

## 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:

**Articles** 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>	means acting as a corporate vehicle in relation to this Agreement pursuant to:  (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  (b) a decision of the Secretariat acting within the scope of its authority,  which it is necessary or desirable to implement by means of a binding contract on an arm's-length basis.
<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**

- 3.1 *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.
- 3.2 *New Parties.* The Panel shall ensure that the Application Form allows an Applicant to elect whether it wishes to become a Shareholder on its accession as a new Party (if successful). Upon the accession of a new Party in accordance with Clause 4, where that

Party elected to become a Shareholder in its Application Form, 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).

3.3 In the case of a Party which is not a Shareholder (for whatever reason), but which applies to the Panel to become a Shareholder, 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 allocated to him pursuant to Clause 6.
- (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 allocated to him pursuant to clause 6 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.