



## **DCUSA CONSULTATION**

DCP 247- Introduction of TRAS Disputes  
Procedure

## **1 PURPOSE**

- 1.1 The Distribution Connection and Use of System Agreement (DCUSA) is a multi-party contract between electricity Distributors and electricity Suppliers and large Generators. Parties to the DCUSA can raise Change Proposals (CPs) to amend the Agreement with the consent of other Parties and (where applicable) the Authority.
- 1.2 This document is a consultation issued to DNOs, IDNOs, Suppliers, any other interested Parties and the Authority in accordance with Clause 11.14 of the DCUSA seeking industry views on DCP 247 'Introduction of TRAS Dispute Procedure'. Parties are invited to consider the questions set out below and submit comments using the form attached as Attachment 1 to [dcusa@electralink.co.uk](mailto:dcusa@electralink.co.uk) by **23 October 2015**.

## **2 BACKGROUND OF DCP 247**

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

- 2.4 During the development of the TRAS solution, the TRAS Working Group identified the need for a clear process for managing contractual claims by and against the TRAS Service Provider.
- 2.5 DCUSA CP 247 was raised by Npower Ltd and proposes to introduce the TRAS Disputes Procedure into the DCUSA.

### **3 WORKING GROUP ASSESSMENT**

- 3.1 The DCUSA Panel acknowledged that a TRAS Working Group has already been established to oversee the implementation of the TRAS. Therefore it would be more efficient to use this TRAS Working Group to assess DCP 247, rather than creating a new working group. DCUSA Parties were provided with information regarding DCP247 and the relevant TRAS Working Group meetings were held in open session so DCUSA Parties not represented on the TRAS Working Group could attend.
- 3.2 Prior to DCP247 being raised, an industry consultation was undertaken in August 2015 seeking views on the legal text provided by external legal advisors to introduce the TRAS Disputes Procedure into the SPAA and DCUSA Codes. Comments from this consultation were reviewed externally prior to consideration by the Working Group. The Working Group agreed that the amended legal text should be issued for a further industry consultation to ensure that all DCUSA Parties have had visibility of the proposed procedure.
- 3.3 The dispute procedure itself is based on the provisions within the TRAS Contract (Schedule 18 'Dispute Resolution Procedure'). These provisions relate to disputes involving both SPAA and DCUSA Parties. Therefore an equivalent SPAA CP has been raised to introduce the TRAS Disputes Procedure into the SPAA (Draft SPAA CP 15/315). Where breaches are raised which relate to both SPAA and DCUSA, the SPAA EC and DCUSA Panel will both be responsible for making decisions in relation to the progression of the claim. The interaction between the SPAA EC and DCUSA Panel will be covered by joint working arrangements which will be agreed by the SPAA EC and DCUSA Panel, and will sit outside the main agreements.

### **The Dispute Agent**

3.4 It is proposed within the procedure that a committee (the Dispute Agent) will be set up for each individual dispute, or a group of disputes where it is agreed that these should be progressed jointly (see paragraph 3.7 below). This committee will comprise of representatives from the SPAA EC and/or DCUSA Panel, plus representatives from the Reporting or Responding Party/Parties. As stated in paragraph 5.2 of the legal text, each Dispute Agent will comprise:

- One or more Supplier representatives appointed by the reporting or responding party who will act in accordance with the wishes of the relevant Supplier; and
- One or more SPAA and DCUSA representatives will act independently in accordance with their respective Code Terms of Reference.

3.5 It has been proposed that decisions of the Dispute Agent will be made on a unanimous basis so that all members of the Dispute Agent committee must be in agreement. In practise, it assumed that the SPAA and DCUSA representatives will be largely passive, (acting in accordance with duties) so they are unlikely to have a position on an individual commercial dispute. The SPAA and DCUSA representative's role will be to ensure that no decision is made that compromises SPAA Ltd's and/ or DCUSA Ltd's position or that of the industry as a whole.

3.6 This means that the Supplier(s) will generally retain control of how the dispute is managed. If there is more than one Supplier, and the Supplier representatives disagree, then the Suppliers can choose to progress their disputes separately.

### **Joint Disputes**

3.7 Paragraph 5.3 of the legal text states that multiple disputes by one or more Suppliers can be joined together and progressed using a single Dispute Agent. Each Supplier with a claim being progressed by a particular Dispute Agent, will have the right to have a representative on the committee. Before a joint claim is progressed, Suppliers involved in joint disputes must agree between themselves how the SPAA and DCUSA costs of progressing the claim will be shared between them, and shall inform SPAA and DCUSA of

the shares to be allocated for invoicing purposes. It should be noted that paragraph 5.10 of the legal text requires Suppliers to be jointly and severally liable for costs of progressing joint claims. It is each Supplier's responsibility to take this into account when deciding whether to progress a claim individually or jointly with other Suppliers.

#### **4 ASSESSMENT AGAINST THE DCUSA OBJECTIVES**

4.1 The Working Group considers that the following DCUSA Objective is better facilitated by:

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

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

#### **5 DCP 247 – LEGAL DRAFTING**

5.1 The DCP 247 legal drafting is provided as Attachment 2. Diagrams setting out the process are included in Appendix 1 for information.

5.2 On the basis that DCP247 is introducing a disputes procedure to reflect the requirements in the TRAS Contract this legal drafting has been produced by external legal advisors.

5.3 It was agreed during the Working Group assessment that the disputes procedure should be included as an appendix to the current TRAS Schedule (Schedule 25) rather than being introduced as a standalone Schedule. Keeping all TRAS specific obligations within a single Schedule will facilitate navigation of the Code. The legal text has been amended to reflect this decision.

#### **6 DCP 247 – IMPLEMENTATION**

6.1 The proposed implementation date for DCP 247 is 25 February 2016, ahead of the TRAS go live date.

#### **7 DCP 247 – CONSULTATION QUESTIONS**

7.1 The Working Group is seeking industry views on the following consultation questions:

Question Number	Question
1	Do you understand the intent of the CP?
2	Are you supportive of the principles of the CP?
3	Do you have any comments on the draft legal text?
4	The redacted TRAS Contract was issued to all Suppliers on 4 August 2015. Based on your review of the redacted TRAS Contract, do you have any comments on the proposed disputes process?
5	Are you supportive of the proposed implementation date 25 February 2016?
6	Do you consider that the proposal better facilitates the DCUSA objectives? Please give supporting reasons.
7	Do you have any other comments on the proposed disputes procedure?
8	Are you aware of any wider industry developments that may impact upon or be impacted by this CP?

7.2 Responses should be submitted using Attachment 1 to [dcusa@electralink.co.uk](mailto:dcusa@electralink.co.uk) no later than **23 October 2015**.

7.3 Responses, or any part thereof, can be provided in confidence. Parties are asked to clearly indicate any parts of a response that are to be treated confidentially.

## 8 NEXT STEPS

8.1 Responses to the consultation will be reviewed by the DCP 247 Working Group. The CP will then be progressed through the change process agreed by the DCUSA Panel as set out below:

No.	Event	Target Date
1	Issue consultation document.	2 October 2015
2	Consultation Responses due.	23 October 2015

3	Working Group meeting to review consultation responses, update legal text and agree Change Report.	2 November 2015
6	Issue Change Report to DCUSA Panel.	11 November 2015
8	DCUSA Panel approves Change Report and Change Report issued for voting.	18 November 2015
9	DCUSA Voting Closes.	17 December 2015
10	Change Declaration issued to parties and Ofgem.	21 December 2015
12	Implementation Date.	25 February 2016

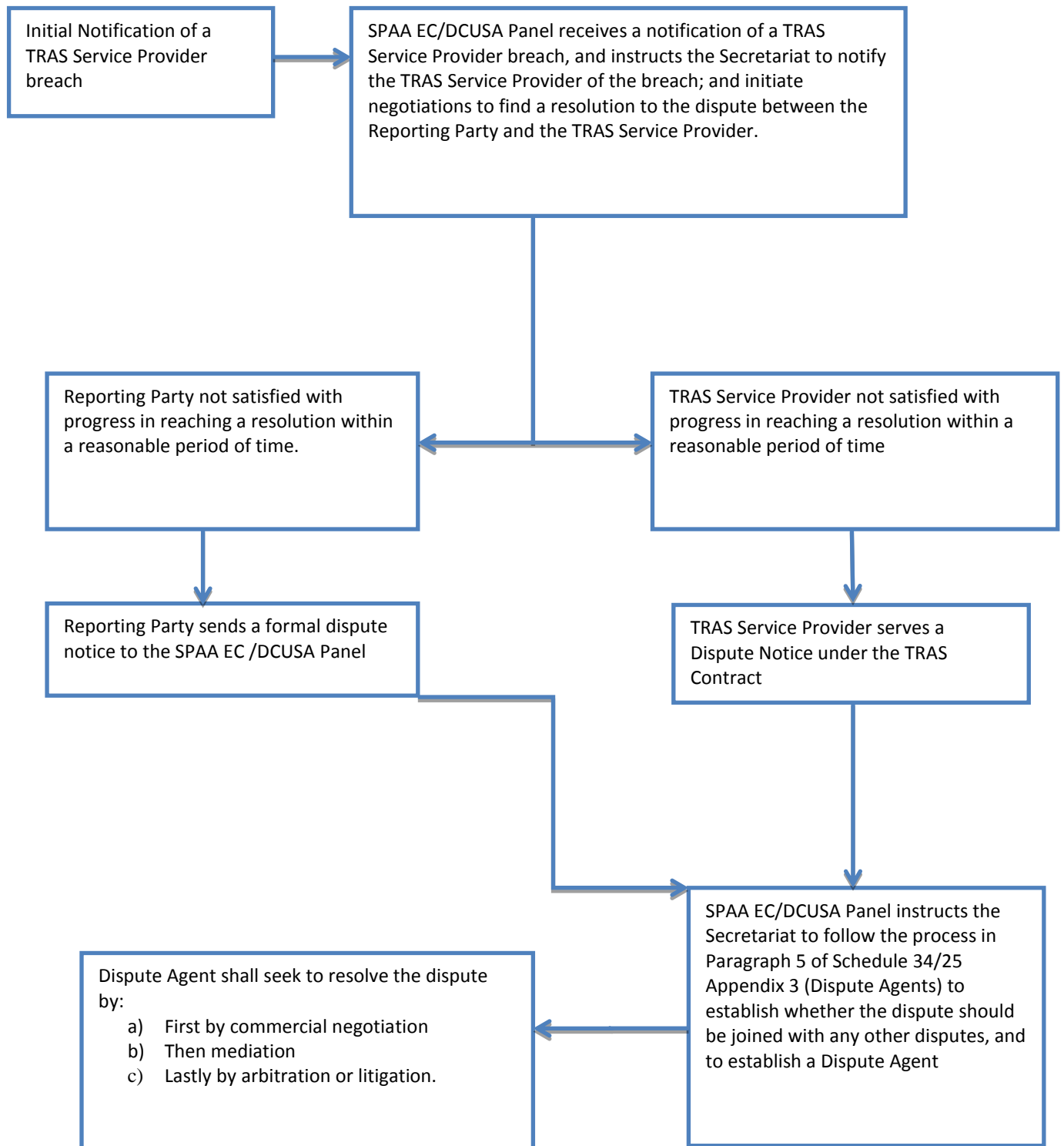
8.2 If you have any questions about this paper or the DCUSA Change Process please contact the DCUSA helpdesk by email to [dcusa@electralink.co.uk](mailto:dcusa@electralink.co.uk) or telephone 020 7432 2842.

## 9 ATTACHMENTS

- Attachment 1 – Response Form
- Attachment 2 – DCP 247 Legal Text
- Attachment 3– DCP 247 Change Proposal

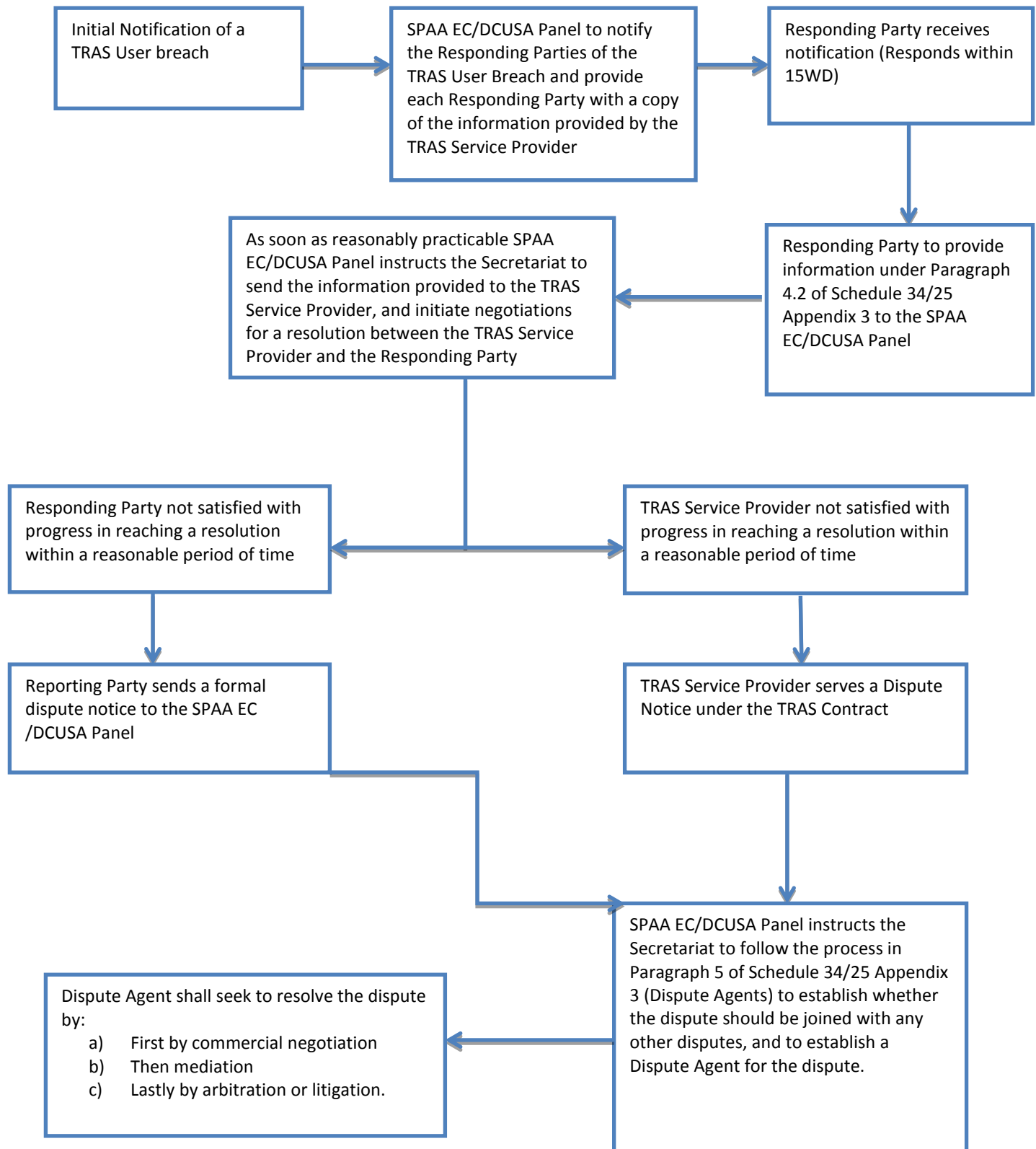
## APPENDICES

Appendix 1 - TRAS Dispute Process Diagrams

**APPENDIX 1 TRAS DISPUTE PROCESS DIAGRAMS****TRAS Dispute Initiation - Raised by Supplier**



### TRAS Dispute Initiation - Raised by TRAS Service Provider



### Dispute Resolution Procedure

