

DCP 435: Party Novation Process

Legal Text

Amend Clause 2.2.1 of Section 1A as follows:

Duration

- 2.2 Once it comes into effect, this Agreement shall remain in effect:
- 2.2.1 in respect of each Party, until (subject to Clauses 54.8 and 54.9) such Party ceases to be a Party in accordance with Clause 54.5 or 60.20; and
 - 2.2.2 generally, until (subject to Clauses 54.8 and 54.9) all of the DNO Parties and all of the IDNO Parties have ceased to be Parties in accordance with Clause 54.5.

Add new subheading and Clauses 60.16 to 60.20 to Section 3 as follows:

Novation

- 60.16 With the approval of the Panel (at their discretion, but subject to Clauses 60.17 and 60.20), a Party may transfer its rights and obligations under this Agreement to another entity. In order to give effect to such transfer, the transferring Party, the transferee entity and DCUSA Ltd (on behalf of itself and each other Party) shall enter into a novation agreement (in such form as the Panel may approve from time to time) (in substantially the form set out in Schedule 9A). For clarity, the entity wishing to take a transfer of rights and obligations may or may not already be a Party via its own Accession Agreement.
- 60.17 Without limitation, the Panel must not approve novation to a transferee entity which, if not already a Party, is not eligible to accede to this Agreement in the Party Category(ies) of the transferring Party or which, if already a Party, is not eligible to add the Party Category(ies) of the transferring Party to its existing accession.
- 60.18 Each Party hereby irrevocably and unconditionally authorises DCUSA Ltd to execute and deliver, on behalf of such Party, any novation agreement approved by the Panel under Clause 60.16.

~~60.19 For clarity, the entity wishing to take a transfer of rights and obligations under Clause 60.16 may or may not already be a Party via its own Accession Agreement. Where the transferee entity is already a Party, the transferred rights and obligations shall become subject to such Party's existing Accession Agreement from the effective date of the novation agreement. Where the transferee entity is not already a Party, the transferring Party's Accession Agreement shall, from the effective date of the novation agreement, be treated as the transferee Party's Accession Agreement (and the transferee entity shall be deemed to have acceded to this Agreement).~~

~~60.20 The effect of each novation agreement entered into pursuant to Clause 60.16 will be to end the transferring Party's accession to this Agreement from the effective date of the novation agreement. Accordingly, the Panel shall not approve a Party's transfer of its rights and obligations under Clause 60.16 if such Party's accession cannot be terminated in accordance with Clause 54.6.~~

Add new Schedule 9A as follows -

SCHEDULE 9A - DCUSA PARTY NOVATION AGREEMENT

THIS NOVATION is made on _____

BETWEEN:

- (1) [] a company incorporated in England and Wales (registered number [] whose registered office is at [] (the “**Outgoing Party**”); and
- (2) [] a company incorporated in England and Wales (registered number [] whose registered office is at [] (the “**Incoming Party**”); and
- (3) **DCUSA LIMITED** a company incorporated in England and Wales (registered number 5812381) whose registered office is at Northumberland House, 303 - 306 High Holborn, London, WC1V 7JZ (acting on behalf of itself and each other DCUSA Party, “**DCUSA Ltd**”).

WHEREAS

- (A) DCUSA Ltd is a company established under the DCUSA to facilitate the operation of the DCUSA. The Outgoing Party is a party to, and is bound by, the DCUSA.
- (B) The Outgoing Party wishes to transfer its rights and obligations under the DCUSA to the Incoming Party.
- (C) The Incoming Party wishes to take a transfer of the Outgoing Party's rights and obligations under the DCUSA.
- (D) DCUSA Ltd agrees to such transfer on behalf of itself and each other DCUSA Party.

NOW IT IS HEREBY AGREED as follows:

- 1. In this Novation:
 - (a) “DCUSA” means the Distribution Connection and Use of System Agreement designated as such by the Gas and Electricity Markets Authority (as such agreement is amended from time to time);
 - (b) “DCUSA Party” means a party from time to time to the DCUSA (but excluding the Outgoing Party and the Incoming Party); and
 - (c) “Effective Date” means [TBC].
- 2. Unless otherwise defined in this Novation, the definitions and rules of interpretation applying in the DCUSA shall apply to this Novation.
- 3. With effect from the Effective Date, and in consideration of the reciprocal obligations under this Novation (the receipt and sufficiency of which are hereby acknowledged by each of the parties):
 - (a) the Outgoing Party transfers all its outstanding rights and obligations under the DCUSA to the Incoming Party;
 - (b) the Incoming Party shall enjoy all the outstanding rights of the Outgoing Party under the DCUSA, and agrees to perform and to be bound by Outgoing Party's outstanding obligations under the DCUSA, as if [the Incoming Party was the original party to the Outgoing Party's Accession Agreement in place of the

Outgoing Party] / [the Outgoing Party's rights and obligations under the DCUSA had always been subject to the Incoming Party's Accession Agreement]¹;

- (c) DCUSA Ltd agrees to perform and be bound by the DCUSA in every way as if [the Incoming Party were the original party to the Outgoing Party's Accession Agreement in place of the Outgoing Party] / [the Outgoing Party's rights and obligations under the DCUSA had always been subject to the Incoming Party's Accession Agreement]; and
 - (d) DCUSA Ltd and the Outgoing Party release each other from all outstanding and future obligations under the DCUSA, and each discharge the other from any and all claims under or in connection with the DCUSA (whether known or unknown).
4. From the Effective Date, each of DCUSA Ltd and the Incoming Party shall have the right to enforce the DCUSA against one another with respect to matters arising before, on or after the Effective Date as if [the Incoming Party was the original Party to the Outgoing Party's Accession Agreement (and the Incoming Party entity shall be deemed to have acceded to the DCUSA)] / [the rights and obligations under the Outgoing Party's Accession Agreement had always been subject to the Incoming Party's Accession Agreement].
5. This Novation may be executed in counterparts, each signed by one of the parties hereto.
6. This Novation shall be governed by and construed in accordance with the laws of England and Wales. The parties hereto hereby submit to the exclusive jurisdiction of the courts of England and Wales and of Scotland.

THIS NOVATION has been entered into on the date first stated above.

SIGNED by)

¹ The two options here (and also in 3(c) and 4) depend on whether the Incoming Party is already a DCUSA Party.

duly authorised for and on behalf of _____) _____
[OUTGOING PARTY NAME] LTD _____)

SIGNED by _____)
duly authorised for and on behalf of _____) _____
[INCOMING PARTY NAME] LTD _____)

SIGNED by _____)
duly authorised for and on behalf of _____) _____
DCUSA LTD _____)

Gowling WLG (UK) LLP
5 March 2024