

## DCUSA CP 374 – Transition of Theft into Retail Energy Code

Draft Legal Text<sup>1</sup>

**With effect from 'Energy Theft Consolidation' as designated by Ofgem under the REC, delete the following definitions from Clause 1:**

<b>Consumption File</b>	<del>has the meaning given to that expression in paragraph 8.1 of Schedule 25 (Theft Risk Assessment Service).</del>
<b>ETTOS Contract</b>	<del>means each of the contracts from time to time between DCUSA Ltd and an ETTOS Service Provider for provision of the Energy Theft Tip Off Service (which may be a tripartite contract to which SPAA Ltd is also party).</del>
<b>ETTOS Contract Manager</b>	<del>means one or more persons appointed under contract from time to time by DCUSA Ltd (potentially jointly with SPAA Ltd) to administer and manage some or all of the ETTOS Contract (potentially jointly with the TRAS Contract) on behalf of DCUSA Ltd.</del>
<b>ETTOS Liabilities</b>	<del>means all costs, charges, expenses, professional fees, fines, damages and other liabilities incurred under or in connection with the Energy Theft Tip Off Service (including the ETTOS Contract), whether in contract, tort (including negligence), for breach of statutory duty or otherwise.</del>
<b>ETTOS Service Provider</b>	<del>means the person or persons with which DCUSA Ltd contracts from time to time for provision of the Energy Theft Tip Off Service (but excluding the Secretariat in its role as Secretariat and excluding the ETTOS Contract Manager).</del>
<b>ETTOS Recipient</b>	<del>means each Supplier Party and each DNO/IDNO Party.</del>
<b>ETTOS Service Data</b>	<del>means the materials, information and other data received by Recipients pursuant to the Energy Theft Tip Off Service.</del>
<b>Hunter System</b>	<del>means the system of that name developed by the TRAS Service Provider under the TRAS Contract, as more particularly defined in the TRAS Contract. means the system of that name developed by the TRAS Service Provider under the TRAS Contract, as more particularly defined in the TRAS Contract.</del>
<b>Outcome File</b>	<del>has the meaning given to that expression in paragraph 8.1 of Schedule 25 (Theft Risk Assessment Service).</del>

<sup>1</sup> Unless otherwise stated, the changes set out in this CP will be made on its initial implementation. However, some changes are specified as taking effect on Energy Theft Consolidation - and those changes will be implemented on Energy Theft Consolidation, as designated by Ofgem under the REC (currently expected 1 April 2021) – and others are specified as taking effect on Retail Code Consolidation - and those changes will be implemented on Retail Code Consolidation, as designated by Ofgem under the REC (currently expected 1 September 2021).

<b>Outlier</b>	means a premises identified as having a lower than expected electricity consumption for the relevant property/customer type, as more particularly defined in the TRAS Contract.
<b>Qualified Outlier</b>	means an Outlier that has been ranked according to propensity for Outlier to be caused by theft, as more particularly defined in the TRAS Contract.
<b>Secure Transfer System</b>	means a managed file transfer solution designed to enable secure file transfer between the Supplier Party and the TRAS Service Provider, as agreed between the Supplier Party and the TRAS Service Provider.
<b>STS</b>	refers to the Secure Transfer System.
<b>SPAA</b>	means the Supply Point Administration Agreement established pursuant to the Gas Supply Licences.
<b>SPAA Ltd</b>	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). 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).
<b>Supplier Data</b>	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 25, includes the equivalent material, information and data provided pursuant to the SPAA).
<b>Theft Assessment Calculator</b>	means a theft assessment calculation tool procured (or to be procured) by the Panel, in order to provide a means of assessing unrecorded electricity units arising as a result of instances of Theft of Electricity.
<b>Theft Risk Assessment Methodology</b>	means the methodology from time to time for determining Outliers, Qualified Outliers and the Theft Target, as more particularly defined in the TRAS Contract.
<b>Theft Target</b>	means the electricity theft detection target from time to time and in respect of particular periods of time, as more particularly defined in the TRAS Contract.
<b>TRAS Contract</b>	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).

<b>TRAS Contract Manager</b>	<del>means one or more persons appointed under contract from time to time by DCUSA Ltd (potentially jointly with SPAA Ltd) to administer and manage some or all of the TRAS Contract on behalf of DCUSA Ltd.</del>
<b>TRAS Liabilities</b>	<del>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.</del>
<b>TRAS Service Data</b>	<del>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).</del>
<b>TRAS Service Provider</b>	<del>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 and excluding the TRAS Contract Manager).</del>
<b>TRAS Service Scorecard</b>	<del>means the scorecard (including the scorecard formula) to be developed pursuant to the TRAS Contract and the scores produced by that scorecard.</del>

**On implementation of this Change Proposal, add the following new definitions to Clause 1:**

<b><u>Consolidated Theft Processes</u></b>	<u>means the processes and procedures governed by this Agreement that are, on Energy Theft Consolidation, to become subject to the Retail Energy Code, as set out in the Theft Arrangements Schedule to the Retail Energy Code.</u>
<b><u>Energy Theft Consolidation</u></b>	<u>has the meaning given in the Retail Energy Code.</u>
<b><u>Retail Code Consolidation</u></b>	<u>has the meaning given in the Retail Energy Code.</u>
<b><u>Retail Energy Code</u></b>	<u>means the code of that name designated and maintained under the Supply Licences.</u>
<b><u>Retail Energy Code Company</u></b>	<u>means RECCo, as defined in the Retail Energy Code.</u>

**On implementation of this Change Proposal, amend the following definitions in Clause 1:**

<b>Energy Theft Tip-Off Service</b>	<u>means a service by which members of the public can report instances (or potential instances) of energy theft (including Theft of Electricity), which service is, from Energy Theft</u>
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	<u>Consolidation, being moved from this Agreement to the Retail Energy Code.</u>
<b>Revenue Protection Code of Practice</b>	means <u>(a) until Retail Code Consolidation, the code of practice set out in Schedule 23; or (b) from Retail Code Consolidation, the Theft Code of Practice Schedule which forms part of the Retail Energy Code.</u>
<b>Theft Risk Assessment Service Arrangements</b>	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 (but excluding the Energy Theft Tip-Off Service), <u>which service is, from Energy Theft Consolidation, being moved from this Agreement to the Retail Energy Code.</u>

**With effect from 'Retail Code Consolidation' as designated by Ofgem under the REC, delete the following definition from Clause 1:**

<del><b>Resolving Unregistered Consumers Code of Practice</b></del>	<del>means the code of that name set out in Schedule 27.</del>
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**With effect from of 'Energy Theft Consolidation' as designated by Ofgem under the REC, amend Clause 5.3 as follows:**

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:

...

5.3.10A 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; and

- 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.~~

**With effect from 'Energy Theft Consolidation' as designated by Ofgem under the REC, delete Clause 32.5:**

~~32.5 — Each Party undertakes to only use the Theft Assessment Calculator to assess unrecorded electricity units arising as a result of instances of Theft of Electricity and to only use the Theft Assessment Calculator for Non-commercial Use. It is acknowledged that DCUSA Ltd has procured the Theft Assessment Calculator on the basis that it will only be used in accordance with this Clause 32.5. Each Party shall indemnify DCUSA Ltd against any costs incurred by DCUSA Ltd as a result of that Party breaching this Clause 32.5. This Clause 32.5 shall apply to every Party that uses the Theft Assessment Calculator (notwithstanding Clause 15). For the purposes of this Clause 32.5, "Non-commercial Use" means a use, even if this entails monetary reward, where a public good results from the use. Public good can be defined as an activity which widens access to information and has social or economic benefit (including more accurate electricity billing and/or electrical line loss calculations).~~

**With effect from 'Retail Code Consolidation' as designated by Ofgem under the REC, amend Clause 32 as follows:**

- 32.1 ~~The Company shall comply with the obligations of the 'Distributor' (and of the 'Distributor's' Revenue Protection Agent) set out in the Revenue Protection Code of Practice (or procure that another person undertakes such obligations on the Company's behalf).~~
- 32.2 ~~The User (where it is a Supplier Party) shall comply with the obligations of the 'Supplier' (and of the 'Supplier's' Revenue Protection Agent) set out in the Revenue Protection Code of Practice (or procure that another person undertakes such obligations on the User's behalf).~~
- 32.13 Where the Company provides a Revenue Protection Service to the User under this Agreement, it shall do so in accordance with the obligations of the 'Supplier' under the Revenue Protection Code of Practice. Charges for the services so provided shall be calculated in accordance with those specified as applicable to such services in the Relevant Charging Statement and shall be

paid for as Transactional Charges in accordance with Clause 22. The Company may cease providing the Revenue Protection Service to the User under this Agreement, provided that the Company gives the User at least three months' advance notice of the date on which the Company will cease providing the Revenue Protection Service. The User may terminate a Revenue Protection Service that is provided by the Company under this Agreement, provided that the User gives the Company at least three months' advance notice of the date on which the User is to cease taking the Revenue Protection Service from the Company.

~~32.4 The Revenue Protection Code of Practice establishes a minimum standard. Nothing in this Clause 32 shall prevent a Party providing or procuring a Revenue Protection Service that goes beyond the obligations set out in the Revenue Protection Code of Practice.~~

**With effect from of 'Retail Code Consolidation' as designated by Ofgem under the REC, delete Clause 32A:**

**~~32A. RESOLVING UNREGISTERED CONSUMERS~~**

~~32A.1 From 01 February 2017 the Company shall comply with the obligations of the 'Distributor' set out in the Resolving Unregistered Consumers Code of Practice (or procure that another person undertakes such obligations on the Company's behalf) and shall use reasonable endeavours to do so prior to then.~~

~~32A.2 From 01 February 2017 the User (where it is a Supplier Party) shall comply with the obligations of the 'Supplier' set out in the Resolving Unregistered Consumers Code of Practice (or procure that another person undertakes such obligations on the User's behalf) and shall use reasonable endeavours to do so prior to then.~~

~~32A.3 The Resolving Unregistered Consumers Code of Practice establishes a minimum standard. Nothing in this Clause 32A shall prevent a Party providing or procuring a service for resolving Unregistered Consumers (as defined in the Resolving Unregistered Consumers Code of Practice) that goes beyond the obligations set out in the Resolving Unregistered Consumers Code of Practice.~~

**On implementation of this Change Proposal, add a new Clause 32B as follows:**

**32B. ENERGY THEFT CONSOLIDATION**

32B.1 The Panel shall make any and all arrangements necessary for, arising as a result of, or reasonably incidental to: (a) the deletion from this Agreement of Schedule 25 (Theft Risk Assessment Service), Schedule 26 (Energy Theft Tip-Off Service) and Schedule 30 (The Electricity Theft Detection Incentive Scheme); (b) Energy Theft Consolidation and the transfer of the Consolidated Theft Processes to the Retail Energy Code; and/or (c) Retail Code Consolidation and the transfer of the Revenue Protection Code of Practice to the Retail Energy Code. Such arrangements shall include the termination, novation, sale, transfer or other disposal of the contracts, data and other assets of DCUSA Ltd relating to the same.

32B.2 With effect from immediately prior to Energy Theft Consolidation, the following Schedules of this Agreement shall be deleted from this Agreement: Schedule 25 (Theft Risk Assessment

Service), Schedule 26 (Energy Theft Tip-Off Service) and Schedule 30 (The Electricity Theft Detection Incentive Scheme). The ongoing rights and obligations of the Parties under those Schedules shall end on such deletion, but without prejudice to the rights and liabilities of each Party that accrued prior to such deletion (subject to Clause 32B.3).

32B.3 With effect from Energy Theft Consolidation, the following provisions shall apply:

32B.3.1 all accrued rights and liabilities of each Supplier Party and DNO/IDNO Party in connection with the Consolidated Theft Processes shall cease to be subject to this Agreement, and shall instead be treated as rights and liabilities under and subject to the Retail Energy Code (as described in the Retail Energy Code);

32B.3.2 DCUSA Ltd is released from all its outstanding obligations in respect of the Consolidated Theft Processes, and releases all its outstanding rights in respect of the Consolidated Theft Processes;

32B.3.3 notwithstanding Clause 32B.3.2, DCUSA Ltd shall provide all reasonable co-operation and assistance requested by the Retail Energy Code Company concerning the Consolidated Theft Processes; and

32B.3.4 notwithstanding Clause 32B.3.2, DCUSA Ltd (and the Secretariat) shall, under Schedule 30 (The Electricity Theft Detection Incentive Scheme) and in respect of the scheme year last ending prior to Energy Theft Consolidation, remain responsible for producing the scheme year summary report and for calculating and processing the incentive scheme debits and credits.

32B.4 With effect from immediately prior to Retail Code Consolidation, the following Schedules of this Agreement shall be deleted from this Agreement: Schedule 23 (Theft of Electricity Code of Practice) and Schedule 27 (Resolving Unregistered Consumers Code of Practice). The ongoing rights and obligations of the Parties under those Schedules shall end on such deletion, but without prejudice to the rights and liabilities of each Party that accrued prior to such deletion (subject to Clause 32B.5).

32B.5 With effect from Retail Code Consolidation, all accrued rights and liabilities of each Supplier Party and DNO/IDNO Party in connection with Schedules 23 (Theft of Electricity Code of Practice) and 27 (Resolving Unregistered Consumers Code of Practice) shall cease to be subject to this Agreement, and shall instead be treated as rights and liabilities under and subject to the Retail Energy Code (as described in the Retail Energy Code).

**On implementation of this Change Proposal, amend Schedule 14, Paragraph 3(a) as follows:**

3. The following shall be accessible through the Public Pages:
  - (a) this Agreement (excluding while it forms part of this Agreement, the Revenue Protection Code of Practice);
  - (b) a list of the Parties;
  - (c) ....



**On implementation of this Change Proposal, amend Schedule 14, Paragraph 3A(a) as follows:**

3A. Subject to Paragraph 6, the following shall only be accessible through the Password Controlled Pages:

- (a) ~~while the Revenue Protection Code of Practice forms part of this Agreement,~~ the full text of this Agreement, ~~(including the Revenue Protection Code of Practice);~~
- (b) minutes of (and papers associated with) the meetings of the Panel, Working Groups and the DCUSA Ltd board of directors that are not made accessible under Paragraph 3;
- (c) the contact details for Contract Managers and holders of Web Accounts;
- (d) the contact details for receipt of information under Clause 30.13 (under which Users are notified of significant off-supply incidents);
- (e) ~~[not used the theft contacts register provided by each Supplier Party under paragraph 6.7 of the Revenue Protection Code of Practice];~~ and
- (f) a file in .csv format containing the collated information for rota Load Block Alpha Identifiers, in accordance with paragraph 13 of Schedule 8.

**With effect from 'Energy Theft Consolidation' as designated by Ofgem under the REC, delete the following Schedules and replace each of them with 'Not Used':**

- Schedule 25 (Theft Risk Assessment Service);
- Schedule 26 (Energy Theft Tip-Off Service); and
- Schedule 30 (The Electricity Theft Detection Incentive Scheme).

**With effect from 'Retail Energy Code Consolidation' as designated by Ofgem under the REC, delete the following Schedule and replace with 'Not Used':**

- Schedule 23 (Revenue Protection Code of Practice); and
- Schedule 27 (Resolving Unregistered Consumers Code of Practice).

**Gowling WLG (UK) LLP**

**8 October 2020**