

Proposed DCUSA Legal Drafting

Add/Amend the following Definitions in Clause 1

"**SPAA**" means the Supply Point Administration Agreement established pursuant to the Gas Supply Licences¹.

"**SPAA Ltd**" means the corporate vehicle created for the purposes of giving effect to the decisions of the executive committee under the SPAA (including its successors as such).

"**Supplier Data**" means, in respect of each Supplier Party, the materials, information and other data provided by that Supplier Party to DCUSA Ltd and/or the TRAS Service Provider pursuant to the Theft Risk Assessment Service Arrangements (and, in Appendix 1 to Schedule [X], includes the equivalent material, information and data provided pursuant to the SPAA).

"**Theft Risk Assessment Service Arrangements**" means the arrangements for a theft risk assessment service and other related measures that the Supplier Parties are obliged to maintain pursuant to the Supplier Licences.

"**TRAS Contract**" means each of the contracts from time to time between DCUSA Ltd and a TRAS Service Provider for provision of the Theft Risk Assessment Service Arrangements (which may be a tripartite contract to which SPAA Ltd is also party).

"**TRAS Liabilities**" means all costs, charges, expenses, professional fees, fines, damages and other liabilities incurred under or in connection with the Theft Risk Assessment Service Arrangements (including the TRAS Contract), whether in contract, tort (including negligence), for breach of statutory duty or otherwise.

"**TRAS Service Data**" means the materials, information and other data received by Supplier Parties pursuant to the TRAS Contract including the TRAS Service Scorecard (but excluding the Supplier Data).

¹ Consequential amendment to definition of Responsible Gas Supplier to replace "Supply Point Administration Agreement (as defined in condition 1 of the standard conditions applicable to Gas Supply Licences)" with "SPAA".

"TRAS Service Provider" means the person or persons with which DCUSA Ltd contracts from time to time for provision of the Theft Risk Assessment Service Arrangements (but excluding the Secretariat in its role as Secretariat).

"TRAS Service Scorecard" means the scorecard (including the scorecard formula) to be developed pursuant to the TRAS Contract and the scores produced by that scorecard.

Add a new Schedule as follows

Schedule [X]² – Theft Risk Assessment Service

1. Governance

1.1 The Panel shall establish a Working Group to oversee the Theft Risk Assessment Service Arrangements. Such Working Group shall work in collaboration with the equivalent sub-committee constituted under the SPAA.

1.2 It is the intention of the Parties that DCUSA Ltd contracts with a TRAS Service Provider for provision of services consistent with the description set out in Appendix 1. Where necessary, DCUSA Ltd shall seek to make changes to the TRAS Contract to ensure it remains consistent with Appendix 1 from time to time. For the avoidance of doubt, no Party shall have any obligation under Appendix 1.

2. Funding

2.1 Subject to Paragraph 2.3, all TRAS Liabilities incurred by DCUSA Ltd (howsoever arising) shall constitute Recoverable Costs to be paid by Supplier Parties pursuant to Clause 8.9A of the main body of this Agreement.

2.2 Where DCUSA Ltd contracts with the TRAS Service Provider under a common arrangement with SPAA Ltd:

- (a) DCUSA Ltd may agree to be liable to the TRAS Service Provider for up to 59% of the TRAS Liabilities that arise in relation to electricity and gas (and to

² The schedule will be added as the first available schedule at the time of implementation, and the DCUSA contents page will be updated to include reference to the new schedule.

be responsible for 100% of the TRAS Liabilities that relate exclusively to electricity); and

- (b) notwithstanding Paragraph 2.2(a), DCUSA Ltd may agree to be jointly and severally liable with SPAA Ltd to the TRAS Service Provider for the TRAS Liabilities of SPAA Ltd; provided that SPAA Ltd agrees to reimburse DCUSA Ltd for the TRAS Liabilities of SPAA Ltd to the extent funded by DCUSA Ltd.

2.3 Paragraph 2.1 shall not apply in respect of TRAS Liabilities to the extent that DCUSA Ltd has a claim against another person in respect of such TRAS Liabilities. Such other persons may include one or more of the TRAS Service Provider, SPAA Ltd, the Supplier Parties and the Secretariat. In such circumstances, DCUSA Ltd shall take all reasonable steps and proceedings to pursue and recover any amounts to which it is entitled from such other persons, unless and until the Panel determines (in consultation with Supplier Parties) that there is no reasonable prospect of success.

2.4 Notwithstanding Paragraph 2.3 and the existence of any claim referred to therein, pending the recovery of amounts pursuant to Paragraph 2.3, the TRAS Liability in question shall constitute a Recoverable Cost (to be paid by Supplier Parties pursuant to Clause 8.9A), subject to subsequent reconciliation once any amount is recovered pursuant to Paragraph 2.3.

2.5 DCUSA Ltd shall take all reasonable steps to mitigate its TRAS Liabilities.

3. Performance Assurance

3.1 The Panel shall appoint a person that is reasonably independent of Supplier Parties and of the TRAS Service Provider to produce a performance assurance report in respect of the Theft Risk Assessment Service Arrangements. Such report shall be undertaken in accordance with the relevant requirements stipulated in the Supply Licences. For the avoidance of doubt, the costs incurred by the Panel in so doing will constitute TRAS Liabilities.

4. Data Protection

- 4.1 The words and expressions in this Paragraph 4 that are not otherwise defined in this Agreement shall be interpreted in accordance with the Data Protection Act.
- 4.2 In respect of each Supplier Party's Supplier Data insofar as it constitutes Personal Data:
- (a) DCUSA Ltd undertakes to that Supplier Party to only Process that Personal Data in accordance with Good Industry Practice and the principles of the Data Protection Act and for the purposes of procuring the Theft Risk Assessment Service Arrangements;
 - (b) DCUSA Ltd undertakes to that Supplier Party to ensure that the TRAS Service Provider shall only Process that Personal Data for the purposes of providing services pursuant to the Theft Risk Assessment Service Arrangements, and in accordance with the TRAS Contract; and
 - (c) that Supplier Party shall ensure that provisions are included in its supply contract terms and conditions in respect of such Personal Data and the Processing of such Personal Data for the purposes of the Theft Risk Assessment Service Arrangements (such provisions to be drafted in accordance with Good Industry Practice).
- 4.3 Each Supplier Party, in respect of the TRAS Service Data and the Supplier Data of the other Supplier Parties, undertakes to only Process that data:
- (a) in accordance with Good Industry Practice, this Agreement, and, insofar as it constitutes Personal Data, the Data Protection Act; and
 - (b) for the purposes of receiving services pursuant to the TRAS Contract and/or discharging its obligations pursuant to the Theft Risk Assessment Service Arrangements.

5. Data Sharing

- 5.1 DCUSA Ltd has agreed to procure that each Supplier Party grants the TRAS Service Provider a licence as described in this Paragraph 5.1. Each Supplier Party, in respect

of its Supplier Data, hereby grants to the TRAS Service Provider a royalty-free, non-exclusive, non-transferable licence to use that Supplier Data for the sole purpose of providing services pursuant to the Theft Risk Assessment Service Arrangements. Each such licence includes the right of the TRAS Service Provider to grant a royalty-free, non-exclusive, non-transferable sub-licence to its sub-contractors for the same purpose.

- 5.2 Each Supplier Party, in respect of its Supplier Data, shall ensure that the TRAS Service Provider can use and sub-licence that Supplier Data in the manner envisaged by Paragraph 5.1 without infringing any Intellectual Property.
- 5.3 Each Supplier Party, in respect of its Supplier Data, hereby grants to each other Supplier Party a royalty-free, non-exclusive, non-transferable licence to use that Supplier Data for the sole purpose of receiving services pursuant to the TRAS Contract and/or discharging its obligations pursuant to the Theft Risk Assessment Service Arrangements.
- 5.4 Each Supplier Party, in respect of its Supplier Data, shall ensure that each other Supplier Party can use that Supplier Data in the manner envisaged by Paragraph 5.3 without infringing any Intellectual Property.
- 5.5 Without prejudice to the generality of Paragraphs 5.1 and 5.3, it is agreed that:
 - (a) the Supplier Data of each Supplier Party will be used for the purposes of detecting theft of electricity and/or gas (not just electricity) at premises throughout Great Britain (not just the premises supplied from time to time by the Supplier Party);
 - (b) the Supplier Data of each Supplier Party relating to a particular premises can continue to be used notwithstanding that the Supplier Party no longer supplies that premises; and
 - (c) the Supplier Data of each Supplier Party can continue to be used notwithstanding that the Supplier Party has ceased to be a Party.
- 5.6 Each Supplier Party undertakes to only use the TRAS Service Data for the purposes of receiving services pursuant to the TRAS Contract and/or discharging its obligations

pursuant to the Theft Risk Assessment Service Arrangements; and to only use such data in accordance with law.

- 5.7 The licences granted by each Supplier Party under this Paragraph 5 represent the only rights of the TRAS Service Provider and the other Supplier Parties in respect of that Supplier Party's Supplier Data. Nothing in this Schedule grants the TRAS Service Provider or the other Supplier Parties any rights to use, transfer or sub-licence a Supplier Party's Supplier Data otherwise than in accordance with this Paragraph 5. All Intellectual Property in each Supplier Party's Supplier Data shall remain vested in that Supplier Party (or its relevant licensors). To the extent that any Intellectual Property in a Supplier Party's Supplier Data vests in the TRAS Service Provider or another Supplier Party by operation of law, the TRAS Service Provider or such other Supplier Party hereby assigns such Intellectual Property vested in it to the first Supplier Party referred to in this sentence.

6. Confidentiality

- 6.1 Subject to Paragraphs 6.3 and 6.4, DCUSA Ltd undertakes to each Supplier Party to treat that Supplier Party's Supplier Data as confidential and to safeguard it in accordance with Good Industry Practice.
- 6.2 Subject to Paragraphs 6.3 and 6.5, each Supplier Party undertakes to treat the TRAS Service Data as confidential and to safeguard it in accordance with Good Industry Practice.
- 6.3 The obligations of confidentiality in this Paragraph 6 shall not apply to the extent that:
- (a) disclosure is required in accordance with the Relevant Instruments or any other law or by a court of competent jurisdiction or any regulatory body;
 - (b) such information was separately created or obtained by the Party³ seeking to make a disclosure without an obligation of confidentiality; and/or
 - (c) such information is already in the public domain at the time of disclosure otherwise than by a breach of this Agreement.

³ Consequential change to definition of 'Party' in clause 1 to include DCUSA Ltd for TRAS Schedule.

- 6.4 DCUSA Ltd may disclose each Supplier Party's Supplier Data to the Secretariat and/or to the TRAS Service Provider (in either case) insofar as is necessary for the purposes of the Theft Risk Assessment Service Arrangements. DCUSA Ltd shall be responsible for any disclosure of such data by the Secretariat otherwise than in accordance with this Paragraph 6. DCUSA Ltd shall have no obligations in respect of disclosure by the TRAS Service Provider. The TRAS Service Provider's right to disclose the Supplier Data shall be subject to the TRAS Contract, in respect of which the Supplier Parties are intended to have directly enforceable rights (as set out in Paragraph 7.4).
- 6.5 Each Supplier Party may disclose the TRAS Service Data to its agents and contractors insofar as is necessary for the purposes of receiving services pursuant to the TRAS Contract and/or discharging its obligations pursuant to the Theft Risk Assessment Service Arrangements. Each Supplier Party shall contract with its agents and contractors on provisions equivalent to this Paragraph 6 and reflecting the licences described in Paragraphs 7.4(b) and (c), and shall be responsible for any disclosure and use of such data by any such persons otherwise than in accordance with this Paragraph 6 and the licences described in Paragraphs 7.4(b) and (c).

7. Liabilities and Claims

- 7.1 Subject to Paragraph 7.2, each Supplier Party hereby indemnifies DCUSA Ltd against any TRAS Liabilities incurred by DCUSA Ltd as a result of a breach by that Supplier Party of this Agreement.
- 7.2 The limitations of liability set out in Clause 53 of the main body of this Agreement shall not apply in respect of any breach by a Party of this Schedule [X], but the following shall instead apply in respect of such breaches:
- (a) nothing in this Paragraph 7.2 shall limit a Party's liability for death or personal injury caused by its negligence, or for fraud or fraudulent misrepresentation;
 - (b) no Supplier Party shall be liable for any inaccuracy in its Supplier Data;

- (c) the Party in breach shall be liable for the losses that were reasonably foreseeable as likely to arise as a result of the breach (to be assessed at the time of the breach, and not at the time at which the Party became a Party); and
- (d) the Party in breach shall not be liable for the losses that were not reasonably foreseeable as likely to arise as a result of the breach (to be assessed at the time of the breach).

7.3 For the purposes of Paragraph 7.2, it is acknowledged and agreed that a breach of this Schedule [X] by a Supplier Party may cause DCUSA Ltd to incur a TRAS Liability to the TRAS Service Provider and/or may cause another Supplier Party to incur a TRAS Liability.

7.4 DCUSA Ltd shall contract with the TRAS Service Provider on the basis that each Supplier Party has a directly enforceable contractual right against the TRAS Service Provider in respect of (as a minimum) the following (subject to and in accordance with the terms and conditions set out in the TRAS Contract):

- (a) an obligation on the TRAS Service Provider equivalent to the obligation set out in Paragraph 4.2;
- (b) a non-exclusive, non-transferable, royalty free licence from the TRAS Service Provider to use the TRAS Service Data (excluding the TRAS Service Scorecard) for the duration of the TRAS Contract for the purposes of receiving services pursuant to the TRAS Contract and/or discharging its obligations pursuant to the Theft Risk Assessment Service Arrangements solely for its own benefit (and the right to sub-licence and use such TRAS Service Data for such purposes without infringing any Intellectual Property);
- (c) a non-exclusive, non-transferable, perpetual, irrevocable, royalty free licence from the TRAS Service Provider to use the TRAS Service Scorecard for the purpose of discharging its obligations pursuant to the Theft Risk Assessment Service Arrangements solely for its own benefit (and the right to sub-licence and use the TRAS Services Scorecard for such purpose without infringing any Intellectual Property);

- (d) an obligation on the TRAS Service Provider equivalent to the obligation set out in Paragraph 6; and
- (e) (only for so long as the TRAS Service Provider has the benefit of the directly enforceable rights set out in Paragraph 7.7) a waiver by the TRAS Service Provider equivalent to the waiver by the Supplier Parties set out in Paragraph 7.6.

7.5 Each Supplier Party hereby agrees with DCUSA Ltd:

- (a) in respect of any claim that the Supplier Party may have against the TRAS Service Provider in respect of the TRAS Contract, to:
 - (i) notify DCUSA Ltd of any such claim;
 - (ii) irrevocably appoint and use DCUSA Ltd as the Supplier Party's exclusive agent (to the exclusion of itself and all other persons) to pursue, negotiate and conduct any such claims (which role DCUSA Ltd may choose to delegate);
 - (iii) provide DCUSA Ltd with all reasonable assistance requested by DCUSA Ltd in respect of the conduct of such claims;
 - (iv) take all reasonable steps to mitigate any TRAS Liabilities; and
 - (v) where the Supplier Party's claim relates to a claim by a third party against the Supplier Party, not make any admission, settlement or payment in respect of such claim without first obtaining DCUSA Ltd's consent (such consent not to be unreasonably withheld or delayed); and
- (b) in respect of any claim that the TRAS Service Provider may have against the Supplier Party in respect of the TRAS Contract, to:
 - (i) on being notified by DCUSA Ltd of the breach that has given rise to such claim, promptly take such steps as may be required to cure and/or avoid such breach;

- (ii) irrevocably appoint and use DCUSA Ltd as the Supplier Party's exclusive agent (to the exclusion of itself and all other persons) to defend, negotiate and conduct any such claims by the TRAS Service Provider (which role DCUSA Ltd may choose to delegate); and
- (iii) provide DCUSA Ltd with all reasonable assistance requested by DCUSA Ltd in respect of the conduct of such claims.

7.6 Without prejudice to any contractual rights that a Supplier Party may have (whether under this Agreement, pursuant to the Contracts (Rights of Third Parties) Act 1999, or otherwise), each Supplier Party hereby irrevocably waives and releases (to the fullest extent permissible by law) all tortious rights and remedies and claims for breach of statutory duty that it might otherwise have against the TRAS Service Provider arising under or in connection with the Theft Risk Assessment Service Arrangements.

7.7 Notwithstanding Clause 60.8 of the main body of this Agreement, the TRAS Service Provider shall be entitled to enforce the following paragraphs in accordance with the Contracts (Rights of Third Parties) Act 1999:

- (a) Paragraphs 4.2(c) and 4.3;
- (b) Paragraphs 5.1, 5.2 and 5.6;
- (c) Paragraph 6; and
- (d) Paragraphs 7.5, 7.6 and 7.9,

provided that this Agreement (including those paragraphs) shall remain subject to amendment and termination in accordance with its provisions (and without the consent of the TRAS Service Provider).

7.8 It is acknowledged that the TRAS Contract may contain change control, dispute resolution, compensation and/or termination provisions linked to the amendment of the paragraphs referred to in Paragraph 7.7, and that DCUSA Ltd may incur TRAS Liabilities in the event of any changes to those paragraphs. DCUSA Ltd shall give notice to the TRAS Service Provider of any proposed changes to any of Paragraphs

2.1, 2.4, 5.3, 5.5 and/or 7.7, and/or to any of the paragraphs referred to in Paragraph 7.7.

- 7.9 Without prejudice to the licences in the TRAS Contract referred to in Paragraphs 7.4(b) and (c), no Supplier Party is granted any licence rights in the TRAS Service Data by this Agreement. No Supplier Party will have any right to transfer or sub-licence the TRAS Service Data otherwise than in accordance with Paragraph 6.5 and the licences referred to in Paragraphs 7.4(b) and (c). All Intellectual Property in the TRAS Service Data shall remain vested in the TRAS Service Provider (or its relevant licensors) and to the extent that any Intellectual Property in the TRAS Service Data vests in a Supplier Party by operation of law, each Supplier Party hereby assigns such Intellectual Property vested in it to the TRAS Service Provider.
- 7.10 Each Supplier Party acknowledges that the TRAS Service Provider is not a party to, and does not have any obligations or liabilities under, this Agreement.

8. Supplier Data

- 8.1 Each Supplier Party shall take all reasonable steps to agree with the TRAS Service Provider a specification and computer readable format for data files containing the data fields described in Appendix 2. The data fields described in Appendix 2 fall into two categories (as further described in Appendix 2), which comprise:

- (a) information in respect of residential premises and commercial premises supplied by the Supplier Party; and
- (b) information in respect of theft investigations by or on behalf of the Supplier Party,

data files containing such data fields, in the specification and format so agreed, being for each Supplier Party the "**Supplier Data File**" and the "**Theft Investigation File**", respectively.

- 8.2 When a Supplier Party populates data fields under Paragraph 8.4, the Supplier Party has the option whether or not to populate those data fields which are described in Appendix 2 as 'preferred' (rather than 'mandatory').

- 8.3 When a Supplier Party populates data fields under Paragraph 8.4 which are described in Appendix 2 as 'mandatory' (rather than 'preferred'), or populates data fields under Paragraph 8.5 (regardless of whether they are described in Appendix 2 as 'preferred' or 'mandatory'), then the Supplier Party:
- (a) must use all reasonable endeavours to provide the data it holds in respect of those data fields (but need not provide the data where it does not hold the required data in a readily accessible and extractable electronic format);
 - (b) must, where the Supplier Party does not hold the required data in a readily accessible and extractable electronic format, use all reasonable endeavours to provide any comparable alternative data that the Supplier Party does hold in such format; and
 - (c) is not otherwise obliged to provide the data.
- 8.4 Between 30 June 2015 and 31 July 2015, each Supplier Party shall provide to the TRAS Service Provider (via the secure STS service agreed between that Supplier Party and the TRAS Service Provider) the Supplier Party's:
- (a) Supplier Data File populated with the data for all the Metering Points for which it is Registered as at 30 June 2015 or any subsequent date up to and including the date of the file's provision to the TRAS Service Provider; and
 - (b) Theft Investigation File populated with investigation data covering the 24 months to 1 June 2015.
- 8.5 By 17.00 hours on the 5th Working Day after the 5th calendar day of each calendar month starting with November 2015, each Supplier Party shall provide to the TRAS Service Provider:
- (a) the Supplier Party's Supplier Data File populated with the data for all the Metering Points for which it is Registered as at the end of the 5th calendar day of the month (to be provided via the secure STS service agreed between that Supplier Party and the TRAS Service Provider); and

- (b) the Supplier Party's updates to the data in the Theft Investigation File populated with updates to the end of the 5th calendar day of the month (to either be provided via the secure STS service agreed between that Supplier Party and the TRAS Service Provider, or via the system provided for that purpose by the TRAS Service Provider).
- 8.6 Once the specification and format of each Supplier Party's Supplier Data File and/or Theft Investigation File has been agreed with the TRAS Service Provider pursuant to this Paragraph 8, the specification and format may not be changed without the TRAS Service Provider's consent (such consent to be obtained by DCUSA Ltd pursuant to the TRAS Contract).
- 8.7 Each Supplier Party shall provide sufficient staff as reasonably required by the TRAS Service Provider from time to time in compliance with the TRAS Contract with the objective of ensuring successful requirements definition, configuration, testing and implementation of the Theft Risk Assessment Service Arrangements in accordance with the TRAS Contract.
- 8.8 Each Supplier Party shall provide a single point of contact for the TRAS Service Provider to manage the day-to-day interactions between the TRAS Service Provider and that Supplier Party.
- 8.9 Each Supplier Party shall report any faults and issues with respect to the TRAS Contract via the help desk established by the TRAS Service Provider for that purpose under the TRAS Contract in the format agreed pursuant to the TRAS Contract.
- 8.10 Each Supplier Party shall provide the TRAS Service Provider with any information or assistance reasonably requested by the TRAS Service Provider from time to time in relation to the provision of the Theft Risk Assessment Service Arrangements by the TRAS Service Provider in accordance with the TRAS Contract.

Appendix 1 to Schedule [X] – Description of the Services to be Procured Pursuant to the TRAS Contract

[see separate document]

Appendix 2 to Schedule [X] – Supplier Data File & Theft Investigation File

[see separate document]

Wragge Lawrence Graham & Co LLP