



# DCC Review Phase 2: Consultation on the new Smart Meter Communication Licence

## Smart DCC Response

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# Table of Contents

Executive Summary .....	3
1 Introduction .....	4
2 Licence structure and content .....	4
2.1 Ofgem Question 1 Licence Structure .....	4
2.2 Ofgem Question 2 Drafting Principles.....	4
2.3 Ofgem Question 3 Amendments to drafting from DCC1 Licence .....	5
3 Chapter 1: Interpretation, contact details and payment.....	6
3.1 Ofgem Question 4 Chapter 1 Comments .....	6
3.2 Ofgem Question 5 Definitions Comments.....	6
4 Chapter 2: Nature and conduct of the Licensee's business .....	6
4.1 Ofgem Question 6 Chapter 2 Comments .....	6
4.2 Ofgem Question 7 Primary Objective.....	9
4.3 Ofgem Question 8 Permitted Business Approval.....	10
4.4 Ofgem Question 9 Workforce Employment .....	11
4.5 Ofgem Question 10 Code Industry Documents .....	12
5 Chapter 3: General arrangements for services and the Licensee's business..	12
5.1 Ofgem Question 11 Chapter 3 Comments .....	13
6 Chapter 4: Arrangements for the Licensee's independence .....	16
6.1 Ofgem Question 12 Chapter 4 Comments .....	16
6.2 Ofgem Question 13 Board of Directors.....	17
7 Chapter 5: Arrangements relating to the Licensee's performance.....	17
7.1 Ofgem Question 14 Chapter 5 Comments .....	17
7.2 Ofgem Question 15 Remuneration Policy .....	19
8 Chapter 6: Cost Control Conditions of this Licence .....	20
8.1 Ofgem Question 16 Chapter 6 Comments .....	20
8.2 Ofgem Question 17 Cost Controls .....	23
8.3 Ofgem Question 18 Ring-fenced Funding.....	26
9 Chapter 7: Financial and ring-fencing provisions.....	26
9.1 Ofgem Question 19 Chapter 7 Comments .....	26
9.2 Ofgem Question 20 Financial Security Requirements.....	27
10 Chapter 8: Provision of regulatory information .....	27
10.1 Ofgem Question 21 Chapter 8 Comments .....	27

<b>11</b>	<b>Chapter 9: Arrangements for intervention and continuity .....</b>	<b>28</b>
11.1	Ofgem Question 22 Chapter 9 Comments .....	28
<b>12</b>	<b>Chapter 10: Other provisions.....</b>	<b>28</b>
12.1	Ofgem Question 23 Chapter 10 Comments .....	28
12.2	Ofgem Question 24 General Derogation Powers.....	29
12.3	Ofgem Question 25 Commencement and Transition.....	29
<b>13</b>	<b>Schedules.....</b>	<b>29</b>
13.1	Ofgem Question 26 Licence Schedules.....	29

## Executive Summary

The smart metering network, and the data transmitted across it, are part of the critical digital infrastructure required across Great Britain to make government commitments to deliver clean power by 2030 a reality.

Since Licence award in 2013, the network DCC has built and the services it provides have changed dramatically. It has been able to adapt to help support government energy policy, including delivering a Centralised Switching Service and facilitating Market Wide Half Hourly Settlement.

At the time of writing, 36.8m meters have been installed in 23.9m premises, enabling the transmission of more than 2.99bn messages per month. We have facilitated 910,314 switches in the last month via the Central Switching Service and saved an estimated 1.4m tons of CO<sub>2</sub> over the last twelve months. The scale and reach of the network are unparalleled.

Looking forward, as the roll out continues and the full capacity of the network is realised, we need the regulatory regime to be precise where it needs to be but also flexible and capable of changing quickly.

The lack of clarity on the rules and regulations in the first licence period have worked against delivering efficient and timely change in response to the demands of our customers and in the best interests of bill payers, so we are pleased that Ofgem has made a number of changes and are looking forward to working closely with Ofgem to finalise the SMCL2.

Broadly, we welcome the changes Ofgem is proposing, but we have a number of suggestions for how the SMCL2 could be further improved. In terms of the structure and format of the licence, because Ofgem has chosen to reorganise and rename the conditions, a large number of housekeeping changes will need to be made to the SEC. There are also references to SMCL1 conditions in the external service provider contracts that will need to be changed. We do not consider the benefits of restructuring outweigh the additional cost and effort required to complete the consequential changes.

In several areas, we have concerns about the regulatory burden of the new licence and have proposed alternatives. The requirement to publish external service provider contracts in LC10 needs to be clarified to avoid a significant burden of redacting and publishing all contracts. Similarly, the obligation in LC5 for DCC2 to review all the novated external service provider contracts will be very onerous, and, in cases where the contracts have recently been signed, of little value. Reducing the scope of the review to just Fundamental Service Capability contracts, and those that have not been signed or significantly amended recently would represent better value for money. However, even then, our service providers will not negotiate on price without also negotiating other terms. This will result in each contract review involving significant effort and cost. A number of our service providers have also highlighted certain licence requirements and SEC provisions that drive costs in their delivery, and which could be changed.

In terms of the provisions in the licence on the ex ante Business Plan, we do not believe it is appropriate for Ofgem to determine DCC2's revenue for a three-year period via a power of direction and not provide an effective right of challenge for customers or DCC2. This should be determined through a full licence consultation process, allowing for challenge at the Competition and Markets Authority. Using a power of direction is not consistent with how Ofgem determines Price Control allowances for other licensed companies, some of which have significantly lower annual revenue requirements than DCC.

There are a number of provisions where Ofgem should review the proposed timings. For example, the timetable for producing the Business Strategy and Technology Roadmap (BSTR) does not align with the ex ante Business Plan Report timings. We also suggest the Procurement Strategy is reviewed on the same cycle as the ex ante Business Plan Report is produced – i.e. a three-year cycle.

Finally, we note that Ofgem will need to make further changes to the SMCL2 when DCC2 has been appointed. We look forward to working together to shape any further proposals.

# 1 Introduction

We are pleased to submit our response to Ofgem's consultation<sup>1</sup> on the second Smart Meter Communication Licence (SMCL2) that was published on Thursday 18 September 2025.

The remainder of this document is structured as responses consistent with the chapters and questions within Ofgem's consultation.

## 2 Licence structure and content

This section covers the first three questions within Ofgem's consultation.

### 2.1 Ofgem Question 1 Licence Structure

#### Q1. Do you have any comments on the structure of the Licence?

We do not welcome the renumbering of the Licence Conditions as set out in the draft SMCL2. These changes create administrative burden on DCC1, DCC2, and other stakeholders. All of the existing compliance arrangements will need to be reviewed and updated to align to the new numbering approach before the Transfer Date (i.e. 1 November 2026). Furthermore, many of the existing contracts with Service Providers contain numbered references to Conditions in the SMCL1 which will need to be reviewed and updated; this process introduces additional cost, risk and complexity to the handover process. Instead, we propose that the existing numbering is retained and the draft SMCL2 is presented as amendments to the SMCL1 to limit the risk arising from contractual changes and reduce the administrative burden.

We have also suggested that some specific elements of the drafting are moved to other conditions where this will improve clarity and ease comprehension within the draft SMCL2.

At present, Ofgem have only provided Part 3 (CONDITIONS) and Part 4 (SCHEDULES) of the draft SMCL2. Ofgem indicated in section 3.2 of the consultation that Part 1 (TERMS IN RESPECT OF GRANT) and Part 2 (TERMS IN RESPECT OF REVOCATION) of the draft SMCL2 are impacted by the ongoing tender process to select DCC2 so are not within the scope of this consultation. We would welcome confirmation from Ofgem on when the subsequent consultation covering Part 1 and Part 2 will take place to allow all stakeholders to properly assess such drafting.

### 2.2 Ofgem Question 2 Drafting Principles

#### Q2. Do you have any comments on the drafting principles?

We broadly support the drafting principles i.e. that the content in the draft SMCL2 is based on text in the current SMCL1, with amendments to capture Ofgem's specific policy decisions related to DCC2.

It will also be important to reflect any relevant changes to the SMCL1 or policy decisions that may be made by Ofgem or the Secretary of State before the Transfer Date. We are aware of some specific examples where changes will need to be captured.

- Ofgem's 'Data Best Practice as a Code Obligation' consultation<sup>2</sup> closed on 11 August 2025, we support the proposed amendment to the SMCL1 to include a new obligation on DCC1 to follow the Data Best Practice Guidance.

<sup>1</sup> [www.ofgem.gov.uk/consultation/draft-new-smart-meter-communication-licence](https://www.ofgem.gov.uk/consultation/draft-new-smart-meter-communication-licence)

<sup>2</sup> [www.ofgem.gov.uk/consultation/data-best-practice-code-obligation](https://www.ofgem.gov.uk/consultation/data-best-practice-code-obligation).

- DESNZ's consultation<sup>3</sup> on the policy framework for Smart Metering post 2025 closed on 3 October 2025. We proposed amendments to the SMCL1 in response to this consultation.
- Ofgem stated in paragraph 3.190 of the consultation document that the Secretary of State is expected to declare Completion of Implementation before the SMCL2 is awarded to the successful DCC2 applicant; we note that there are a range of matters and powers that relate to Completion of Implementation which may need to be reinstated if such declaration is not made before March 2026.
- There may be commitments made to Ofgem by the successful DCC2 applicant that should be captured in the SMCL2 consistent with Schedule 5 of the SMCL1.

An important drafting principle should be to learn from the experience and operation of the SMCL1. For example, we propose that many of the licence deliverables (e.g. Procurement Strategy) should be reviewed once in every three-year price control period rather than annually. This approach would reduce the administrative burden for both DCC2 and the regulatory departments across our customers.

Ofgem have indicated that they will be granting the SMCL2 to the successful DCC2 applicant under section 6(1)(f) of the Electricity Act 1989 and section 7AB(1) of the Gas Act 1986 on the basis that the SMCL2 is an entirely new Licence. Given that large elements of the draft SMCL1 are extracted verbatim from the SMCL1, we do not consider this to be a valid assumption. Similarly, Ofgem have indicated that they will be using the same powers to amend the Smart Energy Code to reflect any consequential changes arising from the draft SMCL2; the consultation approach to these amendments is presently unclear. We are concerned that by adopting this approach to the award of the SMCL2, there is no right for affected stakeholders to appeal the award decision being made. In contrast, any modification to the Licence would allow an appeal to the Competition and Markets Authority (CMA) consistent with section 11C of the Electricity Act 1989.

Finally, we consider there would be benefit in a further consultation on the revised drafting for the SMCL2 to allow further points of detail to be raised. Such further consultation on the text within the draft SMCL2 allows all interested stakeholders to comment on the drafting that arises following this consultation. Providing for a further review process will efficiently improve the overall quality of the awarded SMCL2 and limit the need for subsequent amendments in the early term of DCC2. Additionally, Ofgem should explore a 'page turning' workshop with key stakeholders to review a near final version.

## 2.3 Ofgem Question 3 Amendments to drafting from DCC1 Licence

**Q3. In particular, where the wording in the existing licence has been carried forward (as the condition was not subject to consultations), do you have views about whether it should be rewritten for drafting consistency or simply retained?**

Generally, where changes in the drafting will improve clarity and ease comprehension, it would be better to redraft elements of the text from SMCL1 to improve the draft SMCL2.

<sup>3</sup> [www.gov.uk/government/consultations/smart-metering-policy-framework-post-2025](https://www.gov.uk/government/consultations/smart-metering-policy-framework-post-2025).

## 3 Chapter 1: Interpretation, contact details and payment

This section covers questions four and five within Ofgem's consultation.

### 3.1 Ofgem Question 4 Chapter 1 Comments

#### Q4. Do you have any comments on Chapter 1 of the licence conditions?

Chapter 1 of the draft SMCL2 is titled 'INTERPRETATION, CONTACT DETAILS AND PAYMENT' and includes the following four Conditions:

- Condition 1. Definitions for the Conditions of this Licence;
- Condition 2. Rules of interpretation for this Licence;
- Condition 3. Addresses for the purposes of this Licence; and
- Condition 4. Licensee's payments to the Authority.

At present DCC1 does not make any payments to Ofgem under Condition 4 in the SMCL1. Ofgem should confirm that there are no plans to levy a fee on DCC2 under Condition 4 in the SMCL2 to support planning for the first Business Plan Report.

### 3.2 Ofgem Question 5 Definitions Comments

#### Q5. In particular do you have any comments on the drafting of the definitions (refer to Appendix 2)?

The definition of 'Consultation' would be better drafted with reference to the Cabinet Office's guidelines. The following revised drafting is suggested.

**"Consultation** means an activity to obtain views consistent with the guidelines published from time to time by the UK Government, and "Consult" is to be construed accordingly. The current version of these guidelines is available via [www.gov.uk/government/publications/consultation-principles-guidance/consultation-principles-2018](http://www.gov.uk/government/publications/consultation-principles-guidance/consultation-principles-2018)."

## 4 Chapter 2: Nature and conduct of the Licensee's business

This section covers questions six to ten within Ofgem's consultation.

### 4.1 Ofgem Question 6 Chapter 2 Comments

#### Q6. Do you have any comments on Chapter 2 of the licence conditions?

Chapter 2 of the draft SMCL2 is titled 'NATURE AND CONDUCT OF THE LICENSEE'S BUSINESS' and contains the following seven Conditions:

- Condition 5. General duties and strategy;
- Condition 6. Authorised Business;
- Condition 7. Provision of the Centralised Registration Service;
- Condition 8. Network Evolution;
- Condition 9. Arrangements for the provision of services;
- Condition 10. Procurement of Relevant Service Capability; and



- Condition 11. Roles in relation to Core Industry Documents.

To improve clarity, paragraph 5.8 in the draft SMCL2 should be drafted as an explicit right for Ofgem to issue directions rather than a reference to Condition 43.21 in SMCL1.

Part B in Condition 5 sets out the transitional duties. Within Condition 43.16 in the SMCL1, there is a requirement for a legally enforceable financial agreement to be established covering transfer of funds between DCC1 and DCC2. We consider it prudent for there to be an equivalent obligation on DCC2 in the SMCL2 to ensure that both DCC1 and DCC2 have an explicit licence duty to sign the agreement.

DCC is concerned by the timeline for the Business Strategy and Technology Roadmap (BSTR) as per Condition 5 Part B in the draft SMCL2; the deadline for the initial BSTR should be brought forward. Paragraph 5.16 in the draft SMCL2 sets out that the initial BSTR should be submitted by DCC2 for approval by Ofgem (or the Secretary of State) no later than 31 March 2028. However, this is misaligned to preparation of the second Business Plan Report which is due to be submitted by 31 July 2027 as per paragraph 22.7. DCC considers that it will be economically inefficient for the second Business Plan Report to be finalised without the strategic direction provided by an agreed BSTR. As such, DCC proposes that the date (for submission to Ofgem) in paragraph 5.16 is amended to be 31 December 2026. This schedule allows for initial preparatory activities to be undertaken before award of the SMCL2 to DCC2 and at the same time provides for a reasonable period of time (from March 2026) for the DCC2 Board to influence and shape the approach prior to submission to Ofgem on 31 December 2026.

DCC considers that paragraph 5.17 in the draft SMCL2 should be amended to include references to sustainability and social responsibility. DCC proposes the following additional point is added after paragraph 5.17 (j).

**'how the Licensee will incorporate environmental sustainability and social responsibility best practices into the development and operation of the Authorised Business;'**

The clarity of the requirements in paragraphs 5.17 (g) (ii) and 5.17 (h) (ii) in the draft SMCL2 on 'security threats' should be improved. DCC recommends that the risk mitigation required by paragraph 5.17 (h) (ii) should be for both new and existing security threats. Thus, DCC proposes that paragraph 5.17 (h) (ii) is redrafted as follows.

**'5.17 (h) (ii) how the Licensee will mitigate the risk of *new and existing* security threats,'**

DCC considers it is prudent to set out a schedule for the production of subsequent versions of the BSTR to provide regulatory certainty for both DCC2 and Ofgem. DCC proposes that each subsequent draft BSTR should be submitted to the Secretary of State and Ofgem no later than one year before the next Business Plan Report, this would provide sufficient time for approval of the BSTR to form the basis of the next Business Plan Report. On this basis, DCC proposes that paragraph 5.24 (c) is amended as follows:

**'5.24 (c) after the consultation, submit a revised copy in draft to the Authority and the Secretary of State *no later than one year before the deadline for the draft Business Plan Report as described in Condition 22 Part B.***

We also consider that some aspects of the BSTR should remain confidential e.g. details of potential and actual security threats. As such, paragraph 5.23 (a) should be amended to permit DCC to redact elements of the public BSTR as follows:

**'5.23 (a) publish a copy of the approved BSTR on its Website (*excluding information in order to maintain commercial confidentiality and protect security confidentiality*)'.**

Appendix 1 of Condition 9 sets out the requirements for the Statement of Service Exemptions. This appendix is drafted on the basis that DCC2 should prepare an entirely new document, which would be inefficient. We



propose that the starting point for DCC2's Statement of Service Exemptions is the 'approved' version as at the Transfer Date (as prepared by DCC1 under Condition 17 the SMCL1). Additionally, on efficiency grounds, we propose that the review cycle for the Statement of Service Exemptions set out in paragraph 1.8 in Appendix 1 of Condition 9 should be amended to be once in each Price Control Period (i.e. every three years) rather than an annual review. Also, the drafting relating to the review in paragraphs 1.8, 1.9, and 1.10 in Appendix 1 of Condition 9 is vague as it is left entirely to DCC2's discretion to consider if amendments are needed. It is also unclear how Ofgem's process in paragraph 1.9 interacts with the review process in paragraph 1.8. This could be improved by clearly setting out that Ofgem can direct any major changes, while a simpler consent in writing is provided for minor updates.

We propose that paragraph 1.9 (a) in Appendix 1 of Condition 9 covering the requirement for a physical copy is removed from SMCL2 given that increasingly business interactions have moved to be entirely digital.

Paragraph 10.27 requires that DCC2 submits a draft Procurement Strategy to Ofgem within 12 months following licence award. As set out in paragraph 10.35, we agree it would be appropriate for DCC2 to adopt the Procurement Strategy approved under SMCL1 (at the Transfer Date) until a revised Procurement Strategy is submitted to avoid any lacuna. To improve clarity in the drafting, paragraph 10.35 should be moved to be the first paragraph in Part D of Condition 10; this part should be amended to explicitly determine that DCC1's Procurement Strategy is DCC2's initial Procurement Strategy and then mandate an initial review by 31 March 2028 (i.e. within the first Price Control Period). Additionally, we recommend that the forward review cycle for the Procurement Strategy (paragraph 10.30) is amended to be once in each Price Control Period, rather than annually on the grounds of efficiency.

The drafting in Paragraphs 10.28 and 10.36 covers the right for DCC2 to seek a confidentiality undertaking prior to consulting on the Procurement Strategy. To improve clarity on the drafting it would be appropriate to consolidate these paragraphs.

DCC supports the proposal to publish and maintain External Service Provider contracts on the DCC Website which is currently required under Schedule 1 in the SMCL1. As permitted under Paragraph 10.39, DCC publishes redacted versions of these contracts to balance the need for transparency with the obligation to protect DCC and its counterparties from risks or liabilities that could arise from disclosing information that may breach contractual terms, such as commercially sensitive information. However, DCC proposes that the requirement to publish all contracts within paragraph 10.38 of the SMCL2 is amended. DCC considers there is limited value in the effort required for redaction and publication of contracts for small supporting services, for example the daily supply of milk for DCC office locations. Currently there are 839 contracts (including historical contracts) published on the DCC Website<sup>4</sup>. Our website analytics show that these contracts have been viewed a total of 22 times over the period of 12 months (as of 24 October 2025). The majority of these views were for legacy Fundamental Service Capability contracts.

DCC proposes the drafting is amended to include a threshold, whereby DCC2 is only required to publish Legacy Procurement Contracts listed in Schedule 1 of the SMCL2. Additionally, DCC recommends that future contracts should only be subject to publication where they have undergone the 'HMT Green Book' process, as outlined in paragraph 10.8 of the draft SMCL2. This approach would deliver efficiency savings by reducing the administrative process associated with redacting and publishing contracts of limited strategic or operational significance.

DCC supports Ofgem's policy that any service procured from a Related Undertaking should be subject to the procurement regime set out in Condition 10 and paragraph 10.41 is intended to capture this requirement. To provide additional clarity, we propose that paragraph 10.41 is deleted, and the following sentence is included within the introduction of paragraph 10.2 as an overarching principle:

<sup>4</sup> [Service Provider contracts – www.smartdcc.co.uk/document-centre/?filter=2075](https://www.smartdcc.co.uk/document-centre/?filter=2075)

- ‘10.2      *Relevant Service Capability is capability that is used (or is to be used) for the purposes of securing the provision of Mandatory Business Services under or pursuant to the Smart Energy Code or Retail Energy Code (and includes Fundamental Service Capability and Fundamental Registration Service Capability). **Without exception, the provisions of this condition apply where the Licensee procures services from a Related Undertaking.***’

The drafting within paragraph 10.44 should be amended to improve clarity as follows:

- ‘10.44      ***References to “capability” in this condition do not include administrative, co-ordination, or contract management activities to oversee External Service Providers in their services to provide the Authorised Business.***’

## 4.2      Ofgem Question 7 Primary Objective

**Q7. Do you agree that the wording of the new Primary Objective, the general duties and transitional duties in LC5 meets the policy intent as set out in our decision on the objectives, operational model and future role of DCC?**

DCC supports Ofgem’s proposal for the objectives (in Part A of Condition 5) to include focus on consumer impact. Including consumer impact within the proposed Primary Objective is consistent with the policy conclusion. DCC2 will be a company funded by energy consumers so must be mindful of the impact on consumers. Whilst, we must be cost efficient, we also need to deliver a stable service with good geographic coverage and improved connectivity as the smart metering rollout continues.

DCC has some concerns regarding the drafting of the supporting objectives as set out in paragraph 5.5 (c). We propose that the drafting is amended to be explicit that DCC2 should undertake the Authorised Business in a manner that will protect the Natural Environment; rather than to promote protection of the Natural Environment.

- ‘5.5      *So far as is consistent with the duty to act in pursuance of the Primary Objective, the Licensee must carry out the Mandatory Business in the manner that is most likely to ~~promote~~:*
- (a)      ***promote** innovation by Energy System Participants,*
  - (b)      ***promote** competition among Supplier Energy System Participants, and*
  - (c)      *~~the protection of~~ **protect** the Natural Environment.’*

Within the drafting it is important for Ofgem to note that not all aspects of the term ‘Natural Environment’ (as defined in the Environment Act 2021<sup>5</sup>) are particularly relevant; inherently DCC2’s focus will be the climate change impact on natural systems given the scope of the Authorised Business.

DCC initially set out concerns in its response to Ofgem’s policy consultation on the future role<sup>6</sup> in relation to the breadth of the contractual review which is set out in paragraphs 5.11 to 5.15 of the draft SMCL2. In its decision document, Ofgem stated the timeline for the review will depend on its scope, may be delivered in stages and is expected to begin with initial scoping within 12 months of the Business Transfer Date. Ofgem also confirmed that it will consult further on the scope as part of the draft SMCL2 consultation.

Whilst Ofgem has confirmed the mechanism for setting the timeline and scope for the review may be an Ofgem direction, DCC considers that the current drafting in paragraph 5.11, lacks clarity on scope and schedule, making it extremely difficult to factor realistic costs of both the scoping support work and the

<sup>5</sup> [www.legislation.gov.uk/ukpga/2021/30/section/44](http://www.legislation.gov.uk/ukpga/2021/30/section/44)

<sup>6</sup> [www.smartdcc.co.uk/consultations/dcc-response-to-ofgem-s-consultation-on-our-future-role/](http://www.smartdcc.co.uk/consultations/dcc-response-to-ofgem-s-consultation-on-our-future-role/)

review activity into the first Business Plan Report (which covers the period between 1 November 2026 and 31 March 2028). We propose that the review of external contracts should commence in the second Price Control Period i.e. from 1 April 2028 onwards to allow DCC2 to plan appropriately once the scope is confirmed.

It is essential that Ofgem provide clarity and clearly articulate the objective of the review to enable DCC2 to efficiently identify possible costs and economic benefits. The consultation document indicates that Ofgem anticipates the scope of the review will include Fundamental Service Capability contracts, as well as certain contracts exceeding a specified value threshold. The majority, if not all, of these contracts will have followed HMT Green Book procurement processes and received non-objection from the Secretary of State. Given the complexity of the technology in most FSC contracts, they tend to be long-term in nature and may have recently undergone a formal procurement process or currently be in some form of commercial review (e.g. extension or renegotiation). As a result, the opportunity to realise material cost savings through a contract review prior to expiry is likely to be limited.

To meaningfully identify efficiencies, while balancing the cost of undertaking a review, the exercise would need to be approached as a full procurement process, potentially following the HMT Green Book process, which is an extensive and timely exercise (e.g. 5 years for DCC's largest contracts). This exercise would likely duplicate work DCC has already undertaken and require significant resource, time, and cost investment, and may necessitate the redirection of business-as-usual (BAU) resources to support Ofgem's direction. Such an exercise could impact delivery of other operational and strategic priorities.

Given these concerns, we propose that DCC2's review of External Service provider Contracts is limited to contracts:

- (1) that fall within the HMT Green Book regime (paragraph 10.8 in SMCL2);
- (2) where the contract commencement date is more than 2 years before the date of the direction provided under paragraph 5.10 (as there is limited scope to realise benefits from a review if the contracts has recently been through the HMT Green Book process); and
- (3) where the absolute contract expiry date is more than 5 years after the date of the direction provided under paragraph 5.10 (as the initial review/procurement activity is already underway for such contracts).

While the consultation document suggests the scope may include high-value contracts, DCC notes that paragraph 5.13 currently focuses narrowly on the supply chain. This limited scope risks overlooking broader factors that influence service delivery and cost efficiency. Some of our existing service providers observe that requirements in the SMCL1/SEC add cost; there may be benefits in exploring engagement with the supply chain to identify any amendments that could drive cost out without compromising the network. Thus, an approach that considers the nature of services provided to customers and the technologies that underpin them would be necessary to enable a more meaningful and impactful review. Without this, the potential to achieve material economic efficiencies is significantly constrained. It is also particularly concerning that paragraph 5.13 does not require any delivery plan to support subsequent realisation of tangible benefits.

In summary, we remain seriously concerned that the proposed drafting will result in no net benefit to customers.

### 4.3 Ofgem Question 8 Permitted Business Approval

**Q8. Do you have any comments whether the application and approval approach for Permitted Business under LC6 should be detailed in the Licence or in guidance?**

Part B in Condition 6 indicates that DCC2 will be required to request permission to undertake Permitted Business as set out in guidance provided by Ofgem. In principle, DCC considers the use of a guidance

document to be economically efficient as it allows the detailed approach to be varied based on experience and the nature of each request.

However, the current drafting does not include any requirement for Ofgem to respond to DCC2's request which creates uncertainty. For example, Ofgem's proposal that DCC seeks to match ringfenced innovation funding with external innovation grant funding. Without certainty from Ofgem over the approval timeline, DCC2 could not submit bids or enter into contractual agreements for this type of matched funding. As such, we propose that the default position should be that the request is deemed to be approved if Ofgem does not respond to a request within a defined period, for example 20 working days. We also propose that the requirement for default approval is included within Paragraph 6.6.

To support handover planning, Ofgem should confirm (in the conclusion to this consultation) when the 'Permitted Business Guidance' will be provided. The Permitted Business Guidance should also consider how 'in-flight' activities are managed; for example, if the SMEDR programme<sup>7</sup> (led by DESNZ) moves to an implementation phase, this is expected to be Permitted Business that will straddle the Transfer Date i.e. commence in Q2 2026 under SMCL1 and continue into 2027 under SMCL2.

#### 4.4 Ofgem Question 9 Workforce Employment

**Q9. Do you agree with the new requirement under LC10 for the Licensee to directly employ more than half of the Licensee's workforce and all Senior Managers? If not, do you have views on a different approach that could be adopted to achieve the same aim?**

As set out in our response to the Future Role consultation, DCC (as the existing Licensee) has no view on the approach to employment implemented by DCC2.

On the basis that Ofgem proceeds with the proposed approach set out in the draft SMCL2, DCC has some detailed comments on the relevant aspects in the draft SMCL2.

We propose that Part J in Condition 10 (Employment arrangements) is moved to Condition 15 within Chapter 4 (ARRANGEMENTS FOR THE LICENSEE'S INDEPENDENCE) to avoid the scope for any confusion that employment contracts fall within the scope of the Procurement Strategy.

DCC proposes the following alternative drafting for paragraph 10.42 to improve clarity:

'10.42 At any time, the Licensee must ensure it has a contract of employment with ~~directly employ~~:

- (a) more than half of the Licensee Workforce, and
- (b) all Senior Managers.'

A defined term 'Employee' is provided in Paragraph 10.45 for the purposes of Condition 10. However, the term is not used in Condition 10 but is used in Condition 15. DCC proposes that this definition is moved to Part E in Condition 15.

It would be appropriate that the definition of 'Licensee Workforce' is amended to ensure that personnel deployed by service providers are not inadvertently included. We propose that the relevant definition in paragraph 10.45 is amended as follows:

**'Licensee Workforce means the organised grouping of employees that has as its principal purpose the carrying out of the Authorised Business. For avoidance of doubt, this shall not include employees of**

<sup>7</sup> DESNZ (2022), Smart Meter Energy Data Repository Programme. [www.gov.uk/government/publications/smart-meter-energy-data-repository-programme](https://www.gov.uk/government/publications/smart-meter-energy-data-repository-programme).

**External Service Providers providing Relevant Service Capability under External Service Provider Contracts.'**

#### 4.5 Ofgem Question 10 Code Industry Documents

**Q10. Do you agree with the conditions on Code Industry documents? In particular:**

- a. Updating the condition to reflect the SEC is established and, therefore, introducing a duty to have regard to SEC objectives
- b. Removing the right to be supplied with information arising from other code documents
- c. Whether to retain the conditions relating to consequential changes
- d. Moving the mandatory content and code arrangements to Schedule 2

DCC considers the drafting approach in Part A of Condition 11, which reflects that the Smart Energy Code (SEC) is established, to be broadly acceptable. However, we believe that the drafting currently set out in Schedule 2 should be incorporated into Condition 11. This is because the content of the SEC is critical content and should be captured within the main body of Condition 11 in the draft SMCL2. Presenting this material separately in Schedule 2 risks diminishing its prominence and clarity. Moreover, the need to switch between Condition 11 and Schedule 2 reduces the efficiency and ease of comprehension, making the SMCL2 more challenging to navigate. We also consider this approach to be consistent with the drafting of the Electricity System Operator Licence, thereby supporting structural alignment across energy licences.

The drafting of the SEC Objectives in Part C of Condition 11 within the draft SMCL2 has changed the structure used in Part D in Condition 22 within the SMCL1. The rationale for this is unclear and the revised approach appears to consolidate or reframe these objectives, despite the fact that they remain individually numbered and restated within the SEC itself. We consider that retaining the existing paragraph-based structure would better reflect the established format in the SEC and maintain consistency with current drafting practice.

We agree that it is prudent to remove the provision for access to information regarding other core industry documents from the draft SMCL2, given that this is not a right that DCC can enforce under SMCL1. Where information from other codes is required, it would be more appropriate for an explicit duty to be placed within the relevant code or licence itself.

DCC supports retaining the conditions related to consequential changes in Core Industry Documents. We are committed to working collaboratively with SECCo, RECCo, the SEC Administrator and Secretariat (SECAS), and the REC Code Manager to ensure that code modifications appropriately consider cross-code impacts. We agree that DCC should not be a barrier with respect to consequential changes to a core industry document.

We acknowledge the aims of Ofgem's Energy Code Reform (ECR) in strengthening cross-code coordination by requiring Code Managers to promote alignment and facilitate collaborative development of cross-code modifications. This is a valuable initiative that reinforces the shared responsibility across parties. However, we believe it is essential that DCC is also consulted at an early stage where any cross-code change may affect the systems or processes we manage. Early engagement will help mitigate risks and ensure smoother implementation, which will be vital in enabling DCC2 to meet these obligations. Finally, we emphasise the importance of Ofgem aligning its work, particularly the SEC changes which are expected in ECR Phase 3, with the development of the SMCL2. This coordination is crucial to avoid any policy decisions under ECR inadvertently undermining or contradicting those affecting DCC2.

## 5 Chapter 3: General arrangements for services and the Licensee's business

This section covers one question within Ofgem's consultation.



## 5.1 Ofgem Question 11 Chapter 3 Comments

### Q11. Do you have any comments on Chapter 3 of the licence conditions?

Chapter 3 of the draft SMCL2 is titled 'GENERAL ARRANGEMENTS FOR SERVICES AND THE LICENSEE'S BUSINESS' and contains the following three Conditions:

- Condition 12. General controls for the Authorised Business;
- Condition 13. Security Control; and
- Condition 14. Determination of disputes by the Authority.

DCC has the following comments on the Conditions within Chapter 3 of the draft SMCL2.

Paragraph 12.4 requires a Corporate Governance Statement to be provided by 31 July in each Regulatory Year starting on 1 April 2027. However, the first Regulatory Year for DCC2 is envisaged to be the period between the Transfer Date (i.e. 1 November 2026) and ending with 31 March 2028 as per paragraph 1.4 i.e. a Regulatory Year is never envisaged start on 1 April 2027. Ofgem should consider the policy intent and revise paragraph 12.4 accordingly.

On efficiency grounds, we propose that the requirement to provide a physical copy of the Internal Control Document and the Risk Management Strategy in 12.16 (b) is removed. To improve clarity, we propose 12.16 is replaced with the following text

**'12.16 Following each approval, the Licensee must promptly:**

**(a) provide a copy of the Internal Control Document and the Risk Management Strategy to the Authority; and**

**(b) publish both the approved Internal Control Document and the Risk Management Strategy document on its Website.'**

DCC proposes that paragraph 13.10 is amended (as below) to allow certification providers that are mutually recognised by the United Kingdom Accreditation Service given that some External Service Providers are not based in the United Kingdom. We also propose that paragraph 13.10 refers to ISO/IEC 27001 without specifying the year of publication. This is because updates to the applicable version of the standard are already managed within the SEC, and we do not consider it necessary or proportionate to update the Licence solely to reflect changes to the year of the standard.

**'13.10 Before the First Transfer Date, the Licensee must, hold appropriate certification by a body that is accredited by the United Kingdom Accreditation Service or any other equivalent body that has a mutual recognition agreement with the United Kingdom Accreditation Service at the time the certification is provided in relation to the following standards of the International Organisation for Standards ("ISO") with respect to the resilience, reliability, and security of information assets, processes, and systems used for the purposes of carrying on the Authorised Business:**

**(a) ISO/IEC 27001:~~2022~~ (under the title of Information security, cybersecurity and privacy protection – Information security management systems),'**

DCC notes that the current drafting in paragraphs 13.10 and 13.11 requires DCC2 to hold appropriate ISO/IEC certification "Before the First Transfer Date" and then within the first 12 months of first providing Core Communications Services "obtain Cyber Essentials and certification for all its systems as a minimum security baseline". DCC is committed to supporting the policy intent of continued security of the service by ensuring DCC2 has the appropriate controls in place at Business Transfer. However, DCC notes that Cyber Essentials

is usually used as a prerequisite for UK government contracts and has a simpler scope for certification, and it is often used as a stepping stone for achieving international standards, such as ISO 27001. Therefore, DCC considers that DCC2 obtaining Cyber Essentials within a year of Business Transfer is inefficient reduction in the level of security assurance and proposes that this requirement (in paragraph 13.11) is removed.

DCC proposes that Ofgem and any bidders for SMCL2 consider transferring DCC1's existing certification to DCC2 at the point of Business Transfer. This recommendation is because DCC1's security operations, including its Information Security Management System (ISMS), will be handed over to DCC2. We consider that requiring potential bidders who are not already certified to complete the full certification process prior to the Transfer Date could introduce unnecessary risks to handover readiness, given that certification typically takes between 3 to 12 months to complete. DCC also notes that Ofgem's latest consultation<sup>8</sup> proposes that DCC2 costs associated with security accreditation are eligible for recovery as Pass-Through costs via DCC1. Considering this, DCC recommends engagement with Ofgem during the selection process to review the accreditation requirement, with a view to avoiding unnecessary costs if the existing certification can be transferred from DCC1 to DCC2. Therefore, DCC proposes that paragraph 13.11 be amended to state "**On or Before the First Transfer Date**" to allow flexibility for either new accreditation or the transfer of existing accreditation.

As part of its consideration of the draft SMCL2 licence, DCC reviewed the SMCL1 in relation to security to identify changes that would support application of the latest and future technologies and offer efficiencies, whilst continuing the high level of security for the smart meter network. DCC also considers there is an opportunity to provide clarity on SMCL1 obligations which have been subject to interpretation. As part of this review, DCC presented an overview of its proposed changes to the Security Sub-Committee (SSC) to seek views and comments to be provided to Ofgem.<sup>9</sup> The SSC agreed in principle with the below changes subject to Ofgem's legal drafting.

Part A of Condition 13 requires DCC2 to have a system of controls and measures to ensure the physical security of all equipment, networks, processes, procedures, and data used in or for the purposes of carrying on the Authorised Business. DCC notes that since the award of SMCL1 and implementation of the smart meter network, technology and its security has advanced significantly. One example being the public cloud service revolution and its adoption across industries, including government. DCC considers the current drafting in paragraphs 13.3 to 13.5 does not acknowledge this and the focus is still predominantly on physical data centres and their security. DCC therefore proposes (as below) that the drafting recognises the hosting approach, including limitations such as flexibility and geographic hosting restrictions.

- '13.3      *The Licensee must at all times have in place a system of controls that is designed to ensure the security of all equipment, networks, processes, procedures, and data **(whether physical, digital or virtual)** used in or for the purposes of carrying on the Authorised Business so as to minimise opportunities for theft, fraud, or other unauthorised interference or misuse that whether directly or indirectly could cause any interruption or cessation of Mandatory Business Services or Permitted Business Services.*
- 13.4      *In particular, the system of controls to which paragraph 0 refers must include measures designed to ensure that:*
- (a)      *equipment transported, installed, **configured** or operated by the Licensee **(whether physical devices or cloud-based infrastructure)** for the purposes of the Authorised Business is protected against unauthorised access;*

<sup>8</sup> [www.ofgem.gov.uk/consultation/financing-arrangements-dcc1-and-dcc2-during-business-handover](http://www.ofgem.gov.uk/consultation/financing-arrangements-dcc1-and-dcc2-during-business-handover)

<sup>9</sup> [smartenergycodecompany.co.uk/meeting/ssc-meeting-224/](http://smartenergycodecompany.co.uk/meeting/ssc-meeting-224/)



- (b) *the supply, repair, and maintenance of such equipment, systems, including virtual components and cloud services, and the supply of spare parts or updates for it, are at all times under the control of the Licensee;*
- (c) *all premises and virtual environments used for or in connection with the conduct of the Authorised Business are physically secured and monitored;*
- (d) *equipment, systems, and data that are no longer required for any of the purposes of the Authorised Business are securely disposed of or deleted;*
- (e) *where data is to be transferred, it is transferred in a secure manner.'*

DCC proposes clarifying in the SMCL2 licence, or the SEC through the consequential changes due to be raised by Ofgem, the circumstances in which services or personnel can be located outside of Great Britain and/or the EEA. Paragraph 13.16 currently includes geo-location restrictions for the procurement of Smart Metering Key Infrastructure (SMKI) Services and the controls and monitoring of the security events. It is not abundantly clear from this drafting what elements of the service must stay within Great Britain (or the United Kingdom), due to ambiguity pertaining to the "SMKI Service". This term lacks clarity, as it can refer to multiple components across different parts of the ecosystem and may evolve as the service evolves. Without contextual rationale and clear use cases, DCC has found it difficult to allow the effective application of the principle. There could be opportunities for greater efficiencies if a definition of "SMKI Services" was included in the SMCL2 or the SEC, specifying which aspects of the service are subject to geolocation requirements and outlining the scope in plain terms that can easily be translated to contractual obligations.

Paragraph 13.8 states that DCC must take all appropriate steps to ensure that any agents and contractors (including External Service Providers) establish and maintain equivalent arrangements for the purpose of meeting the security control requirements outlined in Condition 13 (Paragraphs 13.1, 13.2, 13.3, 13.4 and 13.5). Furthermore, Paragraph 13.14 stipulates that DCC cannot enter a contract with a Service Provider that does not contain provisions to facilitate DCC's licence or SEC obligations in respect of security. As discussed previously with Ofgem this is not always appropriate and can drive significant cost.

DCC considers that clarification is needed on the extent to which these obligations flow down the supply chain, and what is reasonable evidence around third-party due diligence by External Service Providers. Particularly regarding contract arrangements which use capabilities such as cloud hosting services as some Service Providers face challenges in providing evidence that their contracts include flow down of DCC Licence and SEC requirements to their third parties. DCC proposes amendments to 13.15 to this effect.

'13.15 The provisions mentioned in paragraph ~~13.3~~13.4 include:

- (a) *requirements for External Service Providers to conduct appropriate third-party due diligence and ensure that their own subcontractors, agents and/or suppliers implement security controls that are consistent with the requirements of the DCC Licence and the SEC*

DCC notes that Paragraph 13.13 requires DCC2 to always make the Register of Security Incidents available to Ofgem for inspection. The current text is ambiguous and could be interpreted as DCC2 is required to provide Ofgem with continuous access to a live register. In practice, the register is made available on request to Ofgem or an update to the register is notified as part of current reporting process for incidents. DCC proposes that 13.13(a) is amended to reflect this.

'13.3 The Licensee must also:

- (a) *notify the Authority of any updates to make* the Register of Security Incidents and *making it available to the Authority for its inspection at all times upon request,*

## 6 Chapter 4: Arrangements for the Licensee's independence

This section covers questions twelve and thirteen within Ofgem's consultation.

### 6.1 Ofgem Question 12 Chapter 4 Comments

#### Q12. Do you have any comments on Chapter 4 of the licence conditions?

Chapter 4 of the draft SMCL2 is titled 'ARRANGEMENTS FOR THE LICENSEE'S INDEPENDENCE' and contains the following five Conditions:

- Condition 15. Licensee's Board of Directors and Managers;
- Condition 16. Independence and autonomy of the Licensee;
- Condition 17. Protection of Confidential Information;
- Condition 18. Special position duties; and
- Condition 19. Appointment and duties of Compliance Officer.

DCC considers that the introduction in Condition 9.1 in the SMCL1 should be retained as this drafting provides a more precise definition of the independence requirement compared to paragraph 15.1 in the draft SMCL2.

Paragraph 15.6 restricts directors from holding shares in affiliates or service providers. We consider this drafting should be amended to allow such holding in pension funds or similar (where the director has no knowledge/insight into the holdings).

DCC proposes an amendment to paragraph 15.4 (d) to improve clarity as follows:

*'15.4 (d) holds cross-directorships or has significant links with other directors **of the Licensee** through involvement in other companies or bodies.'*

To improve comprehension of the draft SMCL2, DCC proposes that Paragraph 15.11 is moved to be Paragraph 15.3, such that it follow directly after Paragraph 15.2 to which it relates.

We propose to replace paragraphs 15.7, 15.8, and 15.9 with a new paragraph 15.7. This new drafting improves clarity across these paragraphs as the interactions within the previous drafting reduced comprehension.

**'15.7 Where the Licensee appoints a person as a non-executive director that person:**

**(a) must be appointed for a fixed period of three years or less;**

**(b) may have previously been appointed as a non-executive director of the Licensee or Previous Licensee; and**

**(c) may not hold the office of non-executive director of the Licensee or Previous Licensee for more than nine years in total.'**

Ofgem's policy is that the Chair of the DCC2 Board should be an independent director. This policy intent is presently captured across Paragraphs 15.5 and 15.20 in the draft SMCL2. To provide additional clarity in the drafting, DCC proposes that paragraph 15.5 is deleted, and Paragraph 15.20 is amended as follows:

**'15.20 The Licensee must appoint an independent director (see paragraphs 15.3 and 15.4) to be the Chair of the Board (the "Chair").'**

DCC notes that the current drafting in paragraph 15.26 omits parents and dependents, but it is unclear whether such omission aligns to a specific policy intent. For example, the Childcare Payments (Eligibility) Regulations 2015 provides this definition: ‘Close relative means a parent, parent in-law, son, son in-law, daughter, daughter in-law, stepparent, stepson, stepdaughter, brother, sister and if any of those listed has a partner, that partner.’ DCC considers that Ofgem should confirm the policy intent underlying the definition of ‘Close Relative’ within Paragraph 15.26 of the draft SMCL2 and make any necessary amendments to align to the confirmed policy requirement.

Condition 19 of the draft SMCL2 requires DCC to appoint a Compliance Officer. The current drafting does not prevent DCC2 from appointing the same Compliance Officer that currently provides the service for DCC1 under Condition 12 in the SMCL1. Ofgem should confirm that this is their actual policy intent to support effective handover planning.

## 6.2 Ofgem Question 13 Board of Directors

**Q13. Do you agree that the wording of the new condition on the Licensee’s Board of Directors (LC15) meets the policy intent as set out in our decision on governance arrangements? In particular, the power for Ofgem to remove directors or require the appointment of an independent director?**

The drafting in Condition 15 of the draft SMCL2 captures Ofgem’s broad policy intent in relation to the governance of DCC2. However, DCC is concerned that aspects of Condition 15 in SMCL2 and Condition 9 in SMCL1 may in combination prevent existing independent directors from successfully transitioning from the DCC1 Board to the DCC2 Board. Ofgem’s conclusion on governance<sup>10</sup> set out that the DCC2 Shareholder should be permitted to transition independent directors from the DCC1 Board to the DCC2 Board, given the benefits from such continuity, subject to:

1. an independent directors’ willingness to join the DCC2 Board;
2. the agreement of the DCC2 Shareholder; and
3. a valid appointment process being followed.

Ofgem should confirm that it will support such transition via appropriate derogations to SMCL1 and SMCL2. Such matters should be explored in detail once the preferred applicant to be the DCC2 Shareholder is confirmed.

## 7 Chapter 5: Arrangements relating to the Licensee’s performance

This section covers questions fourteen and fifteen within Ofgem’s consultation.

### 7.1 Ofgem Question 14 Chapter 5 Comments

**Q14. Do you have any comments on Chapter 5 of the licence conditions?**

Chapter 5 of the draft SMCL2 is titled ‘ARRANGEMENTS RELATING TO THE LICENSEE’S PERFORMANCE’ and contains the following two Conditions:

- Condition 20. Remuneration Policy; and
- Condition 21. Operational performance regime.

<sup>10</sup> Ofgem – 17 January 2025 - <https://www.ofgem.gov.uk/decision/dcc-review-phase-2-governance-arrangements-conclusions>.

Given that DCC2 will need to have a valid Remuneration Policy in place, and it would be unreasonable to retrospectively apply any changes, the drafting in Part E of Condition 20 should be amended to confirm that the draft policy is deemed to be approved if Ofgem do not respond within the 60-day period specified within paragraph 20.9. DCC proposes this text is included after paragraph 20.9:

**'20.XX      A draft or revised Executive Remuneration Policy submitted under this condition will be deemed to be approved by the Authority where the Authority has not provided either a Notice of approval (as set out in Paragraph 20.9 (a)) or a Direction to modify (as set out in Paragraph 20.9 (b)) within the timescales set out in Paragraph 20.9.'**

The intended approach implemented within paragraph 20.9 (b) should also be confirmed; it should be explicit that the 60-day approval period restarts after any resubmission following a direction under Paragraph 20.9.

Part C of Condition 21 (Contract management and procurement) should be moved to another Condition as it doesn't align with the routine reporting requirements within the rest of Condition 21 and the planned OPR Guidance specified in Part D of Condition 21. DCC considers it would fit better at the end of Condition 10 (Procurement of Relevant Service Capability). Ofgem should also amend paragraph 21.11 to be clear that the fees for any such audit would be funded by Ofgem rather than within DCC2's Required Revenue (as such activity could not be factored into the relevant Business Plan Report).

The proposed drafting in paragraph 21.7 requires that DCC2 appoints a third party to oversee all aspects of the Customer Satisfaction Survey. We propose that this requirement is amended to be an oversight/audit role only if deemed necessary.

By way of background, we launched a Customer Satisfaction Survey on 17 October 2025. This survey was internally developed and hosted on an outsourced platform<sup>11</sup>. We received technical support on the implementation from the platform provider. Our current plan is for the survey results to be managed internally. We will be making reports available to Ofgem and our customers on scorings, outcome, and actions to address points raised. We propose that any audit activity be undertaken as a result of any concerns Ofgem may have and the auditor would only be procured if DCC2 were so directed by Ofgem. We consider that appointing a third party to oversee all aspects the survey would not deliver sufficient value for customers and consumers to justify the associated costs. If DCC2 were to fund this, we will need to factor in costs for this new activity within the draft Business Plan Report to apply from the Transfer Date. On this basis, we propose the following amendments to paragraph 21.7:

**'21.7      The Licensee must:**

- (a) *appoint an independent and competent third party to ~~audit~~ review the design, ~~supervise~~ the conduct, and ~~review~~ the output of the survey **if so directed by the Authority**;*
- (b) *have due regard to the views of the third party when discharging the duties in this Part.'*

The existing drafting in paragraph 21.8 proposes that Customer Satisfaction Surveys are undertaken every two years starting from the Transfer Date. At present, we have an approach with regular surveys every six months (planned for each October and March) which will satisfy the regulatory requirement within paragraph 21.8. Our proposal is that DCC2 would continue with this cadence.

<sup>11</sup> The Pisano platform used was selected via a competitive tender process and there is a current contract for a 5-year period.

Paragraph 21.9 proposes that the results of each Customer Satisfaction Survey are published on the DCC2 website. DCC proposes the definition of 'results' to be the overall Customer Satisfaction score (%), participation rates and high-level themes.

Paragraph 21.10 provides Ofgem with broad powers to explore the results of each Customer Satisfaction Survey, request a report from DCC2 on the plans to respond, and provide directions in relation to any Rectification Plan. We are concerned that this requirement is overly broad and doesn't indicate any thresholds/prioritisation that Ofgem may consider before seeking to take action. We are concerned that the cost/resource requirements arising from this paragraph 20.10 are unknown and will drive additional expenditure.

Part D of Condition 21 sets out the scope for OPR Guidance. Ofgem should specify the likely timescale for this guidance to be provided to allow DCC2 to factor Ofgem's requirements into future Customer Satisfaction Surveys, noting that such changes may drive additional costs.

The definition of 'Reporting Period' with paragraph 21.17 states that OPR reporting by DCC2 should be on a monthly basis starting from 1 April 2027. On this basis there will be no OPR reports for the five months between the Transfer Date (1 November 2026) and 31 March 2027. Ofgem should confirm that this lacuna is the policy intent.

The definition of 'Customers' in paragraph 21.17 covers both SEC Parties and REC Parties. At present we solely undertake Customer Satisfaction Surveys for customers using the SEC services. Ofgem should confirm that developing a Customer Satisfaction Survey to cover customers using the REC services is required such that we can start to plan to develop a relevant survey to engage with this cohort of customers.

## 7.2 Ofgem Question 15 Remuneration Policy

**Q15. What are your views on the scope of the remuneration policy – should it be directed to all staff or key staff responsible for the managing Fundamental Service Provider contracts and/or programme delivery?**

DCC understands Ofgem's policy intent is to only apply DCC2's 'Executive' Remuneration Policy (set under Condition 20) for the Executive Team and Senior Responsible Officers overseeing delivery of key programmes. We also understand that Ofgem expects DCC2 to have a 'Staff' Remuneration Policy for all other personnel. Thus, we propose that Condition 20 is renamed to be 'Executive Remuneration Policy' to confirm this policy intent. Additionally, we propose that the definition of 'Senior Manager' (see paragraph 20.12) is amended to be explicit on the approach to improve clarity and ensure the policy intent is correctly captured as follows:

*'Senior Manager means a person in the Licensee's executive team and also any additional persons that are a senior responsible officer overseeing delivery of a key programme ~~a position of Significant Managerial Responsibility or Influence.~~*

More broadly, DCC agrees that it would be disproportionate for Ofgem to have such regulatory powers over all of DCC2's staff regardless of seniority. It is important for DCC2's Board to retain control of the Staff Remuneration Policy that will apply across DCC2's staff (not subject to the Executive Remuneration Policy) given that such arrangements are vital to (i) reward staff excellence, (ii) incentivise staff retention, and (iii) improve corporate performance.

The requirement in paragraph 20.2 (a) is for DCC2 to provide the draft within a year of DCC2's appointment i.e. broadly by March 2027. To allow DCC2 to plan for this activity, Ofgem's conclusion to this consultation should confirm when the Executive Remuneration Policy Guidance (as per paragraph 20.6) will be provided to DCC2 by Ofgem. Additionally, we consider it would be prudent for Ofgem to bring forward the timeline slightly on the basis that DCC2's initial Executive Remuneration Policy should be approved on or before 1 April 2027 i.e. to be used for the start of the financial year.

Paragraph 20.2 (b) should be amended to reduce regulatory uncertainty and prevent Ofgem from bringing forward the deadline as follows:

*‘(b) such other later date as the Authority may direct in Writing to the Licensee.’*

The extent of interactions between Condition 20 (Executive Remuneration Policy) and Condition 21 (Operational performance regime) is presently unclear, e.g. will DCC2 be required to utilise the outcome of the survey of customer satisfaction (Part B in Condition 21) within the Executive Remuneration Policy considerations. Ofgem should clarify their policy intent on these matters.

Because DCC2’s performance will relate to matters under the SEC and REC, paragraph 21.3 should provide for consultation across both forums; we propose the following amendment:

*‘21.3 Where the Authority has not issued any guidance on the selection of the Key Performance Indicators, the Licensee must consult with SEC Parties and REC Parties~~the SEC Panel~~ before choosing its Key Performance Indicators for a Reporting Period.’*

## 8 Chapter 6: Cost Control Conditions of this Licence

This section covers questions sixteen to eighteen within Ofgem’s consultation.

### 8.1 Ofgem Question 16 Chapter 6 Comments

#### Q16. Do you have any comments on Chapter 6 of the licence conditions?

Chapter 6 of the draft SMCL2 is titled ‘COST CONTROL OF THE LICENSEE’ and contains the following six Conditions:

- Condition 22. Business Plan Report;
- Condition 23. Price Control Information;
- Condition 24. Determination of the Licensee’s Required Revenue;
- Condition 25. Licensee’s Recovered Revenue and Reporting;
- Condition 26. Charging Methodology for Service Charges; and
- Condition 27. Charging Statement for Service Charges.

The current ex post price control processes are an annual cycle and therefore required to be progressed at pace. DCC is concerned that the schedule has not been sufficiently adjusted for the three-year ex ante price control approach. The proposed sequence of events gives DCC2 insufficient time to prepare and finalise the Business Plan Report in a way that ensures compliance with the Business Plan Guidance. The provision of the Business Plan Guidance (pursuant to paragraph 22.11) on 1 April is only a few months before each Business Plan Report is scheduled for submission to Ofgem on 31 July (pursuant to paragraph 22.7). and the same day that the draft Business Plan Report is due to be provided to the Customer Challenge Group (pursuant to paragraph 22.14). To address these matters, we propose that:

- the date in paragraph 22.11 covering Business Plan Guidance should be amended to be 30 September (i.e. four months in advance of submission to the Customer Challenge Group);
- to provide consistency, the RIGs deadline in paragraph 23.5 should also be amended to be 30 September; and



- the date in paragraph 22.14 should be brought forward to be 31 January to allow six months between draft submission to the Customer Challenge Group and subsequent submission to Ofgem on 31 July.

For example, under our proposals the schedule for the second Business Plan Report would be as follows:

- 30 September 2026 - Business Plan Guidance provided by Ofgem (four months before submission to the Customer Challenge Group);
- 30 September 2026 - RIGs provided by Ofgem (four months before submission to the Customer Challenge Group);
- 31 January 2027 - draft Business Plan Report provided to Customer Challenge Group (four months before submission to Ofgem);
- 31 July 2027 - Business Plan Report submitted; and
- 1 April 2028 - Second Price Control Period starts covering 1 April 2028 to 31 March 3031.

To provide Ofgem and DCC2 with flexibility regarding provision of additional information regarding each Price Control Period, we propose that paragraph 22.16 is amended as follows:

*'22.16 The Licensee must comply with a request given under paragraph 22.15 within the period specified by the Authority which shall be at least of 14 days beginning with the day on which the request was made.'*

Given that Condition 22 (Business Plan Report) and Condition 23 (Price Control Information) are closely related (as described in paragraph 23.1), we propose that these Conditions are merged to be a single Condition to improve clarity.

The terms Required Revenue (i.e. agreed budget as per Condition 24) and Recovered Revenue (total charges collected as per condition 25) are similar sounding and easily confused. DCC proposes that different terms are used to improve clarity in the SMCL2. We propose that the terms Required Revenue and Recovered Revenue are renamed as 'Ex Ante Revenue' and 'Revenue Collected' respectively.

To improve clarity of the drafting, the algebra in paragraph 24.4 should be expressed as an equation with a time subscript as per the drafting below. The other terms in Condition 24 should also be amended to be consistent with this nomenclature.

**'24.4 In relation to a Regulatory Year (t), the Ex Ante Revenue ( $EAR_t$ ) is the amount calculated in accordance with the following formula:'**

$$EAR_t = EC_t + IC_t + PTC_t - VASC_t$$

Part C of Condition 24 sets out the rules for automatic adjustments to DCC2's Ex Ante Revenue based on 'drivers'. DCC considers that the RIGs for DCC2 (as per Part B of Condition 23) should provide guidance on how such drivers will be measured. This guidance will ensure that each driver is unambiguously defined against a known baseline and reduce the scope for uncertainty for both DCC2 and the customer base. Also, Paragraph 24.8 (b) should have 'and/or' added at the end of (i) to be clear that either (i) or (ii) or both may apply to a 'driver'.

Part D of Condition 24 covers the scope for reopeners to amend Ex Ante Revenue. DCC supports the inclusion of reopeners, however, we have concerns related to the implementation of this policy. Paragraph 24.11 (a) (ii) requires that a reopener is provided to Ofgem between 24 and 31 December; this could only be three working days depending on how the bank holidays fall. DCC proposes that this period is extended to be the entire month of December (see the comment below on paragraph 25.8). There is no clear rationale why a very limited period is proposed and why there are inconsistencies with the current timeline. The



drafting in paragraph 24.11 (b) states that there can be no reopener in the Regulatory Year beginning with 1 April 2026, however the first Regulatory Year for DCC2 is envisaged to be the period between the Transfer Date (i.e. 1 November 2026) and ending with 31 March 2028 as per Paragraph 1.4 i.e. for DCC2, a Regulatory Year is never envisaged start on 1 April 2026. In principle, DCC considers there should be scope for reopeners in the first year (to provide the DCC2 Board with flexibility if needed) and proposes that paragraph 24.11 is redrafted accordingly to allow for reopeners to be applied for in January 2027.

*'24.11 The Licensee may apply for an Annual Reopener, and the application:*

*(a) must:*

- (i) be prepared in accordance with any guidance issued by the Authority for this purpose,*
- (ii) be submitted in Writing during December ~~within the period of seven days beginning with 24 December,~~ and*
- (iii) relate to a future Regulatory Year in the Price Control Period in which the application is submitted, and*

*(b) may be submitted in the first Regulatory Year during January 2027 ~~may not be submitted in the Regulatory Year beginning with 1 April 2026.~~*

Paragraph 24.13 sets out that Ofgem should consult if they are minded not to approve a reopener. In order to provide regulatory certainty, the drafting in Part D of Condition 25 should include a clear timeline for Ofgem rejecting/approving each reopener. Also, DCC considers that the RIGs for DCC2 (as per Part B of Condition 23) should provide guidance on how reopeners will be operated.

The definition of Internal Costs excludes Centralised Registration Internal Costs whereas the RIGs related to the first Business Plan Report do not provide such separation. Ofgem should review this matter and amend as necessary.

The required quarterly reporting in Paragraph 25.8 does not have equally spaced months for reporting. Paragraph 25.8 sets out for reporting in July, October, December and April but December should be January i.e.

- RY Q1 April-May-June reported in July.
- RY Q2 July-August-September reported in October.
- RY Q3 October-November-December reported in January.
- RY Q4 January-February-March reported in April.

As such we propose that paragraph 25.8 is amended as follows:

*'25.8 Within each of the months of July, October, January ~~December~~ and April of each Regulatory Year, the Licensee must submit to the Authority and the Customer Challenge Group a financial update covering the previous three months (a Quarterly Report).'*

A consequence of this amendment is that there is no report each December regarding any reopener details as per paragraph 25.10 and has a consequential impact on paragraph 24.11 (a) (ii). Ofgem should consider amendments to these timelines which sit across Conditions 24 and 25. As such, we propose that paragraph 25.10 is amended to be a forecast of any reopener in October as follows:

*'25.10 In addition to the matters set out in paragraph 25.9, the Quarterly Report submitted in ~~December~~ **October** must state whether any Annual Reopener is expected to be submitted to the Authority and, if so, the reasons.'*

Condition 25.11 requires DCC2 to provide Ofgem with a detailed End-of-Year report to compare costs incurred against the Ex Ante Revenue as determined by Ofgem within Condition 24. It will be important that this process is proportionate and avoids the need for a detailed narrative (under paragraph 25.11 (d)) for every line item in the RIGs akin to the existing ex post process under the SMCL1. We consider that adopting an approach aligned to the RIIO process would be prudent to reduce the burden.

The second charging objective set out in Paragraph 26.7 has an element of drafting that is no longer needed as the case related to novated contracts has been removed. We propose the following revised drafting:

*'26.7 The Second Relevant Policy Objective applies in relation to SMETS1 Meters. The Second Relevant Policy Objective is that, subject to compliance with the First Relevant Policy Objective, the Charging Methodology in respect of all of the Mandatory Business Services (excluding Additional User Services) must (in each of the following cases, as far as is reasonably practicable in all of the circumstances of the case, having regard to the costs of implementing the Charging Methodology) result in Service Charges that are the same for SMETS1 Meters as they are for Other Smart Metering Systems, save that no Service Charges for Communications Hub Services will apply to SMETS1 Meters.'*

On efficiency grounds, DCC proposes that the review cycle for the Charging Methodology is amended to be once in each Price Control Period and paragraph 26.10 (a) is amended accordingly.

Consistent with the approach in SMCL1, paragraph 26.12 (b) in SMCL2 requires DCC2 to provide access to the Charging Methodology on its website. Paragraph 26.12 (a) in SMCL2 requires DCC2 to provide a physical copy of the Charging Methodology upon request for which DCC2 may levy a cost reflective charge. We propose that the requirement for a physical copy is removed from SMCL2 given that increasingly business interactions have moved to be entirely digital.

Paragraph 25.5 gives Ofgem the right to direct DCC2 to revise the charging statement to reduce the cash position. However, the drafting in Part C of Condition 27 regarding amendments to the Service Charges does not permit amendment following a direction given by Ofgem pursuant to paragraph 25.5 related to cash balances exceeding 5% of Ex Ante Revenue. Ofgem should review the drafting in Part C of Condition 27.

To provide additional clarity paragraph 27.12 should be amended to be clear that Service Charges must be amended following each Emergency Adjustment as per the drafting below.

*'27.12 The Licensee may only amend Service Charges in consequence of an Automatic Adjustments up to three times in any Regulatory Year. The Licensee shall amend Service Charges in consequence of each Emergency Adjustment.'*

## 8.2 Ofgem Question 17 Cost Controls

**Q17. Do you agree that the wording of the new conditions 22-25 meets the policy intent as set out in our decision on cost controls?**

Broadly, the approach in the draft SMCL2 captures the policy intent in relation to cost controls. However, there are some matters that were not articulated as policy intent that need to be explored further.

DCC is extremely concerned that paragraph 24.2 in draft SMCL2 gives Ofgem the right to approve the Business Plan Report (covering ex ante costs) via a direction rather than capturing the relevant approval as an explicit licence amendment, which puts a significant financial risk on DCC2. The inability to efficiently challenge Ofgem's determination under a direction may also be a concern to DCC2 customers. We consider

that the right to refer a direction by Ofgem (under Condition 24) to the CMA should be captured within the drafting of Condition 24 in the draft DCC2 Licence. We would envisage that Ofgem's initial decision would apply until the appeal was finally determined. We note that such protections are provided to other regulated monopolies overseen by Ofgem e.g. the DNOs.

Similarly, the SMCL1 has a default arrangement to cover the circumstance where Ofgem does not make a price control determination in the required timescale. This is included to avoid the situation where DCC1 could become insolvent due to regulatory uncertainty. However, this approach has not been reflected in the drafting within Part A of Condition 24 which would introduce increased regulatory risk for DCC2 compared with DCC1. To avoid such risk, we propose the text below is included as paragraph 24.3 and the scope for Ofgem to delay the decision is removed.

'24.3 *The Authority may, by direction given to the Licensee, extend the time available for it to make the determination in paragraph 24.2. If the Authority has not made the determination within paragraph 24.2 by 1 March in the Regulatory Year immediately preceding a new Price Control Period then Ex Ante Revenue proposed by the Licensee for each Regulatory Year in the relevant Price Control Period will be deemed to be determined by the Authority.*

Ofgem's policy decision is that DCC2 should operate prudent financial management such that annual revenue collected should not exceed 105% of approved annual spending to provide a working capital contingency and any excess (above the 5% headroom) should be returned by the end of each Regulatory Year. The policy decision on this matter<sup>12</sup> set out that there would be a mid-year review point. In contrast to the prior policy decision, the regime in Part A of Condition 25 requires that the cash position is monitored monthly. We are concerned that the monthly regime (as proposed) would create an additional resource requirement for DCC2 as currently cash flow forecast reporting is prepared each quarter for the next 12 months in line with reporting to the DCC1 Board. There are valid reasons where DCC2 could reasonably exceed the 5% threshold in any one specific month in a Regulatory Year; this is because charges are fixed across the year but there are peaks and troughs in expenditure e.g. if milestone payments due to service providers are delayed to a subsequent month. On this basis, DCC proposes that the reporting in paragraph 25.3 is amended to be quarterly. Each quarter, a report would be sent to Ofgem (covering 3 months actual cash position for the prior months, and 12 months forecast). The report to Ofgem should also contain a narrative to support the future forecast aligned to the reporting prescribed in paragraphs 25.8 and 25.9.

The algebra in paragraph 25.3 is not aligned to the policy intent; the calculated cash position will never exceed the 1.05 threshold (as prescribed) as the calculation is a monthly cash figure compared to an annual total of cash. DCC proposes that this is revised to be a threshold of 0.05 at the end of the Regulatory Year. The drafting for algebra in the relevant paragraphs should be expressed as an equation with a time subscript to improve clarity.

Paragraph 25.6 (a) (i) provides an amount 'A' which is the cash provided by DCC1 to DCC2 at the point of business handover. However, the drafting doesn't reflect the policy intent Ofgem has previously set out for the transfer arrangement. Whilst an amount of cash will be transferred on the Transfer Date there will be further adjustments to this figure as final DCC1 Liabilities are met e.g. further cash transfer related to the final price control determinations for DCC1 that will be made in the period between the Transfer Date and licence revocation for the SMCL1. The SMCL1 describes this figure in Condition 43.16 as the final 'Kt' value from the current price control regime and is similarly described in the existing ex ante RIGS as 'Inherited Correction Factor'. We propose this definition is amended to reflect that the value of 'A' will be subject to these various adjustments. Additionally, the description of 'B' as prescribed in paragraph 25.6 (b) would be

<sup>12</sup> Ofgem – 9 May 2025 - Paragraph 3.56 [www.ofgem.gov.uk/sites/default/files/2025-05/DCC-Review-Phase-2-Determination-of-Allowed-Revenue-conclusions.pdf](https://www.ofgem.gov.uk/sites/default/files/2025-05/DCC-Review-Phase-2-Determination-of-Allowed-Revenue-conclusions.pdf).

improved if it was determined to be the cash balance at month-end, rather than with reference to the day the calculation is performed.

In summary, we propose that Part A in Condition 25 is amended accordingly (and as a consequence paragraph 25.7 can be deleted):

**Part A: ~~Recovered~~ Revenue Collected**

- ‘25.2 The total Service Charges levied for a Regulatory Year (“~~Recovered~~ Revenue Collected”) must not exceed the amount calculated in accordance with the following formula:

$$(\overline{ECc} + IC + PTC - VASC) \times 1.05 - A$$

$$RC_t < (ECc_t + IC_t + PTC_t - VASC_t) \times 1.05 - A$$

- 25.3 During each April, July, October, and January, the Licensee must calculate the proportion of cash it held at month end for the last three months and it forecasts to hold in each month (m) in relation to the expected Ex Ante Revenue for the next twelve months (“Cash Position”  $CP_m$ ) in accordance with the following formula. ~~On the last working day of a month, the Licensee must calculate the proportion of cash it holds on that day in relation to the Required Revenue for the current Regulatory Year (“Cash Position”) in accordance with the following formula:~~

$$CP_m = \frac{\overline{B}}{(\overline{ECc} + IC + PTC - VASC)} = \frac{B_m}{(ECc_t + IC_t + PTC_t - VASC_t)}$$

- 25.4 By the last working day of April, July, October, and January, the Licensee must provide a report to the Authority containing the data items calculated in paragraph 25.3 along with an explanation ~~Where the Cash Position is greater than 1.05, the Licensee must notify the Authority in Writing as soon as is practicable.~~

- 25.5 Where the Authority becomes aware that the Cash Position is forecast to be greater than 01.05 for the final month in a Regulatory Year, it may direct the Licensee to modify the Charging Statement for the purposes of reducing the expected Cash Position for the final month in a Regulatory Year to 01.05 as soon as is practicable.

- 25.6 In this Part:

- (a) A is, in relation to:
- (i) the Regulatory Year beginning with the First Transfer Date, an amount equal to the cash transferred to the Licensee by the Previous Licensee on or before the First Transfer Date as subsequently adjusted in line with the agreement signed by the Licensee and the Previous Licensee pursuant to Condition 43.16 in the Previous Licence;
  - (ii) any other Regulatory Year, zero.
- (b)  $B_m$  is ~~an~~ the amount equal to the cash held by the Licensee at the end of each month ‘m’ on the day before the day the calculation is performed.

### 8.3 Ofgem Question 18 Ring-fenced Funding

**Q18. Do you have any views on the current drafting regarding the ring-fencing of funding (LC24) and whether this provision would benefit from a stand-alone condition that it more prescriptive regarding spending constraints and other requirements?**

Part B of Condition 24 sets out a broad right for Ofgem to propose elements of ringfencing within the Ex Ante Revenue direction pursuant to paragraph 24.2. We are concerned that there is insufficient clarity on how this right may be exercised, placing unnecessary uncertainty on DCC2 given this direction may only be received (by DCC2) one month before the start of the Price Control Period. It will be vital for Ofgem to consult on the purpose and policy intent that will be considered for any such ring-fencing related direction. The outcome of the consultation should be captured as additional detail in Part B of Condition 24. Furthermore, Part B of Condition 24 should mandate that Ofgem prepare specific ring-fencing guidance on the likely amounts that may be ring-fenced. It will be important that the ring-fencing regime also explains Ofgem's policy intent were any such ring-fencing direction be breached.

## 9 Chapter 7: Financial and ring-fencing provisions

This section covers questions nineteen and twenty within Ofgem's consultation.

### 9.1 Ofgem Question 19 Chapter 7 Comments

**Q19. Do you have any comments on Chapter 7 of the licence conditions?**

Chapter 7 of the draft SMCL2 is titled 'FINANCIAL AND RINGFENCING PROVISIONS' and contains the following five Conditions:

- Condition 28. Availability of all necessary resources;
- Condition 29. Undertakings from an Ultimate Controller;
- Condition 30. Financial stability;
- Condition 31. Indebtedness and transfers of funds; and
- Condition 32. Disposal of Relevant Business Assets.

Within Condition 28, there is a 'Due Date' by which, in each Regulatory Year, DCC2 is required to provide confirmation that it has all necessary resources to successfully deliver the Authorised Business. The drafting in paragraph 28.10 (a) states that, for the Regulatory Year starting 1 April 2027, the Due Date is seven days from Licence Award. From 1 April 2028 onwards, the deadline for provision is the 31 July with supporting information for the prior regulatory year as per paragraph 28.10 (b). However, the first Regulatory Year for DCC2 is envisaged to be the period between the Transfer Date (i.e. 1 November 2026) and ending with 31 March 2028 as per Paragraph 1.4 i.e. a Regulatory Year is never envisaged start on 1 April 2027. Also, the Licence Commencement Date is expected to be in March or April 2026 so in advance of any period starting on 1 April 2027. Finally, it will be impossible for DCC2 to provide any such statements under Condition 28 given the Authorised Business will not transfer to DCC2 until 1 November 2026. It would seem reasonable that DCC2 is required to provide such statements initially within 90 days from the Transfer Date in the first Regulatory Year and then annually from the Regulatory Year starting on 1 April 2028 onwards. Ofgem should revisit the envisaged schedule for Condition 28 to confirm the intent related to these matters.

There is a suggested amendment to paragraph 31.5; the reference to over-recovery should use the term we propose i.e. 'Ex Ante Revenue' rather than 'Allowed Revenue'.

Paragraph 32.4 sets out the requirement for a Register of Relevant Business Assets. On efficiency grounds, we propose that there is a materiality threshold applied to the External Service Provider Contracts to only

include contracts that are listed as Legacy Procurement Contracts or have been subject to the HMT Green Book process prescribed in paragraph 10.8 of the draft SMCL2.

In paragraph 32.4 (d) rather than the 'role' of each person, a brief description of each employee's role may be more useful. Ofgem should also clarify whether paragraph 32.4 (d) is intended to cover only those persons directly employed by DCC2 or should be those persons within the Licensee Workforce (as presently prescribed in Condition 10).

## 9.2 Ofgem Question 20 Financial Security Requirements

**Q20. Do you agree with our decision to remove the additional financial security requirements, noting the potential impact this may have in the event of a Special Administrator Regime, and/or licence revocation.**

We consider it prudent to remove any additional financial security requirements given that the holder of the SMCL2 is subject to the Special Administration Regime which provide stakeholders with certainty that the services will continue. We note that the Special Administration Regime was introduced a few years after the SMCL1 was initially awarded.

# 10 Chapter 8: Provision of regulatory information

This section covers question twenty-one within Ofgem's consultation.

## 10.1 Ofgem Question 21 Chapter 8 Comments

**Q21. Do you have any comments on Chapter 8 of the licence conditions? In particular, whether LC35 and LC36 can be merged given the overlapping obligations in respect of reporting.**

Chapter 8 of the draft SMCL2 is titled 'PROVISION OF REGULATORY INFORMATION' and contains the following four Conditions:

- Condition 33. Provision of Information by the Licensee;
- Condition 34. Requirements for Regulatory Accounts;
- Condition 35. Reporting of Quality of Service Information; and
- Condition 36. Annual Service Report to the Authority.

In principle, we support the consolidation of Condition 35 and Condition 36 within the SMCL2.

Condition 36 sets out that DCC2 must prepare an Annual Service Report by 31 July for the prior Regulatory Year. The drafting in paragraph 36.3 says that the first report is due for the Regulatory Year starting on 1 April 2027. However, the first Regulatory Year for DCC2 is envisaged to be the period between the Transfer Date (i.e. 1 November 2026) and ending with 31 March 2028 as per Paragraph 1.4 i.e. a Regulatory Year is never envisaged start on 1 April 2027. There are clear benefits to stakeholders from the Annual Service Report; thus, to provide clarity we propose that the date in Condition 36.3 is amended to be 1 April 2028. On this basis, the first Annual Service Report would be prepared by DCC2 no later than 31 July 2028 for the period 1 November 2026 to 31 March 2028.

The explicit obligation on Ofgem to consult with all External Service Providers is very broad in paragraph 36.8, we consider this obligation should relate to either providers above a threshold; or alternatively a broad obligation to publicly consult.

Paragraph 36.12 (a) in SMCL2 requires DCC2 to provide a copy of the Annual Service Report to anyone that requests it. We propose that the requirement for a physical copy is removed from SMCL2 given that business interactions have increasingly moved to be entirely digital.



## 11 Chapter 9: Arrangements for intervention and continuity

This section covers question twenty-two within Ofgem's consultation.

### 11.1 Ofgem Question 22 Chapter 9 Comments

#### Q22. Do you have any comments on Chapter 9 of the licence conditions?

Chapter 9 of the draft SMCL2 is titled 'ARRANGEMENTS FOR INTERVENTION AND CONTINUITY' and contains the following two Conditions:

- Condition 37. Arrangements for business handover; and
- Condition 38. Treatment of Intellectual Property Rights.

In principle, we consider that the scope of Condition 37 should be broadened to allow for DCC3 to be appointed on the basis of a share sale (or entity transfer). In exploring the detailed requirements for the planned business transfer (including TUPE and novation of all DCC1's contracts), we have concluded that there would be a material economic efficiency provided by a share sale of Smart DCC Ltd to the successful applicant in the current DCC2 competition. Whilst a share sale for DCC1 to DCC2 was rejected by Ofgem, we consider it should be planned for in the DCC2 to DCC3 transition. Thus, we propose that Condition 37 of the draft SMCL2 should be amended to provide flexibility for either a business transfer or an entity transfer.

DCC notes that the existing review provisions in Part F (Requirement to review the Business Handover Plan) of Condition 43 in SMCL1 have not been included in Condition 37 of SMCL2. The policy intent behind this omission is not described in the consultation document. DCC proposes that a three-year review cycle is included (i.e. within the final Regulatory Year of each Price Control Period) as it would be prudent to ensure key matters are updated given that the Business Handover Plan may be needed e.g. if Special Administration was enacted at short notice following an insolvency event.

For the workforce transfer prescribed in paragraph 37.13 (j) we propose that Ofgem expand this requirement to embody the TUPE related requirements based on our experience of the DCC1 to DCC2 process. More broadly, DCC proposes that the scope of the Business Handover Plan is expanded to include a requirement for DCC2 to undertake and document a Post Implementation Review of the handover programme between DCC1 and DCC2. A new Paragraph 37.13 (k) should be added to the SMCL2 to ensure that the lessons learnt by Ofgem, DCC2's shareholder, DCC1, and DCC1's shareholder are captured.

## 12 Chapter 10: Other provisions

This section covers questions twenty-three to twenty-five within Ofgem's consultation.

### 12.1 Ofgem Question 23 Chapter 10 Comments

#### Q23. Do you have any comments on Chapter 10 of the licence conditions?

Chapter 10 of the draft SMCL2 is titled 'OTHER PROVISIONS' and contains the following Condition:

- Condition 39. Provision of Market Share Information to the Central Delivery Body.

DCC has no comments on Condition 39 of the draft SMCL2.



## 12.2 Ofgem Question 24 General Derogation Powers

**Q24. Do you have any views on whether it would be appropriate to include a general power of derogations for Ofgem?**

In principle, we support having flexibility regarding derogations within DCC2's regulatory regime on efficiency grounds. We propose that the SMCL2 drafting includes a defined process for such derogations to ensure that they are appropriately documented and subsequently notified to ensure visibility for wider stakeholders.

Alongside the general power of derogation for Ofgem, we propose that DCC2 has the right to request that aspects of the SMCL2 are disapplied; consistent with condition F9 in the NESO Licence<sup>13</sup>. Under such a provision, DCC2 would be able to lodge a formal request for aspects of the SMCL2 to be disapplied for a specified period. In addition, where Ofgem rejects a request to disapply aspects of the SMCL2, DCC2 should be afforded the right to appeal to the CMA consistent with section 11C of the Electricity Act 1989.

## 12.3 Ofgem Question 25 Commencement and Transition

**Q25. Do you have any views on the proposed powers to be conferred on the Authority under the commencement and transitional provisions?**

In principle, we support having an efficient regulatory approach to managing the business transfer between DCC1 and DCC2. However, where there is already a clear plan for transition on specific elements, the drafting within the SMCL2 should include such detail e.g. as set out in paragraph 10.35 whereby the existing Procurement Strategy is used as the starting position for DCC2.

# Schedules

This section covers question twenty-six within Ofgem's consultation.

## 13.1 Ofgem Question 26 Licence Schedules

**Q26. Do you have any views on the Schedules?**

There are the following four schedules in the SMCL2:

- Schedule 1. Details of Fundamental Service Capability;
- Schedule 2. Principal Contents of the Smart Energy Code;
- Schedule 3. Novation of External Service Provider Contracts; and
- Schedule 4. Prescribed Business Services.

DCC uses a database system to track all our contracts and there are some inconsistencies with the data fields presently presented in Schedule 1 compared to the data being shared with Ofgem to support the Business Handover Plan and the competition for DCC2. We propose these amendments to provide alignment:

- 'Contract Start Date' becomes '**Contract Commencement Date**';
- 'Contract Expiry Date' becomes '**Current Contract Expiry Date**'; and

<sup>13</sup> See [epr.ofgem.gov.uk/c/9wgWVKeHRymQ3pBbiptyqA/p/0196c209-4e4c-4e2b-92ae-525b634f2f51/wvp/0f0e2906-4054-44b3-ac52-b24f6c7aafb2](https://epr.ofgem.gov.uk/c/9wgWVKeHRymQ3pBbiptyqA/p/0196c209-4e4c-4e2b-92ae-525b634f2f51/wvp/0f0e2906-4054-44b3-ac52-b24f6c7aafb2).

- 'Contract Extension Date' becomes '**Absolute Contract Expiry Date**'.

There are some consequential amendments to the dates for Schedule 1 which we have already provided to Ofgem.

As set out above in our response to Question 10 we consider that the content of the Smart Energy Code should not be presented in Schedule 2. We propose the content of Schedule 2 is included directly in Condition 11 in the draft SMCL2 on the basis that this is critical content that should be captured within the Condition and subject to the standard licence amendment regime when future changes were to be introduced. Additionally, having both elements together improves the overall comprehension of Condition 11 in the SMCL2.

We have no comments on Schedule 3 and Schedule 4.