

**DCP 300 – Panel Members and Alternates**

**Draft Legal Text**

**Amend the following definitions in Clause 1 as follows:**

**Alternate** ~~has the meaning given to that term in Clause 6.11 means~~  
~~an individual selected in accordance with Clause 6 to act~~  
~~as a Panel Member in certain circumstances (as further~~  
~~described in Clause 6).~~

**Reserve** ~~has the meaning given to that term in Clause 6.5.~~

**Amend Clause 6 as follows:**

**6. PANEL MEMBERS**

**Election of Panel Members**

~~6.1 — The directors of DCUSA Ltd as at the date this Agreement becomes effective~~  
~~are hereby appointed as Panel Members with effect from that date. The Panel Members~~  
~~so appointed shall (without prejudice to their eligibility to stand for re-election) all retire~~  
~~(at which point their offices shall become vacant) on the first day of the second month~~  
~~commencing after this Agreement becomes effective (and references in this Clause to~~  
~~“1 December” shall, in relation to the first elections hereunder, be taken as references~~  
~~to such first day).~~

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~~6.1~~ ~~6.1A~~ — The Gas Supplier Parties will not be separately represented on the Panel.  
Accordingly, each reference in this Clause 6 to a ‘Party Category’ or the ‘Party  
Categories’ shall be reference to each Party Category or all Party Categories other than  
the Party Category representing the Gas Supplier Parties.

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6.2 ~~Subject to Clause 6.1, t~~The Panel Members from time to time shall be elected in  
accordance with the following provisions:

- 6.2.1 no later than 40 Working Days ~~(or 25 Working Days in the case of the first elections hereunder)~~ before 1 December in each year, any individual shall be entitled, by notice in writing to the Panel Secretary specifying the Party Category in respect of which he wishes to stand and the company (if any) by which he is employed, to put himself forward for election as a Panel Member or Alternate for that Party Category (the position as Panel Member or Alternative for a Party Category being, for the purposes of this Clause 6.2, a "Role");
- 6.2.2 the Panel Secretary shall ignore notices received from candidates who would, if elected, be obliged to resign in accordance with Clause 6.8.3;
- 6.2.3 no later than 30 Working Days ~~(or 20 Working Days in the case of the first elections hereunder)~~ before 1 December in such year, the Panel Secretary shall notify each Party of the candidates who have put themselves forward for election for each Role as a Panel Member for each Party Category;
- 6.2.4 at the same time as it issues such notice, the Panel Secretary shall, in respect of those ~~Roles~~Party Categories (if any) for which the number of candidates exceeds the number of Panel Member or Alternate offices attributable to that Party Category and currently vacant or due to become vacant on the following 1 December, invite the Groups comprising that Party Category to vote for their favoured candidate for that Role;
- 6.2.5 each such Group shall be entitled to cast one vote per Role, and shall cast such vote by means of a system established by the Panel which ensures that each Party Category casts only one vote per Role and which complies with the same requirements as are set out in Clauses 12.4.5 and 12.4.6;
- 6.2.6 each such Group shall be given 10 Working Days from the date of notification under Clause 6.2.3 to cast such vote; and
- 6.2.7 as soon as reasonably practicable following the expiry of such 10 Working Days, the Panel Secretary shall notify the Parties of the result of such vote, listing, in respect of each ~~Role~~Party Category, the candidate who received the

most votes first, the candidate who received the second most votes second, and so on. In the event that two or more candidates in respect of a Role for a Party Category received the same number of votes, the Panel Secretary shall invite the Groups comprising that Party Category to vote, within such time period as the Panel Secretary may reasonably specify, for their preferred candidate from those tied candidates, the result of such vote determining the order in which those candidates should be listed.

6.3 The Panel Members and Alternates elected in respect of each Party Category shall be as follows:

6.3.1 where the number of candidates who put themselves forward for election as a Panel Member or Alternate for a Party Category is less than or equal to the number of Panel Member or Alternate offices attributable to that Party Category and currently vacant or due to become vacant on the following 1 December, the candidate or candidates who put themselves forward shall be deemed to have been elected as a Panel Members or Alternate for that Party Category; and

6.3.2 where the number of candidates who put themselves forward for election as a Panel Member or Alternate for a Party Category is more than the number of Panel Member or Alternate offices attributable to that Party Category and currently vacant or due to become vacant on the following 1 December, the candidates elected as a Panel Members or Alternate for that Party Category shall be those set out in the list referred to in Clause 6.2.7, starting with the candidate at the top of that list and ending at candidate n (where n is the relevant number of offices that are currently vacant or due to become vacant on the following 1 December); save that where a candidate has applied to be both a Panel Member and an Alternate, where that candidate is appointed as a Panel Member that candidate shall be removed from the list of possible Alternates.

6.4 Where the number of candidates who put themselves forward for election as a Panel Member or Alternate for a Party Category is less than (respectively) the number of Panel Member or Alternate offices attributable to that Party Category and currently vacant or due to become vacant on the following 1 December, the Panel Secretary shall

request that the Authority make up that number by selecting further Panel Members or Alternate on behalf of that Party Category. Any such person as the Authority may direct shall be deemed to have been elected as a Panel Member or Alternate for the relevant Party Category from the date of such direction.

#### **Reserves**

- 6.5 ~~Not used Where Clause 6.3.2 applies, the candidate (or, where the number of offices for the relevant Party Category that are currently vacant or due to become vacant on the following 1 December is greater than one, the number of candidates equal to that number of offices) set out in the list referred to in Clause 6.2.7 immediately below those elected as a Panel Member for that Party Category shall be elected as a Reserve for that Party Category. Clauses 6.7 and 6.8 (but not Clause 6.8.2) shall apply to Reserves as if the references therein to a "Panel Member" were references to a "Reserve".~~

#### **Term of Office and Removal from Office of Panel Members**

- 6.6 Each person elected as a Panel Member or Alternate shall be appointed as such with effect from the last to occur of the following:

- 6.6.1 the date on which he complies with the requirements of Clause 6.17;
- 6.6.2 the date on which he is elected; and
- 6.6.3 the date on which the position for which he was elected becomes vacant.

- 6.7 Each Panel Member or Alternate (other than one appointed under Clause 5.8, ~~6.4~~ or 6.9) shall retire (at which point his office shall become vacant) on 1 December in the second year following his appointment, ~~save that the following Panel Members shall retire on 1 December 2007:~~

~~6.7.1 the Panel Member elected by the DNO Parties with effect from 1 December 2006 who received the least votes of the two Panel Members so elected;~~

~~6.7.2 the Panel Member elected by the Supplier Parties with effect from 1 December 2006 who received the least votes of the two Panel Members so elected; and~~

~~6.7.3 the Panel Member elected by the IDNO Parties with effect from 1 December 2006.~~

6.8 A Panel Member or Alternate shall immediately cease to be a Panel Member (and his office shall become vacant) if he:

6.8.1 resigns his office by notice in writing to the Panel Secretary;

6.8.2 ~~being a Panel Member,~~ fails, ~~in person or by his Alternate,~~ to attend three consecutive meetings of the Panel that have been duly convened; or, being an Alternate, fails to attend [two] consecutive meetings of the Panel which the Alternate was due to attend;

6.8.3 ceases to be, or to be employed by, a person that is:

(A) a Party that forms part of the same Party Category as the Party Category in respect of which the Panel Member or Alternate was elected;

(B) not a Party but that has an Affiliate that is a Party that forms part of the same Party Category as the Party Category in respect of which the Panel Member or Alternate was elected; or

(C) not a Party and that has no Affiliate that is a Party but provides consultancy services to, or represents the interests of, the same Party Category as the Party Category in respect of which the Panel Member or Alternate was elected;

6.8.4 becomes bankrupt or makes any arrangement or composition with his creditors;

6.8.5 becomes prohibited by law from being a director of a company under the Companies Act 2006;

6.8.6 is convicted of an indictable offence;

6.8.7 is admitted to hospital in pursuance of an application under the Mental Health Act 1983 or the Mental Health (Care and Treatment) (Scotland) Act 2003, or an order is made by a court with competent jurisdiction in matters concerning

mental disorder for his detention or for the appointment of a receiver, curator bonis or other person with respect to his property or affairs; or

6.8.8 dies.

#### **Replacement of Panel Members**

6.9 Where the office of a Panel Member (other than one appointed under Clause 5.8) becomes vacant for any reason other than his retirement in accordance with Clause ~~6.1~~, 6.7 or 6.10:

6.9.1 the ~~Alternate~~Reserve:

(A) ~~allocated to elected at the same time as~~ that Panel Member ~~(as described in Clause 6.11) was elected (and if there is more than one such Reserve, the Reserve appearing highest in the list created under Clause 6.2.7);~~ or

(B) if there is no such ~~Alternate~~Reserve, any other ~~Reserve~~Alternate in respect of the Party Category relevant to that office,

shall be appointed to that office. The appointment shall be subject to Clause 6.17, but as if the reference to “his election” in the final line thereof were to “the date upon which the relevant office became vacant”; or

6.9.2 where there is no ~~or Alternate~~Reserve in respect of the relevant Party Category, the election process set out in Clauses 6.2 to 6.5 (inclusive) shall apply in respect of that office, save that the dates and timescales set out therein shall be as the Panel Secretary may reasonably direct.

6.10 A Panel Member appointed in accordance with Clause 6.9 shall retire (at which point his office shall become vacant) on the date that the person that Panel Member replaced would otherwise have retired in accordance with Clause ~~6.1 or~~ 6.7.

#### **Alternates**

6.11 Each Alternate elected as described in Clause 6.3 shall be allocated to a Panel Member for the same Party Category by reference to the election in which the Panel Member

~~and Alternate were elected (and, if relevant, the order in which they appeared on the list created under Clause 6.2.7). A Panel Member for a Party Category may, by notice in writing to the Panel Secretary, appoint a Reserve for that Party Category (or, if no such Reserve exists or is willing to act, any Reserve or any other Panel Member) as his alternate (an **Alternate**). Each such Alternate must, before his appointment can become valid, have complied with the provisions of Clause 6.17.1.~~

- 6.12 Where a Panel Member is not present at a Panel meeting, his Alternate shall be entitled to attend (and count, ~~in his capacity as Alternate,~~ towards the quorum at) that meeting and to exercise and discharge all the functions, powers and duties of the Panel Member~~his appointor~~ at that meeting.
- 6.13 ~~Where a Panel Member is not present at a Panel meeting and his Alternate is not able to be present at a Panel meeting, another Alternate from the same Party Category shall be entitled to attend (and count towards the quorum at) that meeting and to exercise and discharge all the functions, powers and duties of the Panel Member at that meeting. Each Panel Member may, by notice in writing to the Panel Secretary, remove or replace the person appointed from time to time by that Panel Member as his Alternate. An Alternate shall immediately cease to be an Alternate on the occurrence of any of the events set out in Clause 6.8 in respect of the Alternate.~~
- 6.14 ~~Where the office of an Alternate becomes vacant for any reason other than his retirement in accordance with Clause 6.7 (including where the Alternate becomes a Panel Member in accordance with Clause 6.9), then the election process set out in Clauses 6.2 to 6.5 (inclusive) shall apply in respect of that office, save that the dates and timescales set out therein shall be as the Panel Secretary may reasonably direct. Where an Alternate's appointor ceases to be a Panel Member for any reason other than in accordance with Clause 6.1, 6.7 or 6.10, the Alternate shall (subject to Clause 6.8 as applied under Clause 6.13) continue to exercise and discharge all the functions, powers and duties previously exercised and discharged by his appointor until a replacement Panel Member is appointed in accordance with Clause 6.9.~~
- 6.15 Unless the context otherwise requires, any reference in this Agreement to a Panel Member shall be construed as including a reference to that Panel Member's Alternate.

#### **Duties of Panel Members**

- 6.16 A person appointed as Panel Member (including Alternates acting as Panel Members), when acting in that capacity, shall:
- 6.16.1 act independently, not as a delegate, and without undue regard to the interests, of any Related Person;
  - 6.16.2 exercise reasonable skill and care to the standard reasonably expected of a director of a company under the Companies Act 2006; and
  - 6.16.3 act in a manner designed to facilitate the performance by the Panel of its duties under this Agreement.
- 6.17 A person shall not be appointed as a Panel Member or Alternate unless he has first:
- 6.17.1 confirmed in writing to DCUSA Ltd (for the benefit of itself and each Party) that he agrees to act as a Panel Member in accordance with this Agreement and with particular regard to the requirements of Clause 6.16; and
  - 6.17.2 confirmed in writing to DCUSA Ltd (for the benefit of itself and each Party) that he agrees to accept appointment as a director of DCUSA Ltd and to act in such capacity in accordance with this Agreement,
- and his office shall be deemed to have become vacant if he does not do so within 20 Working Days of his election.
- 6.18 Each Panel Member or Alternate shall, at the time of his appointment and upon any relevant change in circumstance, disclose, in writing to the Panel, the name of each Related Person who is a Party, or is otherwise likely to be affected by the operation of this Agreement and the matters to which it relates.
- 6.19 Where a Panel Member or Alternate changes employer, the Panel Member or Alternate shall, as soon as reasonably practicable after such change, notify the Panel Secretary of such change in writing. The Panel Secretary shall then notify the Parties of the change in question.



### **Protections for Panel Members and Others**

6.20 Each Party shall, jointly and severally with each other Party, indemnify, and keep indemnified:

6.20.1 each Panel Member (whether as a Panel Member or as a director of DCUSA Ltd);

6.20.2 each ~~Alternate Reserve~~ (whether acting as a Panel Member or as a director of DCUSA Ltd~~an Alternate or otherwise~~);

6.20.3 the Panel Secretary (whether as Panel Secretary or as the company secretary of DCUSA Ltd);

6.20.4 each person who serves on a Working Group;

6.20.5 any employee of a Party, or of an Affiliate of a Party, who is seconded to (or otherwise providing services to) the Secretariat; and

6.20.6 each Party, or an Affiliate of a Party, as employer of any person referred to in Clauses 6.20.1 to 6.20.4 (inclusive),

from and against any and all costs (including legal costs), charges, expenses, damages or other liabilities properly incurred or suffered by that person or Party in relation to the exercise of the person's powers, duties or responsibilities under this Agreement, including where such powers duties or responsibilities are exercised negligently (and, for the avoidance of doubt, such indemnity shall extend to the persons who acted as directors of DCUSA Ltd in the period prior to the date on which this Agreement became effective).

6.21 The indemnity set out in Clause 6.20 shall not apply to any costs, charges, expenses, damages or other liabilities that are:

6.21.1 recovered in accordance with the procedures set out in Clause 8;

6.21.2 in respect of any charge for the time of those persons referred to in Clause 6.20;

6.21.3 recovered under any policy of insurance in favour of any or all of the persons and Parties referred to in Clause 6.20; or

6.21.4 suffered or incurred or occasioned by the wilful default or bad faith of, or breach of contract by, the relevant person.

6.22 DCUSA Ltd shall hold the benefit of Clause 6.20 (subject to Clause 6.21) as trustee and agent for each person (other than a Party) referred to in Clause 6.20.

6.23 As between themselves, each of the Parties shall be liable, in respect of any amounts properly payable by any Party under Clause 6.20, in accordance with the same proportions as are used to calculate that Party's Cost Contribution under Clause 8 (calculated on the basis of Metering Point registrations in the month in which the cost, charge, expense, damage or other liability referred to in Clause 6.20 was incurred).

**Amend Clause 7.7 as follows:**

7.7 The Panel Secretary's duties shall be to facilitate the operations of the Panel and in particular to:

7.7.1 attend to the requisition of meetings and serve the necessary notices;

7.7.2 maintain a register of names and addresses, from time to time, of the Panel Members, ~~and of the any~~ Alternates ~~allocated~~~~appointed to by~~ each Panel Member, ~~and of the Reserves;~~

7.7.3 keep minutes of all meetings; and

7.7.4 circulate all relevant notices, papers and minutes.

**Amend Clause 7.14 as follows:**

**Notice of Meetings**

7.14 All meetings of the Panel shall be convened by the Panel Secretary on at least five Working Days' notice (subject to any requirements, under Section 1C, for meetings to be held within a shorter period). Such notice (which may be given by e-mail) must be given to:

7.14.1 the Panel Members ~~(and the any appointed~~ Alternates);

7.14.2 the appointed persons referred to in Clause 5.7;

7.14.3 (where the Panel has resolved to invite representatives of one or more of them) one or more (as applicable) of BSCCo, MRASCo and/or SECCo; and

7.14.4 the Parties.

**Amend Paragraph 5.1(a) of Schedule 10 as follows:**

5.1 Directors.

- (a) The Shareholders shall procure that the Directors shall be all the Panel Members from time to time, and each Director shall have as his alternate for the purposes of this Schedule the Alternate ~~allocated appointed by~~ to him pursuant to Clause 6.

**Amend Paragraph 13 of Annex 4 to Schedule 10 as follows:**

Each director shall have as his alternate for the purposes of these Articles the alternate ~~allocated appointed by~~ to him pursuant to clause 6 of the DCUSA. Regulation 65 of Table A shall not apply.

**Gowling WLG (UK) LLP**

**14 June 2017**