

## **1. DEFINITIONS AND INTERPRETATION**

### **Definitions**

1.1 In this Agreement, except where the context otherwise requires, the expressions in the left hand column below shall have the meanings given to them in the right hand column below:

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| <b>Alternate</b> | <del>has the meaning given to that term in Clause 6.11</del> <u>means someone selected to act as a Panel Member in given circumstances.</u> |
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| <b>Reserve</b> | <del>has the meaning given to that term in Clause 6.5.</del> |
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## **2. COMMENCEMENT AND DURATION**

## **3. DCUSA OBJECTIVES**

## **4. ACCESSION OF ADDITIONAL PARTIES**

## **5. FUNCTIONS AND CONSTITUTION OF THE PANEL**

### **Establishment of the Panel**

5.1 The Panel is hereby established. The Panel shall:

5.1.1 pursue the objectives, undertake the duties, and have the powers, set out in Clauses 5.2 to 5.4, and be composed in accordance with Clauses 5.5 to 5.9;

5.1.2 comprise Panel Members elected in accordance with Clause 6, who shall have the duties and protections set out in Clause 6; and

5.1.3 conduct its activities in accordance with the procedures set out in Clause 7.

### **Panel Objectives**

5.2 In conducting its operations in accordance with this Agreement, the Panel shall act in a manner designed to achieve the following objectives (the **Panel Objectives**):

5.2.1 that this Agreement is given full and prompt effect in accordance with its terms and conditions;

5.2.2 that this Agreement is given effect in such a manner as will facilitate achievement of the DCUSA Objectives;

5.2.3 that this Agreement is given effect in a fair and economical manner; and

5.2.4 that this Agreement is given effect without undue discrimination between the Parties or any classes of Party.

### **Duties**

5.3 Without prejudice to any other duties or obligations imposed on it under this Agreement, the Panel shall, subject to and in accordance with the other provisions of this Agreement:

5.3.1 manage and co-ordinate any applications from Applicants to become a Party in accordance with Clause 4;

5.3.2 manage and co-ordinate the process by which Panel Members are appointed, in accordance with Clause 6;

5.3.3 develop budgets in accordance with Clause 8;

5.3.4 manage and co-ordinate the modification process set out in Section 1C, and give effect to any modifications resulting from such process in accordance with Section 1C;

5.3.5 manage the termination of a Party's accession to this Agreement in accordance with Clause 54;

5.3.6 oversee and, where appropriate, approve the actions and decisions of DCUSA Ltd as contemplated by Schedule 10;

- 5.3.7 periodically review this Agreement and operations under it, in order to evaluate whether this Agreement meets the DCUSA Objectives, and report to the Parties on the outcome of each such review;
- 5.3.8 at the written request of the Authority, undertake a review in accordance with Clause 5.3.7 in respect of such parts of this Agreement as the Authority may specify;
- 5.3.9 procure the creation, hosting and maintenance of the Website, which the Panel shall endeavour to ensure complies with the requirements of Schedule 14;
- 5.3.10 make available on the Website in accordance with Schedule 14:
- (A) an accurate and up-to-date copy of this Agreement;
  - (B) subject to Clauses 57.1 and 57.3.1, a copy of each: (i) Change Proposal made; (ii) consultation issued in respect of a Change Proposal; and (iii) Change Report delivered to the Panel and/or the Authority; and
  - (C) subject to Clauses 57.1 and 57.3.1, all the matters, minutes, reports, consultation responses, data and other information related to the change control process set out in Section 1C produced by or for, or made available to, the Panel, the Secretariat, the Panel Secretary or a Working Group (with the exception of contact details).
- 5.3.10A arrange, in return for a charge not exceeding the reasonable cost of so doing, for the following to be supplied to any person requesting a copy of the same:
- (A) an accurate and up-to-date copy of this Agreement (including the Revenue Protection Code of Practice); and
  - (B) subject to Clauses 57.1 and 57.3.1, any document referred to in Clause 5.3.10(B) or 5.3.10(C).
- 5.3.11 at the written request of the Authority, collect and provide to the Authority (or publish in such manner as the Authority may direct) such information regarding the operation of this Agreement as the Authority may reasonably request (and each Party shall provide to the Panel such information as the

Panel reasonably requires in order to enable the Panel to comply with any such request of the Authority);

- 5.3.12 endeavour to establish joint working arrangements with other relevant industry committees and panels in order to facilitate robust interaction between this Agreement and the industry documents for which such industry committees and panels are responsible;
- 5.3.13 consider whether it is appropriate to obtain insurance in respect of the costs, charges, expenses, damages and other liabilities referred to in Clause 6.20, and, where it is appropriate to do so, obtain such insurance;
- 5.3.14 develop and give effect to the Theft Risk Assessment Service Arrangements (and the Panel shall have the power to delegate any or all of such arrangements to one or more third parties);
- 5.3.15 arrange for a Theft Assessment Calculator to be procured, maintained and made available to those Parties obliged to use it in accordance with Schedule 23, which calculator must provide a means for assessing unrecorded units in compliance with the requirements of Schedule 23, must be procured from and maintained by a person that is reasonably independent of the Parties, and may be procured jointly with those persons making equivalent arrangements for gas; and
- 5.3.16 contract for, and manage provision of, an Energy Theft Tip-Off Service, as described in Schedule 26.

## **Powers**

- 5.4 Without prejudice to any other rights or powers granted to it under this Agreement, the Panel shall, subject to and in accordance with the other provisions of this Agreement, have the power to:
  - 5.4.1 appoint and remove the Secretariat;
  - 5.4.2 appoint and remove professional advisers;

- 5.4.3 consider, approve and authorise the licensing, sub-licensing, or any other manner of dealing with Intellectual Property belonging to DCUSA Ltd, for any use which does not hinder, delay or frustrate, in any way whatsoever, the DCUSA Objectives;
- 5.4.4 consider, approve and authorise the entering into by DCUSA Ltd of contracts under which DCUSA Ltd procures the performance by a third party of any activities which might otherwise be carried out by the Panel under this Agreement;
- 5.4.5 constitute Working Groups to which the Panel may delegate any of its duties and powers under this Agreement;
- 5.4.6 without prejudice to the generality of Clause 5.4.5 or the process for considering Change Proposals, and only where it sees fit, constitute Working Groups to consider and report on issues and problems relating to the operation of this Agreement that have been brought to its attention by one or more Parties; and
- 5.4.7 do anything necessary for, or reasonably incidental to, the discharge of its duties under this Agreement.

### **Panel Composition**

- 5.5 The Panel shall comprise the following persons (each a **Panel Member**):
  - 5.5.1 two persons elected by the DNO Parties;
  - 5.5.2 one person elected by the IDNO/OTSO Parties;
  - 5.5.3 two persons elected by the Supplier Parties;
  - 5.5.4 one person elected by the DG Parties; and
  - 5.5.5 any additional person appointed by the Authority in accordance with Clause 5.8.
- 5.6 No one person can hold more than one office as a Panel Member.

- 5.7 The following persons shall be entitled to attend and speak (but not vote) at any meeting of the Panel:
- 5.7.1 one person appointed from time to time, by notice to the Panel Secretary, by the Authority;
  - 5.7.2 one person appointed from time to time, by notice to the Panel Secretary, by the National Electricity Transmission System Operator;
  - 5.7.3 one person appointed from time to time, by notice to the Panel Secretary, by the Consumer Body (Citizens Advice and Citizens Advice Scotland acting together to jointly appoint one person);
  - 5.7.4 (at the invitation of the Panel from time to time) a representative of BSCCo;
  - 5.7.5 (at the invitation of the Panel from time to time) a representative of MRASCo;  
and
  - 5.7.6 (at the invitation of the Panel from time to time) a representative of SECCo.

#### **Appointment of Additional Panel Member by the Authority**

- 5.8 Where at any time:
- 5.8.1 no person is currently appointed as a Panel Member pursuant to this Clause 5.8; and
  - 5.8.2 the Authority considers that there is a class or category of person having an interest in the distribution of electricity in Great Britain whose interests are not adequately represented in the composition of the Panel at that time, and whose interests would be better represented if a particular person were appointed as an additional Panel Member,
- the Authority may (by notice to the Panel Secretary) appoint (subject to Clause 6.17) that particular person as a Panel Member. The Authority may, at any time thereafter by notice to the Panel Secretary, remove that person from the office of Panel Member.

#### **Natural Persons**

- 5.9 Each Panel Member, each Alternate, each person appointed in accordance with Clause 5.7 or 5.8, and each person serving on a Working Group from time to time must be an individual (and cannot be a body corporate, association or partnership).

## 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).~~
- 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.
- 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;
- 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 as a Panel Member or Alternate for each Party Category;
- 6.2.4 at the same time as it issues such notice, the Panel Secretary shall, in respect of those Party Categories (if any) for which the number of candidates for each



Role, (“Role” being Panel Member or Alternate), 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 in each 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 Party Category and for each Role, 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 elected in respect of each Party Category for each Role 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 Panel Members or Alternates 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 Panel Members or Alternates 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 either of a Panel Member or Alternate, if that candidate is appointed as a Panel Member that candidate is removed from the list of possible Alternates.

6.4 Where the number of candidates who put themselves forward for election as a Panel Member for a Party Category is less 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 Panel Secretary shall request that the Authority make up that number by selecting further Panel Members or Alternates 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 ~~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 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, 6.1 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~~

~~6.7.3.6.7—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 fails, in person or by his Alternate, to attend three consecutive meetings of the Panel that have been duly convened;
- 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

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(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 or Alternate (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 ~~Reserve~~Alternate:

(A) elected at the same time as that Panel Member 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 ~~Reserve~~Alternate, 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~~are no ~~Reserve Alternates~~ 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 ~~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 his appointor at that meeting. Where 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. References to Panel Members in Clause 7 shall include references to Alternates representing Panel Members in accordance with this Clause 6.12

6.13 ~~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 ~~an Alternate's appointor~~ a Panel Member ceases to be a Panel Member for any reason other than in accordance with Clause 6.1, 6.7 or 6.10, the Alternate replacing them 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~~ that Panel Member 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 or Alternate, 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 -and each Alternate (whether as a Panel Member or as a director of DCUSA Ltd);

6.20.2 ~~each Reserve (whether acting as 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).



## 7. OPERATION OF THE PANEL

### **The Panel Chairman**

- 7.1 The **Panel Chairman** shall be the Panel Member appointed as such, from time to time, by a simple majority of the Panel Members.
- 7.2 The Panel Chairman may at any time be removed from the office of Panel Chairman by a simple majority of the Panel Members or at the direction of the Authority. Where a Panel Member is removed from the office of Panel Chairman he may not be reappointed as such without the Authority's prior consent.
- 7.3 The Panel Chairman shall preside at every meeting of the Panel at which he is present. If the Panel Chairman is unable to be present at a meeting, he may nominate, by notice in writing to the Panel Secretary, another Panel Member (or ~~his~~ an Alternate) to act as Panel Chairman for that meeting. If neither the Panel Chairman nor any person nominated by him in accordance with this Clause 7.3 is present at a Panel meeting, the Panel Members or Alternates representing Panel Members present may, by simple majority, appoint any one of their number to preside at that meeting.
- 7.4 The Panel Chairman shall be entitled to vote in his capacity as a Panel Member. The Panel Chairman shall in no circumstances be entitled to an extra or casting vote.

### **The Panel Secretary**

- 7.5 The **Panel Secretary** shall be appointed, or removed from office, by the Panel. In no event shall the Panel Secretary be an employee of any Party or any of its Affiliates.
- 7.6 The Panel Secretary shall be entitled to attend and speak (but not to vote) at Panel meetings.
- 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, of any Alternate appointed 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.
- 7.8 The Panel shall be responsible for ensuring that the Panel Secretary undertakes these duties.

### **Meetings of the Panel**

- 7.9 The Panel shall hold meetings at such times as it may decide but in any event shall meet at least once every three months. The venues for meetings shall be determined by the Panel Members.
- 7.10 No business shall be transacted at any meeting of the Panel unless a quorum is present at that meeting. The quorum for each Panel meeting shall be four Panel Members, at least one of whom must have been elected by the DNO Parties and at least one of whom must have been elected by the Supplier Parties.
- 7.11 The Panel may, subject to the other provisions of this Agreement, regulate the conduct of its meetings as it sees fit.
- 7.12 Any Panel Member may, by written notice to the Panel Secretary:
- 7.12.1 request the requisition of an additional Panel meeting. Any such notice given to the Panel Secretary must contain a list of matters to be included in the agenda for the meeting. Following receipt of such a notice, the Panel Secretary shall proceed to convene the meeting within five Working Days; and
  - 7.12.2 request the consideration of additional matters at a meeting for which notice has already been given. Provided such notice is given at least three Working Days before the date of the relevant meeting, the Panel Secretary shall amend the agenda for that meeting to include the additional matters.

- 7.13 Nothing shall prevent a meeting from being held by telephone or other technological means, so long as all the criteria regarding notice and minutes are met.

### **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 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.

- 7.15 The notice of each Panel meeting shall contain the time, date and venue of, and an agenda and any supporting papers for, the relevant meeting. The Panel Secretary shall circulate amendments to the agenda where necessary.

- 7.16 The accidental omission to give notice of a meeting to, or the non-receipt of notice of a Panel meeting by, a person entitled to receive notice shall not invalidate the proceedings of that meeting.

### **Representation and Voting**

- 7.17 Each Panel Member shall be entitled to attend, and to speak and vote at, every meeting of the Panel.

- 7.18 Any Party shall be entitled to send a representative to attend a Panel meeting provided it gives the Panel Secretary two Working Days' notice in advance of such meeting. Such a representative shall be admitted as an observer, and shall (at the Panel Chairman's invitation) be entitled to speak (but in no circumstances vote) at the meeting. The Panel Chairman may, at his sole discretion, exclude a representative of a

Party from a meeting (or any part thereof) where matters being discussed are confidential.

- 7.19 All decisions of the Panel shall be by resolution. In order for a resolution of the Panel to be passed at a meeting, a simple majority of those Panel Members present at that meeting must vote in favour of that resolution.
- 7.20 A resolution in writing signed by or on behalf of all the Panel Members shall be as valid and effective as if it had been passed at a meeting of the Panel duly convened and held. Such a resolution may be signed in any number of counterparts.

### **Minutes of Panel Meetings**

- 7.21 The Panel Secretary shall, as soon as practicable (and in any event within five Working Days) following each Panel meeting, circulate copies of the minutes of that meeting to each person who was entitled to receive a notice of that meeting.
- 7.22 If any Panel Member disagrees with any item of the minutes, he shall, within five Working Days of receipt of the minutes, notify the Panel Secretary of those items with which he disagrees, and the Panel Secretary shall incorporate those items upon which there is disagreement into the agenda for the next following meeting of the Panel, as the first item for resolution.
- 7.23 The Panel Secretary shall maintain a record of all resolutions voted on by the Panel, indicating how each Panel Member voted on each resolution, and shall make such record available on request to any Party.

### **Establishing Working Groups**

- 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 the DCUSA Standing Issues Group.
- 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. 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.
- 7.27 Each Working Group shall publish, on the Website, details of that Working Group's:
- 7.27.1 membership;
  - 7.27.2 terms of reference;
  - 7.27.3 timetable for business and meetings;
  - 7.27.4 minutes of meetings; and
  - 7.27.5 governance procedures.

### **Membership of Working Groups**

- 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.
- 7.29 Before establishing each Working Group, the Panel shall invite (by such means as it considers appropriate) applications from individuals who wish to serve on that Working Group.
- 7.30 Once a Working Group is established, the WG Chairman shall (unless the Panel otherwise directs) be entitled to admit such additional persons to serve on that Working Group as the WG Chairman considers appropriate. The Panel may, at its discretion, subsequently remove any such additional persons from service on that Working Group.

- 7.31 The Authority shall be entitled to send, to any Working Group meeting, a representative who shall be entitled to speak (but not to vote) at that meeting. Any Party shall be entitled to send a representative to attend and (at the WG Chairman's invitation) speak (but in no circumstances vote) at any Working Group meeting.

### **Duties of those Serving on Working Groups**

- 7.32 Each Working Group shall act in a manner designed to achieve the Panel Objectives.
- 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;
  - 7.33.2 exercise reasonable skill and care to the standard reasonably expected of a director of a company under the Companies Act 2006; 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.

### **Decisions of Working Groups**

- 7.35 Resolutions of Working Groups shall not have binding effect unless the Panel has formally delegated the decision-making powers to the Working Group or has ratified the resolution in question.

### **Secretariat**

- 7.36 The Panel may, from time to time, appoint and remove, or make arrangements for the appointment and removal of, any such person or persons (such person or persons to be known as the **Secretariat**) as the Panel requires to assist:
- 7.36.1 the Panel;

7.36.2 the Panel Secretary; and/or

7.36.3 any Working Group,

in the proper performance of its, his or their duties and responsibilities under this Agreement.

7.36A The Secretariat shall perform the role of code administrator in respect of this Agreement. Accordingly, the Secretariat shall (in addition to any other roles allocated to it under this Agreement):

7.36A.1 from time to time, together with other code administrators, publish, review and (where appropriate) report to the Panel and the Authority on any proposed amendments to the Code Administration Code of Practice;

7.36A.2 where the Authority approves any proposed amendments to the Code Administration Code of Practice, working together with other code administrators, amend the Code Administration Code of Practice in accordance with such approval;

7.36A.3 periodically review and report to the Panel on whether the provisions of this Agreement are consistent with the Code Administration Code of Practice (to the extent relevant);

7.36A.4 have regard to, and (to the extent relevant) act in a manner consistent with, the principles contained in the Code Administration Code of Practice; and

7.36A.5 provide assistance (insofar as is reasonably practicable and on reasonable request) to Parties (including, in particular, Small Participants) and (to the extent relevant) consumer representatives that request the Secretariat's assistance in relation to this Agreement; such assistance to include assistance with:

(A) drafting Change Proposals;

(B) understanding the operation of this Agreement;

- (C) their involvement in, and representation during, the Change Proposal processes (including in respect of Panel or Working Group meetings); and
- (D) accessing information relating to Change Proposals.

- 7.37 The Panel shall be responsible for ensuring that the Secretariat undertakes any responsibilities and duties that are either assigned to it under Clause 7.36 or ascribed to it in this Agreement. In particular, the Panel shall ensure that the arrangements under which the Secretariat is appointed shall oblige the Secretariat to undertake such duties and responsibilities on the same applicable terms as are provided for under this Agreement.
- 7.38 Subject to Clause 7.37, any appointment by the Panel under Clause 7.36 shall be on such terms and conditions and in return for such remuneration as the Panel sees fit.
- 7.39 In no event shall the Secretariat be a Party, an Affiliate of a Party, an employee of a Party, or an employee of an Affiliate of a Party.

**DCUSA Ltd**

- 7.40 The provisions of Schedule 10 shall apply in respect of DCUSA Ltd.
- 7.41 The Panel is deemed to have approved all the acts of DCUSA Ltd undertaken before this Agreement became effective, and the Parties hereby confirm that such approval is properly given.



## **54. TERMINATION**

### **Panel Member Conflict**

54.4 A Panel Member shall be disqualified from acting, and shall not act in his capacity as a Panel Member, in relation to a resolution pursuant to this Clause 54 and a Breaching Party where his employer is that Breaching Party or an Affiliate of that Breaching Party. Any Alternate of such Panel Member shall act in that Panel Member's place (unless that Alternate is also employed by that Breaching Party or an Affiliate of that Breaching Party).

## **SCHEDULE 10 – DCUSA LTD**

### **1. BACKGROUND**

- 1.1 *Establishment of joint venture.* The Parties have agreed to establish a joint venture company to carry on the Business.
- 1.2 *DCUSA Ltd.* DCUSA Ltd was incorporated in England and Wales on 10 May 2006, and on the date the DCUSA became effective had an authorised share capital of £1,000 divided into 1,000 ordinary shares of £1 each of which three shares have been issued.
- 1.3 *Shareholders of DCUSA Ltd.* It is intended that the shareholders of DCUSA Ltd shall be limited to the Parties from time to time, each of whom shall hold a single share, and any nominee as referred to in Paragraph 3.2(a).
- 1.4 *Regulation of rights.* The Shareholders have agreed that their respective rights as shareholders in DCUSA Ltd shall be regulated by the provisions of this Schedule (which, for the avoidance of doubt, shall include the provisions of the Annexes hereto) and DCUSA Ltd has agreed with the Shareholders to comply with such of the matters contained in this Schedule as relate to DCUSA Ltd.

### **2. ADDITIONAL DEFINITIONS AND INTERPRETATION**

- 2.1 *Definitions.* In this Schedule, except where the context otherwise requires:

|                 |   |
|-----------------|---|
| <b>Articles</b> | means the Articles of Association of DCUSA Ltd as the same may be amended from time to time, which Articles shall, on the Completion Date, be in the form set out in Annex 4. |
|-----------------|---|

|                          |   |
|--------------------------|---|
| <b>Board</b>             | means the board of directors of DCUSA Ltd.  |
| <b>Business</b>          | <p>means acting as a corporate vehicle in relation to this Agreement pursuant to:</p> <p>(a) a resolution of the Panel (or any Working Group) passed pursuant to Clause 7 and effective by virtue of the provisions of that Clause; or</p> <p>(b) a decision of the Secretariat acting within the scope of its authority,</p> <p>which it is necessary or desirable to implement by means of a binding contract on an arm's-length basis.</p> |
| <b>Company Chairman</b>  | means the chairman of the Board from time to time.  |
| <b>Company Secretary</b> | means the company secretary of DCUSA Ltd from time to time.   |
| <b>Completion Date</b>   | means the first Working Day after the date on which this Agreement becomes effective or such later date as shall be agreed by the Panel.  |
| <b>Directors</b>         | means the directors of DCUSA Ltd from time to time.   |
| <b>Shareholders</b>      | means the persons from time to time registered as holders of Shares.  |
| <b>Shares</b>            | means ordinary shares of £1 each in the ordinary share capital of DCUSA Ltd and any shares issued in exchange therefor by way of conversion or reclassification and any shares representing or deriving from such shares as a result of any increase in or reorganisation or variation of the ordinary share capital of DCUSA Ltd.  |

2.2 *Interpretation.* The Parties and DCUSA Ltd acknowledge and agree that, notwithstanding any other provision of this Agreement:

- (a) DCUSA Ltd is a party to this Agreement solely for the purposes of this Schedule and the obligations expressly imposed on it by this Agreement. DCUSA Ltd shall only be bound by those provisions of this Agreement that are set out (or referred to) in this Schedule or that are set out elsewhere and expressly refer to DCUSA Ltd;
- (b) DCUSA Ltd shall have only such rights under or in respect of this Agreement as are set out (or referred to) in this Schedule or as are set out elsewhere and expressly refer to DCUSA Ltd (or to the Parties where such expression is defined as including DCUSA Ltd);
- (c) the consent or agreement of DCUSA Ltd shall not be required to any modification, abrogation, amendment or suspension of any provision of this Agreement which is not set out in this Schedule, and DCUSA Ltd hereby irrevocably waives any rights which it might be considered, or held, to have to consent or agree to any such modification, abrogation, amendment or suspension;
- (d) the rights of the Parties as Shareholders are set out exclusively in this Schedule and no other provision of this Agreement shall apply to the regulation of the rights and obligations of Shareholders in their capacity as Shareholders or as between the Shareholders (or any of them) and DCUSA Ltd; and
- (e) DCUSA Ltd shall take no action (and the Shareholders shall not take any step which could cause DCUSA Ltd to take any such action) which could prejudice in any way the rights or interests of any Party under this Agreement.

### 3. **ESTABLISHMENT OF DCUSA LTD AND NEW PARTIES**

*Completion.* On the Completion Date, each Party, each Director and DCUSA Ltd shall perform its respective obligations set out in Annex 1 to this Schedule.

*New Parties.* Upon the accession of a new Party in accordance with Clause 4, the Directors shall either:

- (a) transfer to such Party one Share held by a nominee in accordance with the provisions of Paragraph 10.3 or 10.4; or
- (b) allot to such Party one unissued Share (and the Shareholders agree that, where no Shares are otherwise available for issue, they will exercise the voting rights attaching to their Shares to procure that all necessary steps are taken to create and/or authorise the issue of further Shares).

#### **4. DCUSA LTD'S BUSINESS**

- 4.1 *Compliance.* Each Shareholder agrees with each other Shareholder to exercise its rights under this Schedule and as a shareholder in DCUSA Ltd so as to ensure that:
- (a) DCUSA Ltd performs and complies with all its obligations under this Agreement and complies with the restrictions (if any) imposed on it by the Articles; and
  - (b) the Business is conducted in accordance with sound and good business practice with the intention of breaking even each year.
- 4.2 *Sole business of DCUSA Ltd.* The Shareholders and DCUSA Ltd acknowledge and agree that, unless and until the Shareholders give their explicit written consent, the business of DCUSA Ltd shall be confined to the Business.
- 4.3 *Independence of operations.* Each Shareholder acknowledges and agrees that DCUSA Ltd will have complete independence in its operations and undertakes not to take any action which obstructs or interferes with, or seeks to obstruct or interfere with, the Business, provided that this Paragraph 4.3 shall not affect the manner in which any Shareholder may exercise its rights in respect of Shares held by it.

#### **5. THE MANAGEMENT OF DCUSA LTD**

- 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 ~~appointed by him~~selected pursuant to Clause 6.12.

- (b) The Parties shall indemnify DCUSA Ltd against all claims, demands, liabilities, losses, costs and expenses which DCUSA Ltd may suffer or incur by reason of any claim by any Director in connection with his removal from office as a Director and the liability to indemnify shall be met:
  - (i) in the case of a Director who was elected to the Panel by the DNO Parties, severally and rateably by the DNO Parties in accordance with the same proportions by which each DNO Party's Basic Vote would be calculated in the month such liabilities, losses, costs and expenses were incurred;
  - (ii) in the case of a Director who was elected to the Panel by the Supplier Parties, severally and rateably by the Supplier Parties in accordance with the same proportions by which each Supplier Party's Basic Vote would be calculated in the month such liabilities, losses, costs and expenses were incurred; and
  - (iii) in the case of any other Director, as if it were a cost included within an Approved Budget.

5.2 *Company Chairman.* The Company Chairman shall be the person appointed as the Panel Chairman from time to time. If the Company Chairman is unable to be present at a meeting, he may nominate another Director (or any Director's alternate) to act as Company Chairman. If neither the Company Chairman nor his nominee is present within half an hour after the time appointed for holding the meeting, the Directors present may appoint any one of their number to be Company Chairman of that meeting.

5.3 *Committees.* The Directors may delegate any of their powers to committees of the Board consisting of such persons as the Directors may resolve. Any such committee shall exercise only powers expressly delegated to it and shall comply with any regulations imposed on it by the Board.

5.4 *Company Secretary.* The Company Secretary shall be the Secretary for the time being and from time to time.

5.5 Proceedings at Board Meetings.

- (a) Voting rights: Each Director shall have one vote. The Company Chairman shall have no second or casting vote.
- (b) Frequency: The Board shall meet at intervals of not less than once in any period of three months unless otherwise agreed by the Directors and insofar as reasonably practicable meetings of the Board shall follow on immediately from meetings of the Panel. A meeting of the Board may be convened at any reasonable time at the request of any Director by written notice to the Company Secretary.
- (c) Meetings: Meetings of the Board may be held by conference telephone call provided that participants acknowledge that they can speak to and hear each other.
- (d) Notice: Each of the Directors shall be given notice by the Company Secretary of each meeting of the Board setting out details of the time, date and place of meeting at least five Working Days prior to the date of such meeting, provided that such period of notice may be shortened for particular meetings by unanimous written consent of all Directors entitled to attend and vote thereat.

- (e) Quorum: The quorum for each meeting of the Board shall be four Directors, at least one of whom must have been elected to the Panel by the DNO Parties and at least one of whom must have been elected to the Panel by the Supplier Parties.
- (f) Resolutions: All resolutions of the Board shall be made by simple majority of those Directors present or participating by conference telephone call.
- (g) Written resolutions: A written resolution signed by all Directors shall be as valid and effective as a resolution passed by a meeting of the Board properly convened and constituted in accordance with the terms of this Schedule and the Articles.
- (h) Minutes: No later than five Working Days after each Board meeting, the Company Secretary shall circulate minutes of that meeting to each of the Directors.

5.6 *Exercise of Shareholders' rights.* The Shareholders shall exercise the rights attaching to their Shares in the manner best calculated to secure the implementation of decisions taken by the Panel, by the Parties in accordance with Section 1C, or (where this Agreement provides that the decision of the Authority is to be binding) by the Authority, and shall not exercise their rights in a manner which is inconsistent with any such decision.

## **6. RESERVED MATTERS**

- 6.1 The Shareholders shall exercise the rights attaching to their shares to procure, so far as they are able, that DCUSA Ltd shall not take any action (and no resolution relating to such action shall be passed by DCUSA Ltd) in respect of the matters set out in Annex 2 to this Schedule, except pursuant to a decision of the Panel in accordance with this Agreement.
- 6.2 For the avoidance of doubt, to the extent that DCUSA Ltd takes any action in respect of any matter set out in Annex 2 to this Schedule pursuant to a decision of the Panel in accordance with this Agreement, no resolution of the Shareholders shall be required to ratify such action.



## 7. **DCUSA LTD'S EXPENDITURE**

- 7.1 *Inclusion of expenditure in budgets.* The anticipated expenditure of DCUSA Ltd shall be included in any budget prepared pursuant to Clause 8, and shall be subject to approval in accordance with that Clause.
- 7.2 *DCUSA Ltd obligations.* The Shareholders shall exercise the rights attaching to their shares to procure that DCUSA Ltd shall not incur costs unless authorised by a budget approved pursuant to Clause 8, except insofar as is necessary in order to comply with legally binding obligations to which it is subject.
- 7.3 *Authorisation and reimbursement.* Expenditure by DCUSA Ltd shall be authorised by the Panel, submitted to the Secretariat for payment, and reimbursed by the Parties in accordance with the provisions of Clause 8.

## 8. **ACCOUNTS**

- 8.1 *Annual accounts.* At the end of each of Financial Year, or as soon as is reasonably practicable thereafter, DCUSA Ltd shall procure that an account shall be taken of all the assets and liabilities of DCUSA Ltd and of all the dealings and transactions of DCUSA Ltd during such financial year and that the Board shall prepare a report and accounts in accordance with the Companies Act 2006 to be audited within three months after the end of each Financial Year.
- 8.2 *Audit.* Any Party shall have the right at any time to require DCUSA Ltd to instruct the auditors of DCUSA Ltd to conduct a review in respect of the financial affairs of DCUSA Ltd. The cost of such review shall be borne by the Party requesting such review, unless such review is approved by the Directors, in which case it shall be borne by DCUSA Ltd. If any such review is requested, DCUSA Ltd shall procure that DCUSA Ltd's auditors are given all reasonable assistance to complete the review within a reasonable period of time.

## 9. **DISTRIBUTION POLICY**

- 9.1 The Shareholders shall take such action as may be necessary to procure that:

- (a) *Annual general meeting.* DCUSA Ltd's annual general meeting at which audited accounts in respect of the preceding Financial Year are laid before the Shareholders is held not later than the date falling six months after the end of that Financial Year;
- (b) *Auditors' report.* DCUSA Ltd's auditors are instructed, at the expense of DCUSA Ltd, to report on the amount of the profits available for distribution by DCUSA Ltd for each accounting reference period at the same time as they sign their report on DCUSA Ltd's audited accounts for the accounting reference period in question;
- (c) *Distribution of profits.* DCUSA Ltd distributes to and among the Shareholders within 20 Working Days of approval of the audited accounts 100 per cent of its profits available in each year, subject to the appropriation of such reasonable and proper reserves for working capital or otherwise as the Board may consider appropriate; and
- (d) Shareholder guarantees. if any indemnity, guarantee or other assurance against loss is given by a Shareholder for any obligation or liability of DCUSA Ltd at the request of DCUSA Ltd, all the other Shareholders shall indemnify such Shareholder in respect of any liability arising out of such indemnity, guarantee or other assurance against loss severally and rateably in accordance with the same proportion as would be used to calculate each Party's Cost Contribution in accordance with Clause 8 were such calculation to be carried out on the date such liability arises.

## **10. TRANSFER OF SHARES**

10.1 Restrictions on transfer. Otherwise than in accordance with the following provisions of this Paragraph 10, no Shareholder shall:

- (a) pledge, mortgage (whether by way of fixed or floating charge) or otherwise encumber its legal or beneficial interest in its Shares; or
- (b) sell, transfer or otherwise dispose of any of such Shares (or any legal or beneficial interest therein); or

- (c) enter into any agreement in respect of the votes attached to Shares; or
  - (d) agree, whether or not subject to any condition precedent or subsequent, to do any of the foregoing.
- 10.2 *Intra-group transfers.* A Shareholder may transfer its Share to its Affiliate in circumstances where such person becomes a Party at the same time as such Shareholder ceases to be a Party.
- 10.3 *Retiring Shareholders.* If any Shareholder ceases to be a Party for any reason (the **Retiring Shareholder**), then upon written notice to the Retiring Shareholder by any other Shareholder, the Retiring Shareholder shall transfer at par to a nominee for all the Shareholders (other than the Retiring Shareholder) selected by the Directors the Share held by the Retiring Shareholder. All costs and expenses of such transfer shall be for the account of the Retiring Shareholder.
- 10.4 *Enforced transfer.* If a Retiring Shareholder fails or refuses to transfer any Shares in accordance with its obligations under Paragraph 10.3, the Directors may authorise DCUSA Ltd to execute and deliver a transfer from the Retiring Shareholder to a nominee on behalf of the Retiring Shareholder. DCUSA Ltd may accept the consideration for the transfer and hold it on trust for the Retiring Shareholder, which acceptance shall be a good discharge to the nominee, and may set off such amount against the costs and expenses of the transfer. The Directors shall cause the transferee to be registered as the holder of such Share and following the registration of the transfer the validity of the proceedings shall not be questioned by any person.
- 10.5 *Nominee's holding.* The nominee referred to in Paragraphs 10.3 and 10.4 shall hold Shares transferred to it until such time as it is directed by the Directors to transfer them (or some of them) in accordance with Paragraph 3.2. For the avoidance of doubt, wherever in this Schedule a percentage figure of the number of Shares in issue is referred to, this figure shall be calculated as if all Shares held by the nominee were not in issue.

## 11. DURATION AND TERMINATION

- 11.1 This Schedule shall continue in full force and effect until the earlier of:

- (a) the termination of this Agreement; and
- (b) the date on which an effective resolution is passed, or a binding order is made, for the winding up of DCUSA Ltd,

provided, however, that this Schedule shall cease to have effect as regards any Party who, having been entitled under the terms of this Schedule to hold Shares, ceases to hold any Shares.

## **12. SHAREHOLDERS GENERALLY**

12.1 The Shareholders shall procure that:

- (a) save for any nominee referred to in Paragraph 10.3, only the Parties shall acquire Shares (whether by transfer or allotment);
- (b) no Party shall be a Shareholder unless and until it has agreed to be bound by this Schedule in the capacity of a Shareholder (which a Party shall be taken to have done by being a signatory to an Accession Agreement);
- (c) the Directors shall neither transfer nor allot any Share or Shares other than as set out in Annex 1 or Paragraph 3.2, 10.4 or 10.5; and
- (d) save in the case of a nominee as referred to in Paragraphs 10.3 and 10.4, no Party shall at any point hold more than one Share.

## **13. INTELLECTUAL PROPERTY**

If and to the extent that any Shareholder discloses any of its Intellectual Property to DCUSA Ltd, unless that Shareholder is unable to do so, it shall grant (and shall be deemed to have granted), from the date of such disclosure, licences of such Intellectual Property to DCUSA Ltd for use in connection with the Business and for no other purpose whatsoever. Unless expressly agreed otherwise, any such licence shall be non-assignable, irrevocable, non-exclusive, perpetual and royalty-free.

**14. CONFLICT WITH THE ARTICLES**

In the event of any ambiguity created by or discrepancy between the provisions of this Schedule and the Articles, it is the intention that the provisions of this Schedule shall prevail and accordingly the Shareholders shall exercise all voting and other rights and powers available to them so as to give effect to the provisions of this Schedule and shall further, if necessary, procure any required amendment to the Articles.

**15. FURTHER ASSURANCE**

Each Shareholder shall co-operate with the other Shareholders and execute and deliver to the other Shareholders such other instruments and documents and take such other actions as may be reasonably requested from time to time in order to carry out, evidence and confirm their rights under, and the intended purpose of, this Schedule.

## ANNEX 1 TO SCHEDULE 10

### Completion

1. *Board meeting.* On the Completion Date a meeting of the Board shall be held and a resolution shall be passed to convene an Extraordinary General Meeting of DCUSA Ltd, immediately following the conclusion of the Board meeting, for the purposes referred to in paragraph 2 below.
2. *Extraordinary general meeting.* Upon the calling of the Extraordinary General Meeting referred to in paragraph 1 above, the Shareholders shall give consent to short notice in respect of such Extraordinary General Meeting and shall vote thereat in favour of resolutions:
  - (a) authorising the Directors to issue and allot at par one Share to each Party who is not at that time a Shareholder (the Subscribing Parties);
  - (b) amending clause 3 of the Memorandum of Association of DCUSA Ltd by insertion of the new sub-clause set out in Annex 3 as sub-clause 3(1) and renumbering the remaining sub-clauses accordingly; and
  - (c) adopting the regulations in the form set out in Annex 4 as the Articles of Association of DCUSA Ltd.
3. *Initial subscription for Shares.* Forthwith upon the passing of the resolutions pursuant to paragraph 2 above, each Subscribing Party shall complete, sign and deliver to DCUSA Ltd an application for the allotment to that Party of one Share in consideration of the payment by cash of £1 on allotment in respect of each such Share.
4. *Board meeting.* A further meeting of the Board shall be held and resolutions passed to:
  - (a) approve the application of each Subscribing Party for a Share; and
  - (b) authorise the name of each Subscribing Party to be entered in the Register of Members of DCUSA Ltd as holder of one Share and directing the sealing of a certificate in respect thereof.

5. *Allotment.* Upon receipt of the relevant consideration moneys referred to in paragraph 3 above, DCUSA Ltd shall allot and issue one Share to each Party whose application has been approved pursuant to paragraph 4 above and shall register each such Party as the holder of that Share and shall prepare, seal and deliver to each such Party a share certificate in respect thereof in its name.

**ANNEX 2 TO SCHEDULE 10****Limitations on Dealings**

1. The acquisition or disposal by DCUSA Ltd of any share capital or other securities of any person.
2. The reduction of DCUSA Ltd's share capital, any variation of the rights attaching to any class of shares in its capital, or any redemption, purchase or other acquisition by DCUSA Ltd of any shares or other securities of DCUSA Ltd.
3. The making of decisions relating to material contracts or arrangements to which DCUSA Ltd is a party.
4. The making by DCUSA Ltd of a material claim, disclaimer, surrender, election or consent for tax purposes.
5. The incurring of costs in respect of any period which are not envisaged by a budget drawn up and approved pursuant to Clause 8.
6. Entering into any contract or guarantee with a Shareholder or an Affiliate of a Shareholder.
7. Entering into any contract of a material nature.
8. The obtaining by DCUSA Ltd of finance from a third party lender.
9. The making of any change to DCUSA Ltd's Memorandum of Association or the Articles.
10. The presentation of any petition for the winding-up of DCUSA Ltd or the making of any application for an administration order in relation to DCUSA Ltd or for the appointment of an administrator or receiver of DCUSA Ltd.
11. The commencement, settlement or defence of any litigation, arbitration or other proceedings brought by or against DCUSA Ltd for an amount of more than £25,000.
12. The increase of the amount of debt with a maturity greater than three months owed by DCUSA Ltd.



13. The entering into of an agreement of a type or length which is unusual in the context of the Business.

## **ANNEX 3 TO SCHEDULE 10**

### **Amendment to Objects clause**

To carry on the business of acting as a corporate vehicle in relation to, and in accordance with, the Distribution Connection and Use of System Agreement designated as such by the Gas and Electricity Markets Authority (established by Section 1(1) of the Utilities Act 2000), as such agreement is amended from time to time.

## **ANNEX 4 TO SCHEDULE 10**

### **Form of New Articles**

#### **ARTICLES OF ASSOCIATION**

#### **THE COMPANIES ACT 1985-1989**

#### **ARTICLES OF ASSOCIATION**

of

DCUSA LIMITED (the “Company”)

(Registered No. 5812381)

(adopted by Special Resolution passed on [DATE])

### **1. ADOPTION OF TABLE A**

In these articles “Table A” means Table A scheduled to the Companies (Tables A to F) Regulations 1985 as amended prior to the date of incorporation of the Company. The regulations contained in Table A shall, except where they are excluded or modified by these articles, apply to the Company and, together with these articles, shall constitute the articles of the Company. No other regulations set out in any statute concerning companies, or in any statutory instrument or other subordinate legislation made under any statute, shall apply as the regulations or articles of the Company.

### **2. INTERPRETATION**

2.1 Words and expressions which bear particular meanings in Table A shall bear the same meanings in these articles.

2.2 In these articles:

**Act** means the Companies Act 1985 (as amended from time to time).

**Affiliate** means, in respect of any body corporate, a body corporate which is its subsidiary or holding company, or a company which is a subsidiary of that holding company, and each such company.

**Authority** means the Gas and Electricity Markets Authority established by Section 1(1) of the Utilities Act 2000.

**Panel** means the panel appointed pursuant to the DCUSA.

**Panel Members** means the members of the Panel appointed pursuant to the DCUSA.

**DCUSA** means the Distribution Connection and Use of System Agreement designated as such by the Authority (as amended from time to time).

**Party** means a party to the DCUSA (other than the Company).

**Retiring Shareholder** has the meaning given to that expression in Article 10.4.

**Shareholder** means the holder of a share or shares in the Company.

2.3 References in these articles to writing include references to any method of representing or reproducing words in a legible and non-transitory form.

2.4 Headings are for convenience only and shall not affect construction.

2.5 If, and for so long as, the Company has only one member, these articles shall (in the absence of any express provision to the contrary) apply with such modification as may be necessary in relation to such a company.

### 3. **SHARE CAPITAL**

The authorised share capital of the Company at the date of adoption of this article is £1,000 divided in 1,000 shares of £1 each.

#### **4. RESTRICTION ON SHARE OWNERSHIP**

Save with the prior written consent of the directors, no person other than a nominee as referred to in Articles 9.4 and 9.5 shall be the holder of more than one share of the Company at any time.

#### **5. RIGHTS ATTACHING TO SHARES**

5.1 The Shareholders shall exercise all rights attached to their shares to procure, so far as they are able, that no action shall be taken or resolution passed by the Company in respect of those matters set out in Article 5.2 except pursuant to a decision of the Panel, taken in accordance with the provisions of the DCUSA. The right to vote on the matters set out in Article 5.2 shall constitute rights attaching to the Shares.

5.2 The matters referred to in Article 5.1 are:

5.2.1 the acquisition or disposal by the Company of any share capital or other securities of any person;

5.2.2 the reduction of the Company's share capital, any variation of the rights attaching to any class of shares in its capital, or any redemption, purchase or other acquisition by the Company of any shares or other securities of the Company;

5.2.3 the making of decisions relating to material contracts to which the Company is a party;

5.2.4 the making by the Company of a material claim, disclaimer, surrender, election or consent for tax purposes;

5.2.5 the incurring of costs in respect of any period which are not envisaged by a budget drawn up and approved pursuant to clause 8 of the DCUSA;

5.2.6 the making of any contract or guarantee with a member or an Affiliate of a Shareholder;

5.2.7 the making of any contract of a material nature;

- 5.2.8 the obtaining by the Company of finance from a third-party lender;
  - 5.2.9 the making of any change to the Company's Memorandum of Association or these articles;
  - 5.2.10 the presentation of any petition for the winding-up of the Company or the making of any application for an administration order in relation to the Company or for the appointment of an administrator or receiver of the Company;
  - 5.2.11 the commencement, settlement or defence of any litigation, arbitration or other proceedings brought by or against the Company for an amount of more than £25,000;
  - 5.2.12 the increase of the amount of debt with a maturity greater than three months owed by the Company; and
  - 5.2.13 the entering into of an agreement of a type or length which is unusual in the context of the business of the Company.
- 5.3 Each Shareholder shall be entitled to dividends in respect of its share calculated in the same proportions as would be used to calculate that Shareholder's cost contribution in accordance with clause 8 of the DCUSA on the date the dividend is calculated (rather than in proportion to the amounts paid up on the shares). Regulation 104 of Table A shall be modified accordingly.
- 5.4 Subject to the provisions of the Act and to any rights conferred on the holders of any other shares, any share may be issued with or have attached to it such rights and restrictions as the Company may by ordinary resolution decide or, if no such resolution has been passed or so far as the resolution does not make specific provision, as the directors may decide. Regulation 2 of Table A shall not apply.

## **6. UNISSUED SHARES**

Subject to the provisions of the Act and to these articles, any unissued shares of the Company (whether forming part of the original or any increased capital) shall be at the disposal of the directors who may (subject to Article 4) offer, allot, grant options over or otherwise dispose

of them to such persons at such times and for such consideration and upon such terms and conditions as they may determine.

## **7. INITIAL AUTHORITY TO ISSUE RELEVANT SECURITIES**

Subject to any direction to the contrary which may be given by the Company in general meeting and to Article 4, the directors are unconditionally authorised to exercise all powers of the Company to allot relevant securities. The maximum nominal amount of relevant securities that may be allotted under this authority shall be the nominal amount of the unissued share capital at the date of incorporation of the Company or such other amount as may from time to time be authorised by the Company in general meeting. The authority conferred on the directors by this article shall remain in force for a period of five years from the date of incorporation of the Company but may be revoked, varied or renewed from time to time by the Company in general meeting in accordance with the Act.

## **8. EXCLUSION OF RIGHTS TO OFFERS ON A PRE-EMPTIVE BASIS**

Section 89(1) of the Act shall not apply to the allotment by the Company of any equity security.

## **9. TRANSFER OF SHARES**

- 9.1 The instrument of transfer of a subscriber's share which is not fully paid need not be executed by or on behalf of the transferee. Regulation 23 of Table A shall be modified accordingly.
- 9.2 Otherwise than in accordance with Articles 9.3 and 9.4, no Shareholder shall:
  - 9.2.1 pledge, mortgage (whether by way of fixed or floating charge) or otherwise encumber its legal or beneficial interest in its shares; or
  - 9.2.2 sell, transfer or otherwise dispose of any of such shares (or any legal or beneficial interest therein); or
  - 9.2.3 enter into any agreement in respect of the votes attached to shares; or

- 9.2.4 agree, whether or not subject to any condition precedent or subsequent, to do any of the foregoing.
- 9.3 A member may transfer its share to an Affiliate in circumstances where such Affiliate becomes a Party at the same time as such member ceases to be a Party.
- 9.4 If any Shareholder ceases to be a Party for any reason (the **Retiring Shareholder**), then upon written notice to the Retiring Shareholder by any other Shareholder, the Retiring Shareholder shall transfer at par to a nominee for all the Shareholders (other than the Retiring Shareholder) selected by the directors the Share held by the Retiring Shareholder. All costs and expenses of such transfer shall be for the account of the Retiring Shareholder.
- 9.5 If a Retiring Shareholder shall fail or refuse to transfer any Shares in accordance with its obligations under Article 9.4, the directors may authorise the Company to execute and deliver a transfer from the Retiring Shareholder to a nominee on behalf of the Retiring Shareholder. The Company may accept the consideration for the transfer and hold it on trust for the Retiring Shareholder, which acceptance shall be a good discharge to the nominee and may set off such amount against the costs and expenses of the transfer. The directors shall cause the transferee to be registered as the holder of such shares and following the registration of the transfer the validity of the proceedings shall not be questioned by any person.
- 9.6 The nominee referred to in Articles 9.4 and 9.5 shall hold shares transferred to it until such time as it is directed by the directors to transfer them (or some of them) to one or more parties. For the avoidance of doubt, wherever in these Articles a percentage figure of the number of shares in issue is referred to, this figure shall be calculated as if all shares held by the nominee were not in issue.

## 10. **PROCEEDINGS AT GENERAL MEETINGS**

- 10.1 The quorum at any general meeting shall consist of six Shareholders present in person or by proxy: provided that at least two such Shareholders must be DNO Parties and at least two such Shareholders must be Supplier Parties (where the terms DNO Parties



and Supplier Parties have the respective meaning given to them in the DCUSA).

Regulation 40 of Table A shall be modified accordingly.

- 10.2 If, and for so long as, the Company has only one member, that member or the proxy for that member or, where that member is a corporation, its duly authorised representative shall be a quorum at any general meeting of the Company or of the holders of any class of shares. Regulation 40 of Table A shall be modified accordingly.
- 10.3 The chairman at any general meeting shall not be entitled to a second or casting vote. Regulation 50 of Table A shall not apply.
- 10.4 In the case of a corporation, a resolution in writing may be signed on its behalf by a director or the secretary of the corporation or by its duly appointed attorney or duly authorised representative. Regulation 53 of Table A shall be extended accordingly.

## **11. VOTES OF MEMBERS**

At a general meeting, but subject to any rights or restrictions attached to any shares, on a show of hands every member who (being an individual) is present in person or (being a corporation) is present by a duly authorised representative and every proxy for any member (regardless of the number or the holdings of the members for whom he is a proxy) shall have one vote, and on a poll every member who is present in person or by proxy shall have one vote for every share of which he is the holder. Regulation 54 of Table A shall not apply.

## **12. DELIVERY OF PROXIES**

The instrument appointing a proxy shall be in writing from a duly authorised representative of the member. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a certified copy of that power or authority shall be delivered to the registered office of the Company or at such other place within the United Kingdom as is specified for that purpose in the notice convening the meeting of the members, not less than 24 hours before the time appointed for the meeting or adjourned meeting at which the person named in the instrument proposes to act or in the case of a poll taken subsequently to the date of the meeting or the adjourned meeting, before the time appointed

for taking of the poll, and in default the instrument of proxy shall not be treated as valid. Regulation 62 of Table A shall not apply.

### **13. ALTERNATE DIRECTORS**

Each director shall have as his alternate for the purposes of these Articles the alternate ~~appointed by him~~selected pursuant to clause 6.12 of the DCUSA. Regulation 65 of Table A shall not apply.

### **14. DELEGATION OF DIRECTORS' POWERS**

The Directors may delegate any of their powers (with power to sub-delegate) to committees consisting of such person or persons (whether directors or not) as they may resolve. Any such committee shall exercise only powers expressly delegated to it and shall comply with any regulations imposed on it by the directors. Regulation 72 of Table A shall be modified accordingly and references in Table A to a committee of Directors or to a Director as a member of such a committee shall include a committee established under this article or such person or persons.

### **15. NO AGE LIMIT OR SHARE QUALIFICATION**

No Director shall be required to retire or vacate his office, and no person shall be ineligible for appointment as a director, by reason of his having attained any particular age. No shareholding qualification for directors shall be required.

### **16. EXCLUSION OF ROTATION REQUIREMENTS AND OTHER PROVISIONS**

The Directors shall be the Panel Members from time to time. Regulations 73 to 80 (inclusive) and the last sentence of Regulation 84 of Table A shall not apply.

### **17. DISQUALIFICATION AND REMOVAL OF DIRECTORS**

The office of a Director shall be vacated if he ceases to be a Panel Member. Regulation 81 of Table A shall not apply.

## **18. DIRECTORS' GRATUITIES AND PENSIONS**

Regulation 87 of Table A shall not apply.

## **19. NOTICE AND CONDUCT OF BOARD MEETINGS**

Notice of a meeting of the directors shall be deemed to be properly given to a director if it is given to him personally or sent in writing to him at his last known address or any other address given by him to the Company for this purpose, or by any other means authorised in writing by the director concerned. Notice shall be given in this manner to all directors including any director who is for the time being absent from the United Kingdom. A director may waive notice of any meeting either prospectively or retrospectively. All resolutions of the board shall be made by unanimous vote of the Directors present or participating by conference telephone. In the case of an equality of votes, the chairman shall not have a second or casting vote. Regulation 88 of Table A shall be modified accordingly.

## **20. QUORUM FOR BOARD MEETINGS**

The quorum for meetings of the board shall be constituted by the attendance of four Directors, at least one of whom must have been elected as a Panel Member by the DNO Parties and at least one of whom must have been elected as a Panel Member by the Supplier Parties (where the terms DNO Parties and Supplier Parties have the respective meaning given to them in the DCUSA). Directors can attend in person, by means of their alternate or by way of conference telephone or video call throughout such meeting. Regulation 89 of Table A shall not apply.

## **21. PARTICIPATION IN BOARD MEETINGS BY TELEPHONE**

All or any of the members of the board or any committee of the board may participate in a meeting of the board or that committee by means of a conference telephone or video call provided that participants acknowledge that they can speak to and hear each other. A person so participating shall be deemed to be present in person at the meeting and shall be entitled to vote or be counted in a quorum accordingly. Such a meeting shall be deemed to take place where the largest group of those participating is assembled, or, if there is no such group, where the chairman of the meeting is then situated.

## **22. RESOLUTION IN WRITING**

A resolution in writing executed by all the directors or by all the members of a committee for the time being shall be as valid and effective as a resolution passed unanimously at a meeting of the board or, as the case may be, of the committee properly convened and constituted. The resolution may be contained in one document or in several documents in like form each executed by one or more of the directors or members of the committee concerned. A resolution signed by an alternate director need not also be signed by his appointor and, if it is signed by a director who has appointed an alternate director, it need not be signed by the alternate director in that capacity. Regulation 93 of Table A shall not apply.

## **23. DIRECTORS MAY VOTE WHEN INTERESTED**

A director who to his knowledge is in any way, whether directly or indirectly, interested in a contract or proposed contract with the company shall declare the nature of his interest at a meeting of the directors in accordance with the Act. Subject where applicable to such disclosure, a director shall be entitled to vote in respect of any contract or proposed contract in which he is interested and, if he does so, his vote shall be counted and he shall be taken into account in ascertaining whether a quorum is present. Regulations 94 and 95 of Table A shall not apply.

## **24. OFFICIAL SEAL**

The company may exercise all the powers conferred by the Act with regard to having any official seal and such powers shall be vested in the directors. Subject to the provisions of the Act, any instrument to which an official seal is affixed shall be signed by such persons, if any, as the directors may from time to time determine.

## **25. NOTICES**

Any notice or other document may be served on or delivered to any member by the Company either personally, or by sending it by post addressed to the member at his registered address or by fax or telex to a number provided by the member for this purpose, or by leaving it at his registered address addressed to the member, or by any other means authorised in writing by the member concerned. In the case of joint holders of a share, service or delivery of any

notice or other document on or to one of the joint holders shall for all purposes be deemed a sufficient service on or delivery to all the joint holders. Regulation 112 of Table A shall not apply.

## **26. TIME OF SERVICE**

Any notice or other document, if sent by the Company by post, shall be deemed to have been served or delivered 48 hours after posting and, in proving such service or delivery, it shall be sufficient to prove that the notice or document was properly addressed, stamped and put in the post. Any notice or other document left by the company at a registered address otherwise than by post, or sent by fax or telex or other instantaneous means of transmission, shall be deemed to have been served or delivered when it was so left or sent. Regulation 115 of Table A shall not apply.