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## SEC Modification Proposal Form – SECMP0043

### Mod Title

Modification to Services Force Majeure Provisions

### Submission Date

30 November 2017

### Details of Proposer

|                 |                           |
|-----------------|---------------------------|
| Name:           | Bushra Ali                |
| Organisation:   | Smart DCC Ltd             |
| Contact Number: | 07808 011975              |
| Email Address:  | Bushra.ali@smartdcc.co.uk |

### Details of Representative (if applicable)

|                 |  |
|-----------------|--|
| Name:           |  |
| Organisation:   |  |
| Contact Number: |  |
| Email Address:  |  |

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## 1. What issue are you looking to address?

This Modification aims to refine the Services Force Majeure (FM) provisions in the SEC to clarify what is considered a Services FM event and refine the SEC procedures which apply in the event of a Services FM. The Modification does this in the following ways:

- by clarifying that Services FM means (in respect of any services) the occurrence of an event or circumstance which is beyond the reasonable control of the DCC. This would be subject to there being no wilful act, neglect or failure to take reasonable precautions against the relevant event by DCC; and
- improving the processes to be followed following the occurrence of a Services FM event where the DCC wishes to make an application to the Panel to claim relief from liability for the non-performance of its obligations.

The Modification also looks to align DCC's obligations to those of other network operators under other industry codes and licences. For example, Gas Transportation companies can be exempt, under certain criteria and circumstances, from meeting the requirements of their distribution licence. DCC considers that the same principle should apply to DCC under the SEC in relation to exceptional events impacting DCC's ability to provide services.

## 2. Why does this issue need to be addressed? (i.e. Why is doing nothing not an option?)

On 4 September 2017, Ofgem issued their decision to implement the DCC Operational Performance Regime (OPR). The OPR sets performance incentives on DCC's operations and will place 100% of the value of DCC's smart meter-related margin at risk. The regime and changes to Schedule 4 of the Smart Meter Communication Licence to reflect the new obligations will take effect from 1 April 2018.

Part of Ofgem's decision considered how exceptional events impacting DCC's ability to provide Services pursuant to the SEC should remain consistent across the SEC and the OPR. Ofgem's decision stated *"If SEC parties believe that current processes can be improved, they should take actions to do so through SEC governance processes such as code modifications."*<sup>1</sup> DCC has undertaken a review of the regulatory provisions and has identified changes to SEC Section A, specifically the definition of Services Force Majeure (FM)) and SEC Section M3 in respect of the procedures which apply if DCC wishes to claim Services FM.

The changes proposed to the Section A definition of Services FM are only intended to clarify (/seek to remove any ambiguity) that DCC is able to make an application to the SEC Panel to claim relief from liability for the non-performance of its obligations if the event or circumstance is beyond the reasonable control of the DCC. This would be subject to there being no wilful act, neglect or failure to take reasonable precautions against the relevant event by DCC.

The proposed refinement to the governance process under Section M3 (i.e. defining the timetable for Panel delivering a decision if DCC is claiming Service FM) is

<sup>1</sup> Ofgem's OPR Decision, Page 5 -

[https://www.ofgem.gov.uk/system/files/docs/2017/09/1.\\_decision\\_on\\_dcc.pdf](https://www.ofgem.gov.uk/system/files/docs/2017/09/1._decision_on_dcc.pdf)

required to ensure that DCC is able to meet its reporting requirements under the SEC and Service Provider Performance Measurement regime and the OPR.

### 3. What is your Proposed Solution?

The DCC proposes the following amendments to Service FM by providing additional detail to the definition of Services FM in SEC Section A and refinement to the procedure which DCC and Panel are to follow if DCC wishes to claim Services FM outlined in SEC Section M3.

Suggested amendments to the legal text in the mentioned SEC Sections can be found in Attachment A.

### 4. What SEC objectives does this Modification better facilitate?

DCC considers that the Modification meets the following SEC objectives (Section C1.1):

(b) the second General SEC Objective is to enable the DCC to comply at all times with the General Objectives of the DCC (as defined in the DCC Licence), and to efficiently discharge the other obligations imposed upon it by the DCC Licence;

DCC considers that by providing additional details to add clarity to and improve the processes under the SEC the Modification facilitates the second General SEC Objective as the proposed clarity and improvements the Modification seeks will help to facilitate DCC efficiently discharging the obligations imposed upon it.

(g) the seventh General SEC Objective is to facilitate the efficient and transparent administration and implementation of this Code.

The DCC consider the Modification better facilitates the seventh General SEC Objectives of the efficient and transparent administration of the Code as it seeks to improve the procedures under the SEC.

### 5. What is the requested Path type?

Path 2

It is proposed that this Modification Proposal is progressed as a Path 2 Modification as it meets the criteria for Path 2 Modifications under Section D2.6 (c) of the SEC.

### 6. Are you requesting that the Modification Proposal be treated as Urgent?

No

This change does not meet the Urgency criteria.

## 7. What is your desired implementation date?

The changes to DCC's Licence to introduce the OPR will take effect from 1 April 2018. DCC therefore requests that the modification is implemented as close as possible to this date.

## 8. Which SEC Parties are expected to be impacted? (Please mark with an X)

|                             |                          |                        |                          |
|-----------------------------|--------------------------|------------------------|--------------------------|
| Large Supplier Parties      | <input type="checkbox"/> | Small Supplier Parties | <input type="checkbox"/> |
| Electricity Network Parties | <input type="checkbox"/> | Gas Network Parties    | <input type="checkbox"/> |
| Other SEC Parties           | <input type="checkbox"/> |                        |                          |

There are impacts on SEC Parties anticipated.

## 9. Which parts of the SEC will be impacted?

Section A definition of Services Force Majeure and Section M3.

## 10. Will there be an impact on Central Systems? (Please mark with an X)

|                        |                          |                           |                          |
|------------------------|--------------------------|---------------------------|--------------------------|
| DCC Systems            | <input type="checkbox"/> | Party interfacing systems | <input type="checkbox"/> |
| Smart Metering Systems | <input type="checkbox"/> | Communication Hubs        | <input type="checkbox"/> |
| Other systems          | <input type="checkbox"/> |                           |                          |

There is no system impact.

## 11. Will there be any testing required?

No testing is required.

## 12. Will this Modification impact other Energy Codes?

No

No other Energy Codes are impacted.

## 13. Will this Modification impact Greenhouse Gas Emissions?

No