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Department of Energy and Climate Change
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31st May 2012

Dear Rob,

Re: Consultation on the Smart Metering Implementation Programme - Smart Energy Code

1. The Smart Energy Code (SEC) will govern smart metering services that around 10million of our customers receive from the Data Communications Company (DCC). It will also play a significant role in managing the change control process of the Smart Metering Equipment Technical Specification (SMETS) that shall apply to approx 16million meters installed by British Gas and longer term is likely to play a key role in many other industry arrangements including customer transfer processes. The SEC will cover a broader set of industry arrangements than any other industry code and will be fundamental to the operation of our business.

2. It is imperative therefore that British Gas assets, operations, costs or customer service delivery cannot be unduly or unfairly influenced by other industry parties and SEC Panel members especially given that this includes our competitors. The SEC Panel must not be able to deliver decisions and outcomes that are skewed in the favour of a collective, of competitors or any particular industry constituency. This is particularly acute at a time where different companies have different approaches to the roll-out of smart meters and different perspectives on metering specifications.

3. Central to tackling this is the constituency and representation of the SEC panel and the stewardship by the regulator or DECC over the decisions that they take and the timescales over which they are implemented. A form of proportional representation is essential, such as the arrangements that operate within the Master Registration Agreement (MRA). Without this it will be far too easy for a number of competitors represented on the SEC Panel to undermine the interests of a supplier that is not. Whilst an appeal process is an essential tool in mitigating some of this risk it does not fully address it. It creates a reliance on regulatory intervention and all the risks that come with it, including risk for the regulator in terms of potential judicial review.

4. We particularly welcome the suggestion that the independent SEC Panel chair can appoint additional voting SEC panel members if it is felt that any group of DCC Service

Users are not adequately represented within the membership of the panel. However, to avoid this becoming an inevitable occurrence the proposed SEC Panel election process must be modified as it will undoubtedly lead to this provision being enacted. The current proposals are for 4 large suppliers, and 1 small supplier, it is therefore not impossible to conceive that Supplier representation could be controlled by organisations that have a relatively small share of the market (customer numbers) but hold a significant majority in terms of number organisations. It would be wholly inappropriate and unacceptable for such organisations, which are likely to contribute a relatively minor amount towards the operation of the DCC, to have disproportionate control over the change process. For example, to have a greater combined voice or power than a single larger entity, such as ourselves, would be untenable. As the major financial contributor to the DCC, the largest user of DCC services, having over 16million future smart meter installations, 10million customers and having the largest investment programme dependant on the DCC's success, it is imperative that we play a leading role in the SEC governance arrangements. Any arrangements that do not provide this are unacceptable.

5. Customers are at the heart of smart metering and should ensure that they are well represented and seen to be well represented. As far as industry parties are concerned, suppliers are closest to customers, have the strongest relationship with them and are ultimately principally accountable for the rollout and success of smart metering. In addition to ensuring that energy suppliers, and therefore consumers, are sufficiently well represented within SEC governance we would welcome increased consumer representation on the SEC Panel. However, it is essential that any consumer representatives are truly independent (acting on behalf of the National Consumer Council, non-profit charity etc.) and do not have other commercial or media interests that could undermine their ability to truly represent consumers interests first and foremost.

6. It is important for parties to be able to secure change and that stalling tactics or filibustering are prevented. At the same time it should not be possible to railroad change through in a manner that damages not just day to day operations but confidence in the regime per se. Two important aspects that must be in place are;

    a. Standard minimum implementation time-frames. These may vary dependent on the impact, the parties affected etc. and could be tailored by change type given the broad scope of the SEC (industry processes, meter functionality, etc).

    b. An urgent modification process that recognises the need for expedited change. Due to the broad nature of the SEC the existing Ofgem urgency criteria may need to be amended to facilitate this.

7. In terms of DCC cost allocation, the Charging Methodology for the establishment, operation and ongoing service provision of the DCC is a critical part of SEC governance framework. It is essential that parties are allocated cost on a basis proportional to the costs that they place upon the DCC. It is also essential that Suppliers are not effectively penalised for proactively participating in Foundation and in the early years of the mass-rollout stage, we are encouraged that the Government recognise this.

8. It is essential that the Code Administrator and Secretariat functions are carried out in an independent manner with no undue influence from any industry party or the DCC. This should be the case regardless of whether a SECCo is formed and there should be clear obligations placed upon parties within the SEC (and any contractual arrangements) to secure this.

9. Robust and credible dispute, assurance, compliance and rectification regimes will be crucial in upholding the efficient operation and execution of the SEC and DCC activities. This needs to be the right balance of industry control with the appropriate regulatory escalation route in place. We look forward to working with the Programme in developing these functions further.

10. Although not covered by this consultation we are aware that significant work will be required prior to the DCC offering services through the provisions within the SEC and that a form of the SEC will be required in early 2013. With the diverse views amongst Suppliers the governance arrangements during this period are as important, if not more, than the enduring model. We look forward to further programme discussions on how the SEC will be enacted and what the governance arrangements in this 'transitional' period will look like.

11. We have responded to the detailed consultation questions in the attached appendix.

If you require any further information or wish to discuss further any element of this response then please do not hesitate to contact me or

Yours sincerely

Appendix One

Q1: Please provide any comments that you have on the classification of party categories under the SEC.

1.1 We are supportive of the Government's proposal to have the following party categories within the Smart Energy Code (SEC):

- The DCC
- Gas Supplier
- Electricity Supplier
- Gas Transporter
- Electricity Distributor
- Other User

1.2 We do not believe that there is any need to split out these categories into sub-categories to include, for example, non-domestic Suppliers. These categories do not represent the rights or obligations that an organisation will have within the modification change process or within the SEC Panel and are at the appropriate level (i.e. different groups or constituencies could be used for change control and the modification process).

1.3 The matter of meter service organisations (e.g. MOPs, MAPs & MAMs) is dealt with later in the consultation document. We recognise that if the option to include such organisations as SEC parties is adopted then the above list would need to be amended, however, we are not supportive of this (see later question).

1.4 There has been some concern raised that the category "Other User" includes all the other party categories. This may cause legal text drafting problems when assigning obligations or rights within the SEC as, for example, non-licensed parties will have different rights to licensed parties and will need to be excluded each time the "Other User" party category is referred to. We believe that the definition should be amended to exclude all licensed parties and, where necessary, the term all SEC parties can be used.

Q2: Are the requirements of both meter asset providers and meter operators for access to smart metering systems adequately captured in this consultation paper? If not, please provide additional details of the requirements and why they are required.

2.1 We believe that the different roles that MAPs, MOPs and MAMs play within both the gas and electricity industry have been adequately captured within the consultation document. However, there is a key difference between the requirement to be a signatory to the SEC (with rights and obligations etc) and having the ability to function effectively within the market with the necessary access to data and to relevant smart metering systems.

2.2 There has been a lot of industry debate inside and outside of the DECC programme in relation to the role that, in particular, MAPs have within the gas industry. Our understanding is that this is primarily in relation to the ability to track assets and to know who the registered Supplier and MAM is at any given time (to ensure effective commercial arrangements are in place).

2.3 This issue is being tackled within the existing industry governance framework and, in part, is seeking to address inadequate commercial arrangement within the market. We do not believe that the DECC programme needs to address this issue at this time. However, in light of changes to registration in the future we are supportive of the programme continuing to be aware of the issue and ensure future arrangements can support this if necessary.

2.4 The proposals within the consultation document recommend that MAPs and MOs are treated differently within SEC arrangements, we are supportive of this. This should equally apply to MAMs where they are carrying out the same activities as either a MAP or an MO. We are supportive of the following proposed options for the meter service community:

2.5 ***MAPs – Option A (All communications via the relevant Supplier).*** MAPs do not require physical access to the smart metering system and all commercial arrangements should be managed through the Supplier. If a Supplier wishes to allow a MAP to access the smart metering system then this can be managed by the Supplier.

2.6 ***MOs – Option B (Supplier Nominated Agent (SNA)).*** This would formalise the arrangements under Option A and recognise meter parties within the SEC. Although referred to within the SEC, the SNA would not be a SEC Party (no charges, rights or obligations). We do not believe that Option B would necessitate high involvement in SEC governance (e.g. part of the SEC Panel), however, we do recognise that SNAs would need to be involved with technical developments involving SMETS, security changes etc. We believe SNAs would play a vital role in such developments and that this can be managed through working groups or sub-committees created under the auspices of the SEC Panel.

Q3: Do you support the Government's preferred solution to implement a simple variant of Option B whereby the registration of a meter operator in the existing electricity and gas registration systems would be deemed to constitute a nomination by the supplier of that meter operator to act as its agent to perform a specific set of commands?

3.1 We are supportive of the simple variant put forward by the Government but recognise that there may be differences in the way that this is implemented within the existing gas and electricity systems. This is currently being developed within the DECC Smart Metering Regulation Group (and associated sub-groups) and we are fully supportive of this work.

3.2 The proposed variant is similar to existing industry code arrangements where, for example within the UNC, the MAM is not a party to the UNC but is recognised as an entity, the Shipper nominates a MAM for each meter point and this formally constitutes a nomination for that MAM to have access to relevant data (and processes).

Q4: Should meter operators be given limited participation rights in SEC governance under Options B or C, and if so what rights would be appropriate?

4.1 As referred to in our response to Q2 above, we believe that under the proposed Option B there is no requirement for SNAs to form part of the SEC Panel. The inclusion of SNAs within the SEC (under Option B) is purely to facilitate the efficient operation of the DCC, the smart metering systems and the operational activities of, in this case, the Meter Operators. The SEC provides the commercial and governance framework between SEC parties; this does not include service providers or nominated agents (e.g. the appointed Communication Service Providers (CSPs) will fall under the Option A model as they are just a service provider to the DCC).

4.2 Under an Option C model (not proposed and not supported) the outcome of governance may differ slightly. As a full SEC party we would expect that certain rights and obligations (and possibly charges) would be applicable and a more formal role within SEC governance may be required. As this has not been proposed by the Government, is not supported by ourselves and does not seem to be the desire of the meter services community, we have not gone into detail of what this governance model would look like. If Option C is to be further considered then we would welcome further industry dialogue on such proposals.

4.3 Notwithstanding our comments above, we recognise that the meter services community will have a key role to play in ongoing SEC development, especially in relation to technical matters such as SMETS and security requirements. The modification process should be designed in such a way to allow SNAs and Other Users to play an active role in such developments; we believe this can be delivered through appropriate sub-group or sub-committee membership.

Q5: Would you support the tracking of assets being included within the future system requirements for the new registration systems, which are proposed to be provided by the DCC?

5.1 We are supportive of future system requirements for new registration systems to include the ability to track smart metering system assets.

5.2 We acknowledge that it is vital for all industry parties to be able to locate and establish the appropriate commercial arrangements for metering system assets. Currently this is managed differently within the central systems within the gas and electricity industry and, with other centralisation initiatives on the horizon such as registration services; we believe this should be addressed over time. Existing systems and processes can be used for certain asset types (e.g. physical meter) but it will remain the role and responsibility of individual asset providers to track and maintain their own equipment.

5.3 There may be parts of the smart metering system (e.g. the communications hub) that should form part of the DCC ownership (or via arrangements with their CSP) and therefore justification for a central record of these held by the DCC.

Q6: Do you agree with the process proposed for accession and the accession time limit?

6.1 We are supportive of the process that has been proposed by the Government for accession to the SEC. It is vital that the first part of accession performs the necessary checks to ensure that the applicant is suitable for accession. We are also supportive of a phased approach where, upon completing the initial accession phase, the applicant party would then need to demonstrate that it meets the requirements to be able to take DCC services (e.g. security, accreditation, end-to-end system testing).

Q7: Do you agree that once acceded, any SEC Party should be able to participate in the governance of the SEC prior to undertaking any further entry processes?

7.1 We do not believe it would be appropriate for a new SEC party (non-licensed), which is not taking DCC services, to be allowed to participate in SEC governance. The Government proposals include the provision for expulsion from the SEC (for certain party categories) if they have been non-active for a period of six months. It would therefore seem inappropriate to allow such parties to participate in SEC governance within this initial six month period.

7.2 The above could not apply to licensed parties that have a licence obligation to accede to the SEC, even though they may also not be taking DCC services.

Q8: Do you have any views on the company, legal and financial information that should be provided as part of the SEC accession process?

8.1 The consultation document lists some 'potential' information that at an applicant may need to provide. We agree that this should include supporting evidence that the company is a viable and going concern and appropriate credit checks and security are put in place. Start-up enterprises may not have formal credit ratings but Independent Credit Assessments are available and are used elsewhere in the industry

(and form part of Ofgem's Credit Best Practice document). The accession process must be appropriately robust to protect the interests of the DCC and its Users.

Q9: Do you agree that Government should not mandate a specific solution for the DCC User Gateway and that Data Service Provider (DSP) bidders should be invited to propose the solution which they consider to be the most effective (such proposals could include the option of extending an existing industry network)? Do you?

9.1 We agree with Government proposal that a specific solution for the DCC User Gateway should not be mandated. There are a number of existing 'network' options and, through the Data Service Provider (DSP) procurement and establishment process; the DSP should be allowed to make decisions on the most effective solution. We are not against the option of this being an existing industry network but believe this decision should be left to the DSP.

9.2 If the DSP were to utilise an existing industry network, the governance and charging arrangements for providing the service should form part of the SEC. This would mean that the DCC User Gateway service would be provided on an equivalent and consistent basis to all other DCC services.

Q10: Do you have any other comments on the Government's proposals for the DCC User Gateway?

10.1 We have no further comments on the Government's proposals for the DCC User Gateway.

Q11: Do you agree with the proposed DCC user entry processes?

11.1 We believe the proposed entry processes are sensible and appropriate.

Q12: Do you agree with the proposed rights and obligations relating to smart metering system enrolment set out in this chapter? Please provide your views.

12.1 We are generally supportive of the rights and responsibilities that are set out in the Government's proposals within the Consultation document. Such arrangements should ensure that suppliers are only able to enrol their relevant meter points into the DCC and the appropriate parties (registered Supplier and relevant Network Operator) are notified of enrolment.

12.2 We are not supportive of the requirement of the DCC to notify all SEC parties once an MPAN/MPRN has been enrolled. As stated above, the Supplier and relevant Network Operator should be notified but there is no requirement to notify Other Users. We understand that this requirement was included in order for other parties to be able to then offer services to customers and to create a level playing field with Suppliers. We

do not believe that this is consistent with the consumer protection measures that have been employed elsewhere in the programme and could lead to customers being contacted by multiple parties that they have no direct relationship with (and don't wish to have).

12.3 It is vital that consumers are aware of the benefits of smart metering and that there are services available to them that may help them manage their energy consumption etc. However, customers should have the choice as to whether to have arrangements in place with Other Users and this should therefore be triggered as a positive action by the consumer rather than approaches from multiple 3rd parties which will ultimately create a bad customer experience.

Q13: Do you agree that the SEC should require, as a condition of enrolment, that the supplier grants the right to the DCC to access its smart metering system for specified purposes?

13.1 We are supportive that SEC arrangements should create the necessary permissions for the DCC to communicate with enrolled meter points. On a practical level we fail to see how this could be managed in any other way. However, the DCC's access to smart metering systems needs to be limited to activities that relate to either the provision of services to authorised SEC Users or to any other purpose that is required in order for the DCC to fulfil its obligations under its licence and the SEC.

Q14: Do you agree with the proposed rights and obligations relating to smart metering system withdrawal and replacement of devices?

14.1 We are supportive of the Government's proposal for the rights and obligations of parties relating to the withdrawal of smart metering systems from the DCC. It is imperative that only the registered Supplier (or last registered Supplier) has the authority to withdrawal a smart metering system from the DCC and that this should be done with a sufficient, but not disproportionate, notice period.

14.2 The DCC should notify the relevant parties of any smart metering system withdrawal. Such notifications should be limited to confirmation to the registered Supplier, the relevant Network Operator and any other User that is utilising DCC services for that meter point.

14.3 We are also supportive of the proposal that emergency works that are carried out by Network Operators will not be covered by SEC arrangements. Network Operators currently have the ability to provide post emergency or urgent metering services to Suppliers and we are supportive of these bilateral arrangements continuing.

Q15: Do you agree with the three different types of eligibility to receive core communication services that have been proposed?

15.1 We do not see the value or the necessity to categorise each service as Type A, B or C and believe this creates unnecessary complexity and does not adequately cover all scenarios (i.e. more categories would be needed). We therefore propose that services are not categorised in this way.

15.2 Each DCC service should be available to those that have rights to it under the SEC and, for some services, it maybe more than one category of User. For example, if a service was available to Network Operators and Suppliers it would not satisfy the current definition of Type A, B or C.

15.3 Within paragraph 167 of the consultation document it is suggested that a SEC Party, such as a Supplier, may be eligible in addition to accessing type A communication services in relation to the smart metering systems for which it is registered, a Supplier could wish to access a Type C communication services for smart metering systems for which it is not registered (because it is marketing to a potential customer that it does not currently supply). We are not aware that this has been discussed at any length and do not believe, based on the information provided within the consultation document, that this is appropriate.

Q16: Are you aware of situations where there are two or more importing suppliers in relation to a single smart metering system and if so, where do such situations exist, how many exist and what metering arrangements have been made?

16.1 We are not aware of any situations where there are two or more importing Suppliers registered against a single metering system.

Q17: Do you agree that amendments to the set of core communication services should be subject to the standard SEC modification process?

17.1 We fully support the proposal that DCC core services should be subject to the standard SEC modification procedures. As discussed later, the modification process should be designed in such a way to allow minor changes to progress in an efficient manner and for more major changes that have a material impact on DCC Users to be fully evaluated and subject to a higher degree of governance.

Q18: Do you agree that SEC Parties should be able to request elective communication services from DCC on either a bilateral or multilateral basis?

18.1 We are supportive of the DCC being able to offer elective services to Users but believe that there needs to be an appropriate balance between the transparency of DCC activities and the commercial confidentiality of those Users taking such services.

18.2 We also believe that the arrangements need to ensure that the DCC is adequately incentivised to offer and provide elective services and that any reporting or contractual arrangements do not create a barrier to this.

18.3 The definition of core and elective services has been the subject of industry debate for a significant period of time. Our view is that the key difference between core and elective services is the charging arrangements associated with them.

18.4 Core services are available to all Users and form part of the cost base of the DCC, whether core services are utilised by Users the charges that are paid to the DCC will include an element to cover the ability to make such services available.

18.5 Elective services are not funded by all (chargeable) Users and are only paid for by those that have requested such services. Charges for elective services should include an appropriate element of DCC's fixed costs (to avoid cross subsidies). The provision of elective services by the DCC should be such that they do not have a detrimental impact on the DCC's ability to provide core services.

18.6 We believe that elective services will fall into (at least) 3 categories:

a) Existing (core) services utilised in a different manner;
b) New message types being sent to the smart metering system; and
c) Services provided by the DCC that do not utilise the communications network or smart metering system.

18.7 For (a) above, changes to the frequency or response times associated with a certain existing message type may well form an elective service. Apart from the identity of the Users taking such services we believe that the DCC should be obliged to provide sufficient information about elective services to allow other Users to be able to make an informed decision on whether to also utilise them. The DCC could, for example, publish the nature of the service (e.g. service x with a response time of y), the current aggregated take-up of the service and the elective service charges associated with such a service.

18.8 For (b) above, any new message types sent to the smart metering system will, probably, be sent to another device in the home rather than the meter itself. Any such service will be a message type of a certain size, with delivery frequencies and associated response messages (if applicable). From a simplistic basis this is simply a message of a certain size and the contents are largely irrelevant (to the DCC and other Users).

18.9 For such services the DCC could be expected to publish information on this type of elective service that would allow other Users to establish whether they wish to take similar services. The commercial advantage to the Supplier that initiates a new elective service is not impacted by this as it is not the content of the message that would be disclosed (neither would the identity of the Supplier). Any commercial or competitive advantage that the Supplier has is likely to be controlled by the device in the home (and the service offered to the consumer) rather than the content of messages

being sent to it. A degree of transparency on these services would therefore not impact on any commercial advantages or innovation and would promote the usage of further elective services, which in turn, should lead to a more cost effective DCC service provision.

18.10 For (c) above, Users may wish to obtain elective services from the DCC that do not utilise the communications network or the smart metering systems. This may include, for example, a User requesting analysis or reporting on their own DCC usage or performance. Such services may be of lower value but the DCC should still be able to offer a degree of transparency on such services without compromising commercial confidentialities.

Q19: Do you agree that the following SEC requirements associated with the provision of core communication services should also apply to elective service provision: DCC user entry processes, technical security requirements, data privacy requirements, financial security requirements and dispute arrangements?

19.1 We agree that the same provisions that will apply to the provision of DCC core services should extend to cover DCC elective services. The protection of the DCC, the communications network and other DCC Users is paramount. As explained above, the charging arrangements are the only real material difference between core and elective services and we see no reason why any other SEC provisions should not apply.

Q20: Do you agree that the SEC should set out mandatory procedures for the provision of an offer of terms for elective communication services by the DCC and with the mandatory procedures proposed? Do you consider that any additional procedures should apply? What do you consider are the appropriate timescales within which an offer of terms should remain open?

20.1 We agree that the SEC should set out mandatory procedures for the provision of elective services (including the process for obtaining an 'offer' from the DCC). Placing a limit of [20] days on the DCC may, in some cases, be restrictive and lead to the DCC not being able to provide the service or having to offer non-favourable conditions. Where justified, the offer process should be flexible enough to allow the DCC sufficient time to prepare an appropriate offer.

20.2 The length of time that an offer should remain open for may depend on when the requesting User intends to take the service. For example, the DCC may be approached about a new elective service prior to any development being carried out (e.g. feasibility stage). The User therefore may wish to have some certainty that the service will be available in the future and the requesting process should allow for this (without compromising the ability of other Users to request alternative elective services).

Q21: Do you agree that commercially sensitive terms and conditions associated with elective service provision, which might include the type of communication service that is being provided, performance standards associated with the provision of that service and the price associated with that service, should be confidential between the DCC and the party or parties receiving the service unless the party or parties receiving the service consent or unless requested by the Authority pursuant to the DCC Licence?

21.1 Please see our response to Q18 above. There needs to be an appropriate balance struck between the DCC providing sufficient transparent information to other Users and the protection of any commercially sensitive matters.

21.2 18.2 We also believe that the arrangements need to ensure that the DCC is adequately incentivised to offer and provide elective services and that any reporting or contractual arrangements do not create a barrier or disincentive to do this.

Q22: Do you agree that the SEC should contain provisions requiring that the DCC notifies SEC Parties of the timing of the implementation of changes to its systems?

22.1 It is critically important that the DCC is obligated to follow a formal notification process prior to implementing changes to its systems.

22.2 Certain central system changes will have a direct impact on DCC Users, the timing of such changes will need to be co-ordinated and sufficient notice period provided to Users is therefore critical.

22.3 As within other industry code arrangements, system changes should have different categorisation dependant on the scale of the impact on other parties. We would also expect changes to be managed in strict release windows with only exceptional or urgent changes being made at other times.

22.4 Changes that do not impact any other Users should still be notified but may not require the same level of advanced warning or approval.

Q23: Do you agree that the DCC should only be required to offer terms for elective communication services from a specified date, and if so, what do you consider that date should be?

23.1 Our comments below on the availability of elective services are based on the assumption that all services that currently appear in the DCC Service Catalogue are available as core services. If this is not to be the case then our view is that those services should be available as elective from day 1.

23.2 From DCC Go-live it is imperative that the DCC is afforded the opportunity to ensure that it can maintain its core functions and core duties. Having an obligation to provide elective services could compromise this and therefore should not be in place on day 1 unless the services within the current service catalogue are not classified as core.

23.3 However, should the DCC wish to offer such services (from day1 or at any other time) then they should not be prevented from doing so, as long as their core functions are not compromised.

23.4 We therefore propose that the DCC is not mandated to provide elective services for a period of approximately 12 months unless existing services are not available as core services. The DCC should be able to offer elective services prior to the end of the 12 month period if it can do so without having a detrimental impact on the provision of core services or the fulfilment of its licence conditions.

Q24: Do you think that the proposed approach for DCC charging is reasonable?

24.1 We welcome the Government's proposal to keep any charging proposals under review to ensure that they do not act as a disincentive for Suppliers to rollout smart meters early.

24.2 We also believe that the principle of using predicted service volumes for the enduring regime (post mass-rollout) to calculate charges, for the mass-rollout phase, is very important as it is those volumes that the DCC, and its service providers, have been procured to deliver.

24.3 We are supportive of the Charging Methodology being based upon the Charging Principles within the DCC licence and forming part of the SEC governance framework. Changes to the Charging Methodology should be managed through the standard SEC modification procedures.

24.4 We are also supportive of the proposed approach of using fixed and explicit (variable) charges. For licensed parties, it may be prudent to allow fixed costs to include a base level of core service usage, possibly based on an assumed minimum annual volume (e.g. each meter point will usually have x many messages associated with it etc.). Explicit charges could then apply, if metrics exist, to then charge for services over and above the base level provided through fixed costs.

24.5 For non-licensed entities we believe that explicit charges would apply but that such charges should be calculated in line with the Charging Principles and Methodology. These charges should also contribute to the fixed costs of the DCC (as proposed for elective services).

24.6 For DCC charges prior to DCC Go-live, we agree that the charges should be limited to that of the cost of the Code Administrator, the Secretariat, the SEC Panel and other DCC own costs (not those of the DSP, CSPs etc).

24.7 It would seem appropriate for those licensed entities that will be required to be signatories to the SEC (or subject to the transitional arrangements that are put in place) to be subject to such charges.

24.8 The level of charges prior to Go-live should be, as proposed for fixed charges in the enduring regime, based upon the expected usage levels of each participant within the enduring regime. Some Users may not wish to take services during the mass rollout phase, or take proportionally less during the early years of mass rollout phase. It would be inappropriate for parties that chose to take advantage of the foundation phase or early enrolment to then disproportionally subsidise the set up and ongoing costs of the DCC.

24.9 For charges during the mass rollout phase, we agree with the principle that they should be met by those that create the cost (if dependant on actual enrolled meter points). Fixed charges should continue to apply to all licensed entities regardless of enrolment profiles with actual and planned enrolment being used as measure for explicit charges. As mentioned above, it is essential that charges during this period do not disincentive Suppliers to enrol meters (rather than install) into the DCC and we welcome the commitment provided by Government to keep this under review.

24.10 We are supportive of the SEC containing provisions for invoicing arrangements, payment terms, late payment and interest provisions and associated procedures. As with the Charging Methodology, these arrangements should be subject to the standard modification procedures.

24.11 We acknowledge and support the principle that the DCC may need to revise its Charging Methodology to include additional services, such as provision of the centralised registration activity, in later years.

Q25: Do you consider that the "pay now dispute later" approach is consistent with the envisaged DCC regime? If you disagree please set out the reasons for your preferred approach.

25.1 We acknowledge the Government's desire to ensure that the DCC remains financially viable and, by having "pay now dispute later", the proposals will go some way in offering a degree of protection and help to reduce the associated 'risk' of DCC financing.

25.2 Whilst we support the need to financially protect the DCC there must be a robust disputes process in place that allows for charges to be challenged. For example, we believe that a gross error provision should be included within the SEC. When an invoice is issued that contains an obviously erroneous amount it is clear that it should not fall into the "pay now dispute later" process as this would create an equal (or greater) risk to the User.

25.3 For day-to-day invoice disputes the process should allow for payment of undisputed amounts to continue with 'valid' challenges then be deferred until resolved. In order to retain the financial protection for the DCC, the disputed amount should be recoverable from all Users in the next set of invoices (and refunded if the dispute is not upheld).

25.4 We also believe that equivalent interest and late payment provisions should apply to any invoices, or invoice amounts, that are found to be incorrect but were subject to these provisions.

25.5 The amended provisions we have suggested above will strike the right balance between protecting the financial position of the DCC and Users as well as ensuring there are appropriate incentives in place to operate a robust invoicing and payment regime.

Q26: Do you accept that bad debt should be socialised explicitly within the current charging period across all DCC service users? If you disagree please set out the reasons for your preferred approach.

26.1 Bad debt should only be a pass-through (allowed revenue adjustment) to the DCC when it has acted fully in accordance with the credit and security arrangements set out within the SEC. The same process exists for gas and electricity Network Operators although any occurrences have to be approved on a case-by-case basis by the Authority. It would seem sensible if a similar mechanism existed for the DCC. Where the DCC has not acted appropriately then the bad debt should be borne by the DCC (or at least in part).

26.2 The option to socialise amongst service providers appears to be flawed as this simply transfers the risk to the DSP and CSPs which will be reflected in their commercial arrangements with the DCC. This increased risk will therefore result in increased DCC charges to cover off debt that may not ever materialise (over insuring).

Q27: Do you agree with the proposed functions, powers and objectives of the SEC Panel, as set out in Boxes 12A and 12B?

27.1 We agree with the proposed powers and objectives of the SEC Panel as set out in the Consultation document. However, the proposed SEC Panel fulfils two key roles as it acts as an executive committee / board and also as a modification panel; we don't believe this is appropriate.

27.2 Whilst we are supportive of the SEC Panel arrangements we believe that the modification panel (or change board) does not require the same membership as that of the SEC Panel's other duties. We would therefore support a split in these activities with an executive committee type arrangement being utilised (with majority membership being licensed entities) and a more representative approach being taken to the modification procedures panel arrangements.

27.3 This has been highlighted as the single major concern with the proposed SEC arrangements by industry participants and we would welcome further industry development to resolve this issue.

Q28: Do you think that a fully independent panel is the appropriate model for the SEC? Please give reasons for your answer.

28.1 For the SEC Panel (executive type duties) we believe that the membership should be made up by those licensed entities that are required to accede and comply with the SEC. These entities have a direct vested interest in the ongoing performance of SEC arrangements and the DCC and are therefore best placed to fulfil this role.

28.2 The modification panel should consist of broad industry representation rather than a number of perceived independent experts. Although representatives may be expected to always consider their own commercial positions when considering modification proposals, all decisions need to be made in accordance with the relevant objectives of the SEC. Decisions taken by members should be supported by sufficient qualitative and/or quantitative assessments, providing a degree of protection from purely commercial viewpoints. Getting the right balance of industry representation is therefore key to ensuring that panel recommendations are in the best interests of the overall SEC objectives and ultimately the end consumer.

28.3 Consumers are at the heart of smart metering arrangements and the benefits that they will deliver, on this basis we are fully support of consumer representation on the SEC modification panel. We would welcome an increased level of consumer representation to that of other industry codes and support their participation throughout the modification procedures.

28.4 A number of parties will have suggested that the representation on the SEC modification panel could be done on a constituency basis with either members representing a number of parties or each SEC party being assigned to a constituency and a weighted voting process utilised.

28.5 There are number of drawbacks with constituency voting with the main one being the assumption that all constituent members will tend to have the same view on modification proposals. We do not believe this to be the case, especially prior to the enduring regime and this in itself may create an unbalanced and unrepresentative approach with diluted views that could result in inappropriate decisions being taken by the panel.

28.6 Ultimately we need to ensure that, for self-governance proposals, the appropriate safeguards are in place to allow for efficient changes to be made whilst protecting the interests of DCC Users and consumers. This seems to have worked well within other industry codes despite different interpretations of the self-governance criteria (see later question).

28.7 For modification proposals that will ultimately be decided upon by the Authority, the formulation of the recommendation (or non-recommendation) is the key issue when discussing the membership of the SEC modification panel. The recommendation creates the right of appeal if the Authority were to make a decision that does not accord with

the SEC modification panel. Although this is usually a rare event within industry codes it is a crucial piece of the overall governance piece and the arrangements need to fit for purpose.

Q29: Do you agree that the proposed SEC Panel composition set out in Box 12C is appropriate? Please give reasons for your answer, Alternative proposals for the panel composition are welcome.

29.1 As referred to in the previous question, the SEC Panel has a wide range of duties and it is not appropriate for the composition of the 'panel' to be the same for all these activities.

29.2 The day-to-day operation of the SEC should be carried out (mainly) by representatives from the licensed entities that are compelled to be signatories to the SEC. These entities have a vested interested in achieving the SEC and DCC relevant objectives.

29.3 As explained in the previous question, the modification panel part of the SEC Panel duties is where there will be the most industry disagreement on membership. The modification panel needs to be as representative and inclusive as possible.

29.4 It would be wholly inappropriate and unacceptable for relatively small organisations, which contribute a relatively minor amount towards the operation of the DCC, to have disproportionate control over the change process. For example, a few organisations within the same category / constituency to have a greater combined voice or power than a single larger entity, such as ourselves, would be untenable. As the major financial contributor to the DCC, the largest user of DCC services, having over 16m consumer accounts and having the largest investment programme dependant on the DCC's success, it is imperative that we play a leading role in the SEC governance arrangements. Any arrangements that do not provide this are unacceptable.

29.5 The term small Supplier is used within the consultation document and is referred to as having less than 250,000 customers. If 'small supplier' is to remain as a defined term within the SEC then it would useful to get some clarity as to whether the 250,000 relates to single or dual fuel and whether it relates to mandatory or all meter points?

29.6 Non-domestic Suppliers have not been identified separately within the SEC Panel membership and we are supportive of this. The vast majority of non-domestic meter points are supplied by the larger 'domestic' Suppliers and it would therefore not be appropriate to segregate in this way.

Q30: Do you agree with the proposed division of voting and non-voting members, and in particular do you believe that the DCC should be a non-voting member in respect of any or all aspects of panel business?

30.1 We are supportive of the split between voting and non-voting membership if the proposal within the consultation document was to be taken forward. It would not be appropriate for the Authority or Government appointee to have a vote in SEC Panel decisions although their input, and hence membership, would be welcomed.

30.2 There are strong arguments for the DCC to have a greater degree of involvement in some SEC modification panel decisions and therefore we would be supportive of a restricted voting role. If a restricted voting model is adopted, we would welcome further discussions within the programme on the nature of such restrictions.

Q31: Do you agree that the proposals for the independence, appointment and term of office of the panel chair are appropriate? Please give reasons for your answer.

31.1 We are supportive of the proposals for the independence, the appointment and term of office of the panel chair. We believe this is consistent with the conclusions from the Ofgem Code Governance Review and supports the principle that SEC Panel business should be conducted in such a manner that does not unduly discriminate against any party and that the panel chair is free to carry out his duties without any undue influence.

Q32: Do you agree with the proposed arrangements for panel member elections and appointments?

32.1 Whilst we support the principle that SEC parties should have input into the nomination process it is vital that such arrangements do not then lead to unrepresentative membership.

32.2 The one vote per corporate group model prevents an organisation that is a multiple SEC Party having an undue advantage as it may not be entirely reflective of participation levels as a DCC User (i.e. a Supplier with multiple Supply licences but small market share shouldn't have a greater say than a Supplier with a single licence but a larger overall market share).

32.3 The one vote per corporate group also has representative issues as a licensee that has a relatively small market share is very likely to be utilising a far less proportion of DCC services when compared to a licensee with a large market share. In order to retain a representative model the appointment process should therefore be based on market share of total population of meters and likely service usage. This is consistent with the proposed Charging Principles and it seems wholly appropriate that those that are paying a greater share of DCC service charges should have a greater say and role to play in SEC governance.

Q33: Do you agree with the proposed rules in respect of proceedings and decision making at SEC Panel meetings?

33.1 For the executive committee type duties of the SEC Panel we are supportive of the proposed rules for the proceedings and decision making at the SEC Panel meetings.

33.2 For modification proposal decisions, the rules around proceedings and decision making will entirely depend on what model is adopted (as discussed in earlier questions). If the modification panel is to have limited membership, rather than full inclusive constituency / weighted votes, then the proposals do seem appropriate.

Q34: Which of the two options for remuneration of panel members do you prefer, and why? In particular which of these options do you believe would be most aligned with each of the options for the panel to be either an independent or a representative body as a whole?

34.1 Panel membership should not be restricted to only those organisations that have the financial flexibility to participate. We would therefore be supportive of limited expenses being paid to Panel members (or a subset of members) for attendance at meetings etc. Such expenses should be subject to a fair and reasonable test and limited to maximum allowances for travel, accommodation, incidental expenses etc.

34.2 We are not supportive of Panel members being remunerated as a payment for their duties as a Panel member (over and above reasonable expenses). Licensed entities, trade associations, consumer bodies the Authority and other SEC parties should all expect to have to participate in industry governance and regulatory matters and therefore this should be seen as business as usual to all industry participants.

Q35: Do you think the Code Administrator and Secretariat chosen by the SEC Panel should be contracted through the DCC or through a SECCo?

35.1 We accept there are concerns around the DCC having undue influence over the Code Administrator or Secretariat. Ideally the Code Administrator and Secretariat should be wholly independent from the DCC and SEC parties.

35.2 Despite the above we do not believe there is necessarily a requirement to create a further legal entity (SECCo) in order to contract for a Code Administrator and Secretariat function. The independence of the Code Administrator and Secretariat could be secured through the contractual arrangements put in place by the DCC which in turn can be safeguarded by the appropriate obligations within the SEC. Both the contract and the SEC could oblige the Code Administrator and Secretariat to act in a fully independent manner despite receiving payment from the DCC.

35.3 We do not believe that this would be commercially confusing for the Code Administrator or Secretariat as the SEC and commercial arrangements can clearly state that they are acting on behalf of the SEC Panel at all times.

35.4 We acknowledge that the appointment of other 3rd parties (e.g. security experts, auditors) may be required under the provisions of the SEC and that without a SECCo this may also need to be done through the DCC. However, if this was of concern to SEC parties (or others) then arrangements could be such that the Code Administrator acts as a contracting body on behalf of the SEC Panel with the associated costs being recovered from the DCC and from Users through DCC service charges.

35.5 We therefore are supportive of the Government's proposal that the Code Administrator and Secretariat should be appointed by the SEC Panel and contracted with through the DCC.

Q36: If a SECCo was established what should its funding arrangements, legal structure, ownership and constitutional arrangements be?

36.1 We believe that if a SECCo were to be established then further work would be required with Stakeholders to find the appropriate operating model. MRASCo and SPAA Ltd are examples where this does work elsewhere in the industry and these could be utilised as models to base such an entity on.

Q37: Do you have any views on the proposals regarding which parties should be entitled to raise SEC modification proposals?

37.1 We are supportive of the groups that have been identified within the consultation document being eligible to raise modification proposals. The modification process should facilitate robust analysis of any modification proposal and provide the safeguard that if any, for example, vexatious proposals were to be raised that they would ultimately fail.

37.2 Whilst this protection could allow any party, regardless of material interest or commercial position, to raise modification proposals, we believe that it is correct to limit the ability to raise proposals to SEC signatories (as contracting parties) or materially affected parties (e.g. consumer representatives).

37.3 We would like to get clarity on what the definition of an "appropriate body" is when it comes to consumer representation. There are different types of organisations that purport to be acting in the interests of consumers; this does not prevent them from being profit making commercial entities.

37.4 We do not feel it that it would be appropriate for such organisations to be involved with SEC governance or have the ability to raise modification proposals. We would welcome an increased focus on consumer representation within SEC governance but this should only be carried out by those bodies without commercial interest and a clear mandate to represent the consumer.

Q38: Do you have any comments on the proposed standard progression paths for different categories of modification?

38.1 We are supportive of the standard modification progression paths that include Self-governance, urgent status proposals and 'standard' proposals that ultimately go to the Authority for decision.

38.2 The standard progression paths are aligned with the conclusions from the Ofgem Code Governance Review (CGR) and apply the principles developed under the Code Administrators Code of Practice (CACoP). We believe consistent application of CGR and CACoP principles across industry codes lead to a clearer future for industry code development and will assist with cross code governance issues.

Q39: Do you have any comments on proposed criteria that the panel would apply to judge whether a proposal is non-material and so to determine which path should be followed?

39.1 The existing self-governance criteria that applies in other industry codes is based on implementation of the modification proposal not having a material impact on matters such as competition, domestic consumers etc. This is not always an easy test to carry out as it can be argued that the majority of modification proposals would not raised unless they had a material impact (i.e. unlikely to raise a proposal if there is no resulting benefit).

39.2 Often proposals that seem to be eminently sensible and receive wide industry support then fail to be classed as self-governance as implementation would have a material impact, albeit a positive one, and the proposal has to be assessed by the Authority despite all parties agreeing that it should be implemented.

39.3 Creating a new industry code presents us with the opportunity to refine the self-governance process. We therefore propose that the self-governance criteria used within the SEC modification procedures are based on the implementation of proposals not having a significant detrimental impact, rather than simply a material impact. We will also be suggesting this approach is taken forward within existing industry codes through Ofgem's recently announced second phase Code Governance Review.

Q40: Do you think it is for the panel or for the Authority to decide whether a modification proposal should be considered urgent and determine its timetable?

40.1 The Authority set out clear criteria that a modification proposal should meet for it to be treated as 'urgent'; however, it is not often that this is as clear cut as it may seem. Urgent modification proposals are often put forward by a party that will suffer a commercial and/or financial loss if the proposal were not to be treated as urgent and subsequently be implemented.

40.2 A decision by the SEC Panel not to grant urgency would effectively prevent the modification proposal from being implemented in the proposed timescales. In the majority of cases this would then render the modification proposal useless (i.e. not worth progressing through the standard route).

40.3 Our view is that the Authority's criteria for urgency should ultimately be judged by the Authority themselves. The role of the SEC Panel should be to utilise their industry knowledge and experience to assess whether they believe a proposal meets the criteria and then provide this as a recommendation to the Authority.

Q41: Do you have any views on whether any non-standard modification rules and procedures should apply to any particular parts of the SEC?

41.1 There will be documents / procedures that sit within the SEC that may not require the full modification process. For example, there may be technical documents, operational procedures, Code of Practices etc that have their own governance and change process (e.g. a sub-committee may have delegated authority to update an operational procedures document if consensus can be reached). This would be seen as another 'standard' procedure under the SEC framework.

41.2 In other industry codes, changes are often discussed at a workgroup (agreement sought) and then require a majority vote (stamp of approval) by the SEC Panel. Variations of this can include 'unanimous' vote by the SEC Panel with the modification process being the backstop process for any changes. The decision on the relevant sections or parts of the SEC that should be treated in such a way should be considered alongside the development of the SEC (as appropriate).

41.3 Key areas, for example, that may warrant different governance arrangements are the SMICoP, the end-to-end security system and business process diagrams. This may not utilise the full modification process but instead could be managed via delegated authority to a narrower group of experts.

Q42: Do you agree with the proposal that responsibility for making final decisions or recommendations on SEC modification proposals should always rest with the SEC Panel and that this power should not be capable of delegation?

42.1 The SEC (modification) Panel should be the governance vehicle for making final decisions or recommendations on SEC modification proposals. However, where non-standard procedures have been adopted, as described above, then the authority to make such decisions may be handed down to an appropriate workgroup or sub-committee. Should such a group not be able to gain consensus or agreement then the SEC Panel could have the final say (or the matter is dealt with by way of the full modification process).

Q43: Are there any further matters relating to the modification process which you would like to comment on?

43.1 We do not agree that it is necessary for the Secretary of State to have powers to direct that a modification proposal should not be made. Whilst we appreciate that the Government want to ensure that the programme is delivered effectively we do not believe that the modification process creates any additional risks to this. We acknowledge that the Secretary of State already has the power to direct changes to be made to the SEC, up until 2019, and believe that this is sufficient.

43.2 The SEC has clear relevant objectives all of which either support the licence conditions of Suppliers, network operators and those of the DCC. Therefore, whilst modification proposals have to be evaluated against the relevant objectives we fail to see how this power is required or indeed how it would be used. We have commented further on this within our response to the DCC licence conditions.

Q44: Do you agree that that the SEC should place certain obligations on the SEC Panel and, possibly, SEC Parties with regard to the production, provision and publication of certain information and reports? If so, what do you believe these should be?

44.1 We do agree that the SEC should place certain obligations on relevant parties in order for reports to be produced and, where appropriate, published.

44.2 Such reports should only be required to establish whether the SEC and SEC parties are carrying out obligations in line with the SEC requirements. If compliance with the SEC is to be reported on then this information should not necessarily immediately be public information and careful consideration will need to be given to if, or when, such information could be made public.

44.3 Obligations may also be required on parties if the Authority wishes to request certain information, where they have right to do so, in order for the data to be collated (by the Code Administrator) and forwarded on to the Authority.

44.4 The DCC will also need to be obligated to produce regular reports to the SEC Panel, and possibly the Authority, in order to demonstrate performance and compliance under the SEC.

44.5 We look forward to working with DECC to develop more detailed proposals in this area.

Q45: Are there any particular areas of risk that you believe should be addressed by appropriate compliance/assurance techniques under the SEC?

45.1 We welcome the Government's proposals to have a robust compliance and assurance regime within the SEC. The end-to-end system will comprise a complex set of

interdependent equipment, systems. It is vital that, for these to remain operationally effective and secure, that the compliance and assurance regime can mitigate the risk of non-compliance and any resulting security threats or operational incidents.

45.2 All SEC parties need to be given the appropriate assurances that other SEC parties, the DCC or any other 3rd party that interacts with the end-to-end system, does so in an appropriate manner. Ensuring that this compliance and assurance framework is right will go a long way to providing this comfort and should provide an effective (and efficient) mechanism to detect non-compliances.

Q46: Do you have any views on the most appropriate governance arrangements for any compliance/assurance framework under the SEC?

46.1 Any compliance or assurance regime also must be cost effective. The right balance needs to be found to avoid the regime from becoming a costly drain on industry resource and an effective way of quickly identifying issues and suitable rectification plans.

46.2 We are supportive of a central compliance and assurance function being created under the governance of the SEC. It is not appropriate to leave compliance as a matter for the Authority to deal with as this should play a part for serious or continuous events. It is imperative that the day-to-day issues and non-compliances that will occur can be dealt with swiftly and by the industry.

46.3 We appreciate that any assurance or compliance regime under the SEC may have limitations in terms of financial penalties and expulsion, however, measures such as the ability to apply sanctions (in certain cases) should provide sufficient incentives and safeguards. Ultimately the Authority would continue to have enforcement powers (for licensed entities) that it could use as and when appropriate to do so.

Q47: Do you have views on the options for the creation and enforcement of liabilities between the DCC and service users described in this chapter?

47.1 We are supportive of a liability framework that sufficiently incentives the DCC to provide a certain level of service and, on balance, sufficiently compensates those affected parties when such service standards have not been met.

47.2 For liabilities arising in relation to the DCC service provision we agree that it seems entirely appropriate that a failure of a service standard would result in pre-determined reduction in DCC allowed revenue and a consequential reduction in DCC charges. We would propose that any such mechanism should target those reductions, where possible, to those Users affected by the failure (if discreetly identifiable).

47.3 Payment liability should be dealt with in a manner that is consistent with other industry codes. Standard late payment and interest charges should apply and the ability of

the DCC (or the SEC Panel) to take steps to limit the exposure of such payment liability to the other DCC Users is essential.

47.4 Liability resulting from any failure of the DCC to provide and/or operate assurance processes could have significant financial consequences on SEC Parties and DCC Users. We look forward to discussing and developing this as part of DECC's future work.

47.5 We agree that the DCC and all SEC parties will have over arching data protection obligations from existing legislation and this, in most cases, will deal with data liability and not carry a monetary liability within the SEC (although licence breaches and enforcement or sanctions from, for example, the Data Protection Act could lead to financial penalties outside of SEC arrangements).

47.6 We are supportive of a security liability framework that does include financial liability but appreciate that a financial cap may be required (which may be different for different parties). Any financial cap needs to be sufficient that it adequately compensates those affected but is capped at a level to avoid a situation that requires an over insured industry that creates greater costs for all parties, and ultimately consumers. We would welcome further industry and Programme discussion in order to ascertain suitable and appropriate limits on such liability.

47.7 Physical damage liability is likely to be isolated and to be limited (unlike a data or a security breach) and there may be no need to impose a financial cap on such liability payments.

Q48: Do you agree that there should be a cap on liability for specific types of breach between the DCC and service users (including security breaches and physical damage). If so, what do you believe the appropriate level of these caps to be?

48.1 Please see the answer to question 47 above.

Q49: Are there any other specific types of liability between the DCC and service users that should be addressed in the SEC? If so, how should these be treated?

49.1 We believe consideration needs to be given to any physical damage or loss incurred by our customers (rather than us directly). This may include damage to physical property, death, personal injury etc. This may well be seen as a consequential loss to ourselves as the Supplier (assuming the customer would take action against us) and be covered, however, we seek further clarification on this.

Q50: Do you have views on the options for the creation and enforcement of obligations and liabilities between SEC Parties (excluding the DCC) described in this chapter?

50.1 There will be a number of scenarios where the actions of one SEC Party could have a detrimental impact on others. The types of loss or liability may well fall into the

categories discussed earlier in relation to DCC service provision and a similar regime may be required.

50.2 To limit the occurrences of liabilities and potential disputes between parties it is essential that the roles and responsibilities of Users are clearly defined as well as ownership and responsibility of the components of the smart metering system (e.g. shared infrastructure or DCC owned assets where maintenance and operational responsibility sits elsewhere).

50.3 Where physical damage or 'interference' with equipment has led to financial loss (including operational cost) to a SEC party we believe that this should be dealt with under SEC provisions rather than being an issue dealt with by both outside of the SEC framework.

Q51: In your view, do any of the potential matters between parties described in this chapter (or any other such matters that you are aware of) merit the inclusion of obligations or liabilities that are directly enforceable between parties under the SEC?

51.1 Where physical damage occurs there may be merit in allowing parties to seek redress directly with the other party, even though this wouldn't be through the SEC it could still be governed by SEC provisions. Other liabilities may not be so appropriate to be remedied directly and the preferred option would be for this to form part of a SEC compliance and assurance framework.

Q52: Do you agree that it would generally be preferable to enforce party obligations "centrally", for example through an appropriate compliance or assurance framework under the SEC?

52.1 We fully support the proposal to enforce party obligations through an appropriate centralised compliance and assurance framework.

Q53: Are there any scenarios where you believe that it would be appropriate to allow for cost recovery between parties under the SEC? If so, what form should these arrangements take?

53.1 The most likely scenario for where cost recovery may be required between SEC parties is in relation to shared infrastructure within the home. The ownership and responsibility for certain aspects of the smart metering system (e.g. the communications hub) has yet to be resolved. Ideally ownership of equipment and responsibility for maintenance/operation will be clearly defined and, if necessary, any shared assets or joint responsibility will have the necessary arrangements for cost recovery.

53.2 In terms of communication hub ownership (the most likely element to have shared usage) our position that it should be owned by the DCC (probably as an asset

belonging to the relevant CSP) would significantly reduce the need for SEC party liabilities and disputes.

Q54: What types of dispute do you believe might arise under the SEC?

54.1 Typical industry code disputes relate to interpretation, alleged non-compliance, suspected 'gaming' and the declaration of force majeure. Often disputes arise as a consequence of an unforeseen event where the code rules then create a perverse / disproportionate financial outcome. Often these are attempted to be resolved through retrospective modifications which, in the majority of cases fail.

Q55: Do you agree with the proposed framework for resolving various different categories of dispute, as outlined in this chapter?

55.1 We are supportive of the proposed framework for resolving various different types of dispute. The types of disputes (or relevant sections of the code) need to have a clear dispute process that is commensurate to the nature of the dispute and cannot be unduly influenced by any party. There may need to be some referral to the Panel / Authority to determine which process is required on a case-by-case basis. For example, a technical issue with SMETS may have significant competition implications, an 'expert' or sub-committee may well be able to determine a technical resolution but may struggle to determine the outcome (e.g. financial liability). In such instances a combination of processes may be required.

Q56: Do you have any views on the suggested framework for dealing with defaults under the SEC, including the events, consequences and procedures described? In particular, do you agree with the proposed role for the SEC Panel and have any view on what SEC rights or services it would be appropriate to suspend in the event of a default?

56.1 The proposals seem sensible and aligned with other industry codes. SEC Panel, although not a legal entity, is central to the arrangements and, as discussed in previous responses, will act as more of an executive committee (rather than a traditional 'panel'). Cases of expulsion decisions limited to non-licensed parties and arrangements should be clear enough that the SEC Panel 'judgement' is mostly procedural.

Q57: Do you agree with the proposed rules and procedures governing withdrawal and expulsion from the SEC described in this chapter?

57.1 We are supportive of the proposed rules and procedures governing withdrawal and expulsion and believe they are reasonable, appropriate and largely consistent with other industry codes.

57.2 There may need to be additional rules around any debts that may not have been calculated or accrued at the time of the withdrawal. For example, payments may be subject to final year reconciliation (as in other codes) and rules will be required as to whether parties remain liable for these or, if not, how those costs are treated (e.g. shared amongst others or allowed revenue adjustment like 'bad debt').

Q58: In addition to the proposals above relating to the suggested intellectual property provisions to be included in the SEC, are there any other intellectual property provisions which should be considered for inclusion within the SEC?

58.1 We are generally supportive of the proposals relating to IPR that are to be included in the SEC.

58.2 For clarity, the IPR held by the DCC should be clearly the property of the DCC licence holder (rather than the DCC as a legal entity / company). This will ensure that any transfer of DCC licence will allow for all IPR provisions to also transfer.

58.3 If there are circumstances where the DCC requires access to IPR owned by a SEC Party then there needs to be clear equivalent provisions within the SEC. This may have to be carried out on a case-by-case basis as it may not always be possible to licence certain IPRs. Confidentiality clauses and agreements may also be required under these circumstances.

Q59: What information should be classified as confidential under the SEC?

59.1 We agree with the classification of confidential information that has been proposed within the consultation document.

Q60: How should a balance be struck between transparency and data publication under the SEC, whilst maintaining confidentiality?

60.1 Any publication of data should not be detrimental to competition, to the day-to-day operation of any organisation or to efficient discharge of the SEC relevant objectives.

60.2 Data publication should have a clear purpose and a clear understanding of what the data represents (to avoid misinterpretation and negative reputational impact) and clear permissions in place to release data when it is considered to be confidential or commercially sensitive.

60.3 Nothing within the SEC should, or can, override the requirements set out in legislation (such as the Data Protection Act); in such cases legislation or regulation would always take precedence.

Q61: Please detail those events which you believe would warrant the force majeure provisions being exercised and indicate who should declare a force majeure event.

61.1 The events listed within the consultation document are all typical FM events, however, the catch all term of 'other significant events' is the most commonly used and is often interpreted quite broadly. There needs to be a clear process for determining whether FM should be used (or not) and a robust disputes process for when there is disagreement (which is highly likely).

61.2 We are fully supportive of the SEC Panel and/or the Authority having a part to play in force majeure proceedings and welcome further development and discussion in this area.

Q62: Please provide your thoughts on the proposal that the SEC should define a set of contingency business process arrangements and associated service levels/obligations which will apply in the event of a major service failure.

62.1 The DCC will need BCM plans in place regardless of whether it relates to FM or not. Where a DCC service user declares FM the impact on other users is not likely to be as significant as the DCC declaring FM, however, contingency procedures should exist where reasonably possible for SEC services and processes.

Q63: Please provide your comments on the proposals outlined for the DCC transfer and whether there are any other specific provisions that you suggest need to be covered within the SEC, in addition to the proposed novation agreement for the SEC.

63.1 The proposals outlined in the consultation document seem entirely reasonable. It is essential that all aspects of the DCC operation (service provider / 3rd party contracts, assets, IPR, financial undertakings etc.) are covered by the arrangements.

63.2 It seems reasonable and appropriate for all SEC parties to also have a SEC requirement to 'assist' as necessary with any novation and to appoint the new DCC (or any relevant service providers) as agents for the purpose of the novation agreement.