

**DCP 289A Draft Legal Text**

**Creation of Distribution Charging Methodology Development Group**

**Add the following new definitions to Clause 1.1:**

- DCMDG Issue Form** means a form, established by the Panel and published on the Website, to be used by any person wishing to submit an issue relating to the Charging Methodologies for the Use of System Charges under this Agreement to the DCMDG.
- DCMDG Liabilities** means all costs, charges, expenses, professional fees, fines, damages and other liabilities incurred on behalf of, or in connection with, the DCMDG.
- Distribution Charging Methodology Development Group or DCMDG** means a Working Group representing a cross-section of industry participants brought together to consider solutions to issues relating to the Charging Methodologies for Use of System Charges (including those submitted by way of DCMDG Issue Forms).

**Amend Clauses 7.24 to 7.26 as follows:**

- 7.24 The Panel may establish sub-committees (each a Working Group) for the purposes of doing, or assisting the Panel in doing, anything to be done by the Panel pursuant to this Agreement. The Panel may dissolve any Working Group it has previously established. In particular, the Panel may establish, dissolve and subsequently re-establish either or both of the DCUSA Standing Issues Group and the Distribution Charging Methodology Development Group (also known as the DCMDG).
- 7.25 The Panel may delegate to each Working Group such of the Panel's duties, powers and functions under this Agreement as the Panel may specify.
- 7.26 Each Working Group shall be subject to such written terms of reference and such written procedures as the Panel may specify from time to time; ~~save that the DCUSA Standing Issues Group shall be subject to the terms of reference and procedures given in Schedule 7,~~ and the DCMDG shall be subject to the terms of reference and

procedures given in Schedule [X<sup>1</sup>]. Subject to the applicable terms of reference and procedures, each Working Group shall otherwise conduct its business as it sees fit. No Working Group may further delegate any of its duties, powers and functions unless expressly authorised to do so by such terms of reference.

**Amend Clause 7.28 as follows:**

7.28 Each Working Group shall be composed of such persons with experience and expertise suitable to the Working Group's remit, and who are willing to serve, as the Panel may direct. Each Working Group shall be chaired by such person (the WG Chairman) as the Panel may direct, or as (in the case of the DCUSA Standing Issues Group) is elected pursuant to Schedule 7 or as (in the case of the DCMDG) is appointed pursuant to Schedule [X<sup>2</sup>].

**Amend Clauses 7.33 and 7.34 as follows:**

7.33 Those persons serving on a Working Group from time to time, when acting in that capacity, shall:

7.33.1 act independently, not as a delegate, and without undue regard to the interests, of any Related Person (save that this requirement shall not apply to those serving on the DCMDG);

7.33.2 exercise reasonable skill and care to the standard reasonably expected of a director of a company under the Companies Act 2006 (save that this requirement shall not apply to those serving on the DCMDG); and

7.33.3 act in a manner designed to facilitate the performance by the Working Group of the duties delegated to it.

7.34 Unless the Panel otherwise directs, a person who is to serve on a Working Group shall not be appointed to that Working Group unless he has first confirmed in writing to DCUSA Ltd (for the benefit of itself and each Party) that he agrees to act in accordance with Clause 7.33 (save that this requirement shall not apply to those serving on the DCMDG).

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<sup>1</sup> The schedule number is to be added at the direction of the Panel on implementation.

<sup>2</sup> To be the same schedule as under footnote 1.

**Amend Clauses 8.9 as follows:**

8.9 Subject to Clauses 8.9A and 8.9B, the amount (a Cost Contribution) that each Party shall be obliged to bear as its share of the Recoverable Costs, in respect of each Quarter, shall:

8.9.1 in the case of each DG Party (in its capacity as such), the OTSO Party and each Gas Supplier Party (in its capacity as such), be zero; and

8.9.2 in the case of each other Party, be calculated as follows:

$$CC = 50\% \times (N/TN) \times RC$$

where:

**CC** is the relevant Party's Cost Contribution (other than that which is subject to Clauses 8.9A and 8.9B) in respect of that Quarter;

**N** is, in respect of a DNO Party or an IDNO Party, the aggregate number of Metering Points which each such Party has on its MPAS Registration System; and, in respect of a Supplier Party, the aggregate number of Metering Points against which that Party is registered across all of the MPAS Registration Systems (based, in each case, on the average figure for the three months comprising that Quarter and provided under clause 27.6 of the MRA);

**TN** is, in respect of each Party and that Quarter, the aggregate number of Metering Points across all of the MPAS Registration Systems (based on the average aggregate figure for the three months comprising that Quarter and provided under clause 27.6 of the MRA); and

**RC** is the total amount of the Recoverable Costs (other than those which are subject to Clauses 8.9A and 8.9B) incurred, or otherwise accounted for, in that Quarter.

**Add a new Clause 8.9B as follows:**

8.9B In respect of the Recoverable Costs relating to the Distribution Charging Methodology Development Group, each Party's Cost Contribution (in respect of each

Quarter) shall not be calculated in accordance with Clause 8.9 and shall instead:

8.9B.1 in the case of all Parties other than DNO Parties (in their capacity as Parties other than DNO Parties), be zero; and

8.9B.2 in the case of each DNO Party (in its capacity as such), be calculated as follows:

$$\mathbf{DC = (N/TN) \times TRC}$$

where:

DC is the relevant DNO Party's Cost Contribution in respect of that Quarter and the Recoverable Costs relating to the Distribution Charging Methodology Development Group;

N has the same meaning as in Clause 8.9;

TN has the same meaning as in Clause 8.9; and

TRC is the total amount of the Recoverable Costs relating to the Distribution Charging Methodology Development Group incurred, or otherwise accounted for, in that Quarter.

**Amend Clause 8.10 as follows:**

8.10 The Panel shall, in respect of each Party and within 7 days after the start of each Quarter:

8.10.1 calculate the Panel's best estimate (by reference to the Approved Budget) of that Party's Cost Contribution (together with VAT thereon, if applicable) in respect of that Quarter; and

8.10.2 arrange for an invoice or other statement, on such terms as the Panel may from time to time prescribe, for an amount equal to such estimate to be sent to that Party. Such invoices shall separately identify Recoverable Costs for TRAS Liabilities, ~~and~~ for ETOS Liabilities and for DCMDG Liabilities. Such invoices shall be sent by post, by email, or by post and email, as specified by

the receiving Party from time to time (or, where no preference has been specified, by post only). Such invoices shall ordinarily be payable within 30 days, or within such shorter period as the Panel may specify for TRAS Liabilities ~~and/or~~, ETTOS Liabilities and/or DCMDG Liabilities.

**Add a new Schedule as follows:**

**SCHEDULE [X<sup>3</sup>] - DISTRIBUTION CHARGING  
METHODOLOGY DEVELOPMENT GROUP**

**1. SCOPE**

- 1.1 The Distribution Charging Methodology Development Group (also known as the DCMDG) provides an opportunity for the Panel or any person to raise (and have discussed) issues relating to the Charging Methodologies for Use of System Charges. Where appropriate (to be determined in the terms of reference), the DCMDG will undertake a pre-assessment of proposed solutions prior to a formal Change Proposal being raised.
- 1.2 The DCMDG will act under the auspices of the Panel but will have no powers to enforce changes to this Agreement or any existing industry agreements or associated systems.

**2. OBJECTIVES**

- 2.1 The objectives of the DCMDG shall be to:
- (a) meet periodically with any persons whose interests are materially affected by one or more Charging Methodologies for Use of System Charges;
  - (b) review issues relating to Charging Methodologies for Use of System Charges that are submitted to it in by the Panel or by way of DCMDG Issue Forms;
  - (c) discard issues as requiring no further action or to develop and propose cost / risk based solutions to issues;

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<sup>3</sup> To be the same schedule as under footnote 1. Update the DCUSA contents page accordingly.

- (d) identify the impact of such solutions on this Agreement;
- (e) consider such solutions in the light of the Charging Objectives;
- (f) provide the Panel with an early view, in respect of the Charging Methodologies for Use of System Charges, as to the potential impact of Change Proposals that may be proposed from time to time;
- (g) review, on behalf of the Panel, industry developments and their possible impact on this Agreement (where relating to the Charging Methodologies for Use of System Charges);
- (h) consult outside the DCMDG where appropriate;
- (i) carry out any other activity requested by the Panel;
- (j) carry out discussion and assessment of any other matter relating to the Charging Methodologies for Use of System Charges which a person attending the DCMDG believes is appropriate;
- (k) facilitate discussion relating to the implementation of the Charging Methodologies for the Use of System Charges under this Agreement; and
- (l) allow full discussion on subjects which are of relevance and interest to those attending the DCMDG.

### **3. MEMBERSHIP**

- 3.1 The membership of the DCMDG shall be open to all those who feel they can contribute to the work of the DCMDG and/or the development of the Charging Methodologies for the Use of System Charges, whether or not they or their employer are a Party to this Agreement (subject to Paragraph 3.2).
- 3.2 The Panel can restrict membership of the DCMDG and/or attendance at DCMDG meetings to a single attendee from each organisations or corporate group where the Panel considers it necessary to do so.

### **4. CHAIR**

- 4.1 The chairperson for the DCMDG (the Chair) will at all times be an independent appointment made by the Panel, who will serve for a 12-month term.
- 4.2 Should the Chair resign, for whatever reason, before the expiry of his or her 12-month term, the Panel will appoint a new Chair.
- 4.3 The Chair's role will be to chair meetings, facilitate discussions and seek to establish a proposed way forward.

## **5. REQUIREMENTS OF MEMBERS**

- 5.1 Subject to Paragraph 3.2, all interested persons will be entitled to attend DCMDG meetings, and those who choose to be a member of the DCMDG will be entitled to do so. Those who become members of the DCMDG will, where reasonably possible, be expected to ensure their attendance on a consistent basis and ensure their commitment toward making the DCMDG a success.
- 5.2 Members of the DCMDG should be prepared to:
  - (a) engage and participate fully in the DCMDG;
  - (b) take actions to be completed outside of the DCMDG meetings; and
  - (c) report back to the DCMDG on views and actions taken.

## **6. MEETING FREQUENCY**

- 6.1 The DCMDG will schedule meetings on a monthly basis. The convening of any additional meetings of the group will be on an as required basis depending on the number of issues on the table and the urgency for the resolution of them.
- 6.2 The Chair may convene an emergency meeting of the DCMDG where necessary, for the purpose of debating urgent operational issues and, where appropriate, developing Change Proposals to overcome these.
- 6.3 The Chair will be required to give a minimum of 5 days' notice of any such emergency meeting. Where practical, and expedient, emergency meetings of the DCMDG may be conducted wholly, or partly, by conference call.

- 6.4 The Chair will be entitled to cancel any scheduled meeting of the DCMDG if, having consideration to the views of the group, he or she considers there are insufficient items of importance for debate at the meeting to warrant holding it.

## **7. SECRETARIAT**

- 7.1 The DCMDG will be supported by the Secretariat, who shall be responsible for:
- (a) booking, convening and circulating notice of meetings;
  - (b) logging DCMDG Issue Forms and validating them for completeness;
  - (c) circulating the agenda for each meeting of the DCMDG at least 10 days in advance of the meeting (or as far in advance as reasonably practicable in the case of emergency meetings);
  - (d) writing minutes of the meeting in a style and level of detail specified by the Chair;
  - (e) circulating minutes of the meeting no later than 10 Working Days following the meeting;
  - (f) publishing all meeting papers and minutes on the Website; and
  - (g) providing a report to the Panel from each meeting as appropriate, giving a summary of key issues and progress being made, and including the task list or work plan for the DCMDG.

## **8. SUMMARY OF PROCESS**

- 8.1 The DCMDG will consider issues as:
- (a) directed by the Panel; or
  - (b) raised by any person who submits a completed DCMDG Issue Form.
- 8.2 Where a DCMDG Issue Form has been submitted to the Secretariat, the Secretariat shall add the matter to the next scheduled DCMDG meeting. Issue forms submitted less than 10 Working Days before the next scheduled meeting will be accepted at the

discretion of the Chair.

- 8.3 The DCMDG shall consider and recommend to the Panel or raising person (as appropriate) solutions to issues within the DCMDG's scope.
- 8.4 The DCMDG will actively seek to cluster issues for consideration together where a single solution may be viable.
- 8.5 The DCMDG may recommend that changes be proposed to this Agreement for the resolution of these issues.

## **9. DECISION MAKING**

- 9.1 Recommended solutions to issues may be agreed at the meeting. The recommendations may include, but are not limited to, changes to this Agreement and best practice guidance to Parties.
- 9.2 Recommendations are to be agreed by majority consensus of the members attending the relevant DCMDG meeting.

## **10. REPORTING**

- 10.1 The DCMDG reports directly to the Panel. A report will be provided to the Panel from each meeting, as appropriate, giving a summary of key issues and progress being made and including the task list or work plan for the group.

## **11. FUNDING**

- 11.1 All DCMDG Liabilities incurred by DCUSA Ltd (howsoever arising and including the costs of Secretariat services and ancillary charges such as meeting and teleconferencing charges) shall constitute Recoverable Costs to be paid by DNO Parties pursuant to Clause 8.9B of the main body of this Agreement.
- 11.2 DCUSA Ltd shall take all reasonable steps to mitigate its DCMDG Liabilities.
- 11.3 The expenses of those serving on the DCMDG (or otherwise attending DCMDG meetings) will be the responsibility of the relevant individual.

## **12. OTHER MATTERS**

- 12.1 Save as set out in this Schedule, the procedures of the DCMDG shall be in accordance with any direction by the Panel from time to time.

**Gowling WLG (UK) LLP**

**5 May 2017**