



## **DCUSA Change Report**

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# **DCP 247 – Introduction of TRAS Disputes Procedure**

### **Executive Summary**

DCP 247 seeks to include provisions in the DCUSA for the progression of disputes under the Theft Risk Assessment Service (TRAS) Contract.

## 1 PURPOSE

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- 1.1 This document is issued in accordance with Clause 11.20 of the DCUSA and details DCP 247 'Introduction of TRAS Dispute Procedure'.
- 1.2 The voting process for the proposed variation and the timetable of the progression of the Change Proposal (CP) through the DCUSA Change Control Process is set out in this document.
- 1.3 Parties are invited to consider the proposed legal drafting amendments (Attachment 1) and submit their votes using the voting form (Attachment 2) to [dcusa@electralink.co.uk](mailto:dcusa@electralink.co.uk) no later than **17 December 2015**.

## 2 BACKGROUND OF DCP 247

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- 2.1 DCP 247 has been raised by Npower Ltd Plc. The CP seeks to include provisions in the DCUSA for the progression of disputes under the Theft Risk Assessment Service (TRAS) Contract. SPAA Schedule 34 and DCUSA Schedule 25 set out the provisions relating to TRAS. Paragraph 7 of these Schedules covers the rights and liabilities of Suppliers with regards to the TRAS arrangements. It clarifies that each Supplier has a directly enforceable contractual right against the TRAS Service Provider in respect of data protection, intellectual property rights (IPR) and confidentiality.
- 2.2 Where the TRAS Service Provider breaches these provisions, a Supplier can raise a claim against the TRAS Service Provider. Rather than each Supplier raising individual claims directly against the TRAS Service Provider, the SPAA and DCUSA Schedules state that the Supplier must appoint and use SPAA Ltd and/ or DCUSA Ltd as the Supplier's agent to pursue, negotiate and conduct any such claims, noting that this role could be delegated.
- 2.3 Conversely the TRAS Service Provider could raise a claim against SPAA Ltd and DCUSA Ltd for actions taken by one or more Suppliers that breach the confidentiality, data protection or IPR provisions in the contract. As the TRAS Contract is a tripartite contract between SPAA Ltd, DCUSA Ltd and the TRAS Service Provider, the TRAS Service Provider would raise

any such claim directly to SPAA Ltd and DCUSA Ltd. It would be SPAA Ltd and DCUSA Ltd's responsibility to recoup any losses as a result of the claim from the offending Supplier.

- 2.4 During the development of the TRAS solution, the TRAS Working Group identified the need for a clear process for managing contractual claims by and against the TRAS Service Provider. The CP proposes that the TRAS Disputes Procedure be introduced as an Appendix to the TRAS Schedule 25.

### **3 DCP 247 WORKING GROUP**

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- 3.1 The DCUSA Panel acknowledged that a TRAS Working Group has already been established to oversee the implementation of the TRAS. Therefore it would be more efficient to use this TRAS Working Group to assess the DCP 247, rather than creating a new working group. DCUSA Parties were provided with information regarding DCP 247 and the relevant TRAS Working Group meetings were held in open session so DCUSA Parties not represented on the TRAS Working Group could attend.

### **4 DCP 247 CONSULTATION**

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- 4.1 Two consultations were issued in relation to DCP 247. Prior to DCP247 being raised, an industry consultation was undertaken in August 2015 seeking views on the legal text provided by external legal advisors to introduce the TRAS Disputes Procedure into the SPAA and DCUSA Codes. Comments from this consultation were before the Working Group was set up thus the responses are not included in this Change Report.
- 4.2 The Working Group agreed that the amended legal text should be issued for a further industry consultation to ensure that all DCUSA Parties have had visibility of the proposed procedure. The DCP 247 consultation was issued to DCUSA Parties on 2 October 2015. There were five responses received to the consultation.
- 4.3 A summary of the responses received, and the Working Group's conclusions are set out below. The full set of responses and the Working Group's comments are provided in Attachment 4.

#### **Question 1 - Do you understand the intent of the CP?**

- 4.4 The Working Group noted that all of the respondents understood the intent of the CP.

**Question 2 - Are you supportive of the principles of the CP?**

- 4.5 The Working Group noted that all the respondents were supportive of the principles of the CP.

**Question 3 - Do you have any comments on the draft legal text?**

- 4.6 The Working Group noted that a majority of the respondents provided comments on the draft legal text to DCP 247. Whilst reviewing the legal text the Working Group highlighted that there may be potential data protection issues as the TRAS Dispute process will bring DCUSA and SPAA into contact with personal information. It was noted that a confidentiality agreement may be required once a Dispute Committee is set up and the Working Group took an action to consider this further.
- 4.7 The Working Group noted the proposed amendments to the legal text and agreed to make a number of changes as suggested by the respondents. However it was acknowledged that the process set out in the legal text is based on the procedure in Schedule 18 of the TRAS Contract. Therefore changes to the timescales were not made to address comments raised during the consultation. The Working Group did take an action to add a number of items to the TRAS risk register relating to the disputes process. The Working Group's responses to comments on the DCP 247 legal text are provided in Attachment 4.

**Question 4 - The redacted TRAS Contract was issued to all Suppliers on 4 August 2015. Based on your review of the redacted TRAS Contract, do you have any comments on the proposed disputes process?**

- 4.8 It was noted that one respondent provided comments on the proposed disputes process. The respondent suggested some minor amendments to TRAS Contract and it was agreed that the suggested changes would be added to the TRAS Housekeeping List.
- 4.9 The Working Group also raised concerns that the TRAS Contract requires Parties to continue to comply with their TRAS obligations while they are going through a dispute. Members agreed that this issue will be further considered at the TRAS Working Group meetings.

**Question 5 - Are you supportive of the proposed implementation date 25 February 2016?**

- 4.10 The Working Group noted that a majority of respondents were supportive of the proposed implementation date of 25 February 2016. One respondent suggested that the implementation date should be linked to the Authority decision to enable implementation

as early as possible. The Working Group agreed to change the implementation date to 5 Working Days after the Authority decision.

**Question 6 - Do you consider that the proposal better facilitates the DCUSA objectives?**

**Please give supporting reasons.**

4.11 All of those respondents who commented, agreed that the following DCUSA Objective is better facilitated by DCP 247:

**General Objective Four – ‘The promotion of efficiency in the implementation and administration of this Agreement’**

4.12 General Objective Four is better facilitated by DCP 247 as the establishment of a clear and robust process for the progression of disputes under the TRAS Contract will ensure that disputes are resolved in the most efficient way.

**Question 7 - Do you have any other comments on the proposed disputes procedure?**

4.13 With regards to the Dispute Procedure it was noted that one respondent queried whether the TRAS disputes procedure complies with the TRAS contract provisions. It was noted that the Dispute Procedure is based on the process in the TRAS Contract.

**Question 8 - Are you aware of any wider industry developments that may impact upon or be impacted by this CP?**

4.14 No respondent expressed any concerns with regards to the CP having an impact upon or being impacted by any wider industry developments.

## **5 EVALUATION AGAINST THE DCUSA OBJECTIVES**

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5.1 For a DCUSA Change Proposal to be approved it must be demonstrated that it better meets the DCUSA Objectives. There are five General DCUSA Objectives and five Charging Objectives. The full list of objectives is documented in the CP form provided as Attachment 3.

5.2 The Working Group considers that the following DCUSA Objective is better facilitated by DCP 247:

**General Objective Four – ‘The promotion of efficiency in the implementation and administration of this Agreement’**

- 5.3 General Objective Four is better facilitated by DCP 247 as the establishment of a clear and robust process for the progression of disputes under the TRAS Contract will ensure that disputes are resolved in the most efficient way.

## **6 IMPLEMENTATION**

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- 6.1 The proposed implementation date for DCP 247 is 5 Working Days after the Authority decision. It was agreed that the implementation date should be linked to the Authority decision to enable implementation as early as possible ahead of the TRAS go live date.
- 6.2 DCP 247 is classified as a Part 1 matter and therefore will go to the Authority for determination after the voting process has completed.

## **7 DCP 247 WORKING GROUP CONCLUSIONS**

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- 7.1 The DCP 247 Working Group has discussed the proposed amendment to DCUSA. The Working Group unanimously agrees that the legal text developed better facilitates the DCUSA Objectives. The Working Group agrees that the CP should be issued for industry voting.

## **8 ENGAGEMENT WITH THE AUTHORITY**

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- 8.1 Ofgem has been fully engaged throughout the development of DCP 247 as a member of the Working Group.

## **9 ENVIRONMENTAL IMPACT**

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- 9.1 In accordance with DCUSA Clause 11.14.6, the Working Group assessed whether there would be a material impact on greenhouse gas emissions if DCP 247 were implemented. The Working Group did not identify any material impact on greenhouse gas emissions from the implementation of this CP.

## **10 PROPOSED LEGAL TEXT**

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- 10.1 The proposed legal text for DCP 247 has been drafted by the DCUSA Legal Advisor and acts as Attachment 1.
- 10.2 The legal text provides a clear process for managing contractual claims by and against the TRAS Service Provider. It is proposed that the TRAS Disputes Procedure be introduced as an Appendix to the TRAS Schedule 25.

## 11 PANEL RECOMMENDATION

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- 11.1 The Panel approved this Change Report on 18 November 2015. The Panel considered that the Working Group had carried out the level of analysis required to enable Parties to understand the impact of the proposed amendment and to vote on DCP 247.
- 11.2 The timetable for the progression of the Change Proposals is set out below:

Activity	Target Date
Change Report Agreed	18 November 2015
Change Report Issued For Voting	20 November 2015
Party Voting Ends	17 December 2015
Change Declaration Issued	21 December 2015
Authority Decision	29 January 2016 (Dependent on Ofgem Moratorium)
Implementation	5 Working Days after Authority Decision.

## 12 NEXT STEPS

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- 12.1 Parties are invited to consider the proposed amendment (Attachment 1) and submit their votes using the Voting form (Attachment 2) to [DCUSA@electralink.co.uk](mailto:DCUSA@electralink.co.uk) by **17 December 2015**.
- 12.2 If you have any questions about this paper or the DCUSA Change Process please contact the DCUSA by email [DCUSA@electralink.co.uk](mailto:DCUSA@electralink.co.uk) to or telephone 020 7432 3008.

## 13 ATTACHMENTS

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- Attachment 1 – DCP 247 Proposed Legal Text
- Attachment 2 – Voting Form
- Attachment 3 – DCP 247 CP Form
- Attachment 4 – DCP 247 Consultation