

SECTION 1B – GOVERNANCE

5. FUNCTIONS AND CONSTITUTION OF THE PANEL

Establishment of the Panel

- 5.1 The Panel is hereby established. The Panel shall:
- 5.1.1 pursue the objectives, undertake the duties, and have the powers, set out in Clauses 5.2 to 5.4, and be composed in accordance with Clauses 5.5 to 5.9;
 - 5.1.2 comprise Panel Members elected in accordance with Clause 6, who shall have the duties and protections set out in Clause 6; and
 - 5.1.3 conduct its activities in accordance with the procedures set out in Clause 7.

Panel Objectives

- 5.2 In conducting its operations in accordance with this Agreement, the Panel shall act in a manner designed to achieve the following objectives (the **Panel Objectives**):
- 5.2.1 that this Agreement is given full and prompt effect in accordance with its terms and conditions;
 - 5.2.2 that this Agreement is given effect in such a manner as will facilitate achievement of the DCUSA Objectives;
 - 5.2.3 that this Agreement is given effect in a fair and economical manner; and
 - 5.2.4 that this Agreement is given effect without undue discrimination between the Parties or any classes of Party.

Duties

- 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:
- 5.3.1 manage and co-ordinate any applications from Applicants to become a Party in accordance with Clause 4;

- 5.3.2 manage and co-ordinate the process by which Panel Members are appointed, in accordance with Clause 6;
- 5.3.3 develop budgets in accordance with Clause 8;
- 5.3.4 manage and co-ordinate the modification process set out in Section 1C, and give effect to any modifications resulting from such process in accordance with Section 1C;
- 5.3.5 manage the termination of a Party's accession to this Agreement in accordance with Clause 54;
- 5.3.6 oversee and, where appropriate, approve the actions and decisions of DCUSA Ltd as contemplated by Schedule 10;
- 5.3.7 periodically review this Agreement and operations under it, in order to evaluate whether this Agreement meets the DCUSA Objectives, and report to the Parties on the outcome of each such review;
- 5.3.8 at the written request of the Authority, undertake a review in accordance with Clause 5.3.7 in respect of such parts of this Agreement as the Authority may specify;
- 5.3.9 procure the creation, hosting and maintenance of the Website, which the Panel shall endeavour to ensure complies with the requirements of Schedule 14;
- 5.3.10 make available on the Website in accordance with Schedule 14:
 - (A) an accurate and up-to-date copy of this Agreement;
 - (B) subject to Clauses 57.1 and 57.3.1, a copy of each: (i) Change Proposal made; (ii) consultation issued in respect of a Change Proposal; and (iii) Change Report delivered to the Panel and/or the Authority; and
 - (C) subject to Clauses 57.1 and 57.3.1, all the matters, minutes, reports, consultation responses, data and other information related to the change control process set out in Section 1C produced by or for, or made

available to, the Panel, the Secretariat, the Panel Secretary or a Working Group (with the exception of contact details).

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; 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.

Powers

5.4 Without prejudice to any other rights or powers granted to it under this Agreement, the Panel shall, subject to and in accordance with the other provisions of this Agreement, have the power to:

- 5.4.1 appoint and remove the Secretariat;
- 5.4.2 appoint and remove professional advisers;

- 5.4.3 consider, approve and authorise the licensing, sub-licensing, or any other manner of dealing with Intellectual Property belonging to DCUSA Ltd, for any use which does not hinder, delay or frustrate, in any way whatsoever, the DCUSA Objectives;
- 5.4.4 consider, approve and authorise the entering into by DCUSA Ltd of contracts under which DCUSA Ltd procures the performance by a third party of any activities which might otherwise be carried out by the Panel under this Agreement;
- 5.4.5 constitute Working Groups to which the Panel may delegate any of its duties and powers under this Agreement;
- 5.4.6 without prejudice to the generality of Clause 5.4.5 or the process for considering Change Proposals, and only where it sees fit, constitute Working Groups to consider and report on issues and problems relating to the operation of this Agreement that have been brought to its attention by one or more Parties; and
- 5.4.7 do anything necessary for, or reasonably incidental to, the discharge of its duties under this Agreement.

Panel Composition

- 5.5 The Panel shall comprise the following persons (each a **Panel Member**):
 - 5.5.1 two persons elected by the DNO Parties;
 - 5.5.2 one person elected by the IDNO/OTSO Parties;
 - 5.5.3 two persons elected by the Supplier Parties;
 - 5.5.4 one person elected by the CVA Registrants; and
 - 5.5.5 any additional person appointed by the Authority in accordance with Clause 5.8.
- 5.6 No one person can hold more than one office as a Panel Member.

- 5.7 The following persons shall be entitled to attend and speak (but not vote) at any meeting of the Panel:
- 5.7.1 one person appointed from time to time, by notice to the Panel Secretary, by the Authority;
 - 5.7.2 one person appointed from time to time, by notice to the Panel Secretary, by the National Electricity Transmission System Operator;
 - 5.7.3 one person appointed from time to time, by notice to the Panel Secretary, by the Consumer Body (Citizens Advice and Citizens Advice Scotland acting together to jointly appoint one person);
 - 5.7.4 (at the invitation of the Panel from time to time) a representative of BSCCo;
 - 5.7.5 (at the invitation of the Panel from time to time) a representative of MRASCo;
and
 - 5.7.6 (at the invitation of the Panel from time to time) a representative of SECCo.

Appointment of Additional Panel Member by the Authority

- 5.8 Where at any time:
- 5.8.1 no person is currently appointed as a Panel Member pursuant to this Clause 5.8; and
 - 5.8.2 the Authority considers that there is a class or category of person having an interest in the distribution of electricity in Great Britain whose interests are not adequately represented in the composition of the Panel at that time, and whose interests would be better represented if a particular person were appointed as an additional Panel Member,
- the Authority may (by notice to the Panel Secretary) appoint (subject to Clause 6.17) that particular person as a Panel Member. The Authority may, at any time thereafter by notice to the Panel Secretary, remove that person from the office of Panel Member.

Natural Persons

5.9 Each Panel Member, each Alternate, each person appointed in accordance with Clause 5.7 or 5.8, and each person serving on a Working Group from time to time must be an individual (and cannot be a body corporate, association or partnership).

6. PANEL MEMBERS

Election of Panel Members

- 6.1 The Gas Supplier Parties will not be separately represented on the Panel. Accordingly, each reference in this Clause 6 to a ‘Party Category’ or the ‘Party Categories’ shall be reference to each Party Category or all Party Categories other than the Party Category representing the Gas Supplier Parties.
- 6.2 The Panel Members from time to time shall be elected in accordance with the following provisions:
- 6.2.1 no later than 40 Working Days before 1 December in each year, any individual shall be entitled, by notice in writing to the Panel Secretary specifying the Party Category in respect of which he wishes to stand and the company (if any) by which he is employed, to put himself forward for election as a Panel Member or Alternate for that Party Category (the position as Panel Member or Alternative for a Party Category being, for the purposes of this Clause 6.2, a “**Role**”);
- 6.2.2 the Panel Secretary shall ignore notices received from candidates who would, if elected, be obliged to resign in accordance with Clause 6.8.3;
- 6.2.3 no later than 30 Working Days before 1 December in such year, the Panel Secretary shall notify each Party of the candidates who have put themselves forward for election for each Role;
- 6.2.4 at the same time as it issues such notice, the Panel Secretary shall, in respect of those Roles (if any) for which the number of candidates exceeds the number of Panel Member or Alernate offices attributable to that Party Category and currently vacant or due to become vacant on the following 1 December, invite the Groups comprising that Party Category to vote for their favoured candidate for that Role;
- 6.2.5 each such Group shall be entitled to cast one vote per Role, and shall cast such vote by means of a system established by the Panel which ensures that each

Party Category casts only one vote per Role and which complies with the same requirements as are set out in Clauses 12.4.5 and 12.4.6;

6.2.6 each such Group shall be given 10 Working Days from the date of notification under Clause 6.2.3 to cast such vote; and

6.2.7 as soon as reasonably practicable following the expiry of such 10 Working Days, the Panel Secretary shall notify the Parties of the result of such vote, listing, in respect of each Role, the candidate who received the most votes first, the candidate who received the second most votes second, and so on. In the event that two or more candidates in respect of a Role for a Party Category received the same number of votes, the Panel Secretary shall invite the Groups comprising that Party Category to vote, within such time period as the Panel Secretary may reasonably specify, for their preferred candidate from those tied candidates, the result of such vote determining the order in which those candidates should be listed.

6.3 The Panel Members and Alternates elected in respect of each Party Category shall be as follows:

6.3.1 where the number of candidates who put themselves forward for election as a Panel Member or Alternate for a Party Category is less than or equal to the number of Panel Member or Alternate offices attributable to that Party Category and currently vacant or due to become vacant on the following 1 December, the candidate or candidates who put themselves forward shall be deemed to have been elected as Panel Members for that Party Category; and

6.3.2 where the number of candidates who put themselves forward for election as a Panel Member or Alternate for a Party Category is more than the number of Panel Member or Alternate offices attributable to that Party Category and currently vacant or due to become vacant on the following 1 December, the candidates elected as a Panel Member or Alternate for that Party Category shall be those set out in the list referred to in Clause 6.2.7, starting with the candidate at the top of that list and ending at candidate n (where n is the relevant number of offices that are currently vacant or due to become vacant on the following 1 December); save that where a candidate has applied to be both a Panel

Member and an Alternate, where that candidate is appointed as a Panel Member that candidate shall be removed from the list of possible Alternates.

6.4 Where the number of candidates who put themselves forward for election as a Panel Member or Alternate for a Party Category is less than (respectively) the number of Panel Member or Alternate offices attributable to that Party Category and currently vacant or due to become vacant on the following 1 December, the Panel Secretary shall request that the Authority make up that number by selecting further Panel Members or Alternates on behalf of that Party Category. Any such person as the Authority may direct shall be deemed to have been elected as a Panel Member or Alternate for the relevant Party Category from the date of such direction.

6.5 Not used

Term of Office and Removal from Office of Panel Members

6.6 Each person elected as a Panel Member or Alternate shall be appointed as such with effect from the last to occur of the following:

6.6.1 the date on which he complies with the requirements of Clause 6.17;

6.6.2 the date on which he is elected; and

6.6.3 the date on which the position for which he was elected becomes vacant.

6.7 Each Panel Member or Alternate (other than one appointed under Clause 5.8 or 6.9) shall retire (at which point his office shall become vacant) on 1 December in the second year following his appointment.

6.8 A Panel Member or Alternate shall immediately cease to be a Panel Member or Alternate (and his office shall become vacant) if he:

6.8.1 resigns his office by notice in writing to the Panel Secretary;

6.8.2 being a Panel Member, fails to attend three consecutive meetings of the Panel that have been duly convened; or, being an Alternate, fails to attend two consecutive meetings of the Panel which the Alternate was due to attend;

6.8.3 ceases to be, or to be employed by, a person that is:

- (A) a Party that forms part of the same Party Category as the Party Category in respect of which the Panel Member or Alternate was elected;
 - (B) not a Party but that has an Affiliate that is a Party that forms part of the same Party Category as the Party Category in respect of which the Panel Member or Alternate was elected; or
 - (C) not a Party and that has no Affiliate that is a Party but provides consultancy services to, or represents the interests of, the same Party Category as the Party Category in respect of which the Panel Member or Alternate was elected;
- 6.8.4 becomes bankrupt or makes any arrangement or composition with his creditors;
- 6.8.5 becomes prohibited by law from being a director of a company under the Companies Act 2006;
- 6.8.6 is convicted of an indictable offence;
- 6.8.7 is admitted to hospital in pursuance of an application under the Mental Health Act 1983 or the Mental Health (Care and Treatment) (Scotland) Act 2003, or an order is made by a court with competent jurisdiction in matters concerning mental disorder for his detention or for the appointment of a receiver, curator bonis or other person with respect to his property or affairs; or
- 6.8.8 dies.

Replacement of Panel Members

- 6.9 Where the office of a Panel Member (other than one appointed under Clause 5.8) becomes vacant for any reason other than his retirement in accordance with Clause 6.7 or 6.10:
- 6.9.1 the Alternate:
- (A) allocated to that Panel Member (as described in Clause 6.11); or

(B) if there is no such Alternate, any other Alternate in respect of the Party Category relevant to that office,

shall be appointed to that office. The appointment shall be subject to Clause 6.17, but as if the reference to “his election” in the final line thereof were to “the date upon which the relevant office became vacant”; or

6.9.2 where there is no Alternate in respect of the relevant Party Category, the election process set out in Clauses 6.2 to 6.5 (inclusive) shall apply in respect of that office, save that the dates and timescales set out therein shall be as the Panel Secretary may reasonably direct.

6.10 A Panel Member appointed in accordance with Clause 6.9 shall retire (at which point his office shall become vacant) on the date that the person that Panel Member replaced would otherwise have retired in accordance with Clause 6.7.

Alternates

6.11 Each Alternate elected as described in Clause 6.3 shall be allocated to a Panel Member for the same Party Category by reference to the election in which the Panel Member and Alternate were elected (and, if relevant, the order in which they appeared on the list created under Clause 6.2.7).

6.12 Where a Panel Member is not present at a Panel meeting, his Alternate shall be entitled to attend (and count towards the quorum at) that meeting and to exercise and discharge all the functions, powers and duties of the Panel Member at that meeting.

6.13 Where a Panel Member is not present at a Panel meeting and his Alternate is not able to be present at a Panel meeting, another Alternate from the same Party Category shall be entitled to attend (and count towards the quorum at) that meeting and to exercise and discharge all the functions, powers and duties of the Panel Member at that meeting.

6.14 Where the office of an Alternate becomes vacant for any reason other than his retirement in accordance with Clause 6.7 (including where the Alternate becomes a Panel Member in accordance with Clause 6.9), then the election process set out in Clauses 6.2 to 6.5 (inclusive) shall apply in respect of that office, save that the dates and timescales set out therein shall be as the Panel Secretary may reasonably direct.

- 6.15 Unless the context otherwise requires, any reference in this Agreement to a Panel Member shall be construed as including a reference to that Panel Member's Alternate.

Duties of Panel Members

- 6.16 A person appointed as Panel Member (including Alternates acting as Panel Members), when acting in that capacity, shall:

6.16.1 act independently, not as a delegate, and without undue regard to the interests, of any Related Person;

6.16.2 exercise reasonable skill and care to the standard reasonably expected of a director of a company under the Companies Act 2006; and

6.16.3 act in a manner designed to facilitate the performance by the Panel of its duties under this Agreement.

- 6.17 A person shall not be appointed as a Panel Member or Alternate unless he has first:

6.17.1 confirmed in writing to DCUSA Ltd (for the benefit of itself and each Party) that he agrees to act as a Panel Member in accordance with this Agreement and with particular regard to the requirements of Clause 6.16; and

6.17.2 confirmed in writing to DCUSA Ltd (for the benefit of itself and each Party) that he agrees to accept appointment as a director of DCUSA Ltd and to act in such capacity in accordance with this Agreement,

and his office shall be deemed to have become vacant if he does not do so within 20 Working Days of his election.

- 6.18 Each Panel Member or Alternate shall, at the time of his appointment and upon any relevant change in circumstance, disclose, in writing to the Panel, the name of each Related Person who is a Party, or is otherwise likely to be affected by the operation of this Agreement and the matters to which it relates.

- 6.19 Where a Panel Member or Alternate changes employer, the Panel Member or Alternate shall, as soon as reasonably practicable after such change, notify the Panel Secretary of

such change in writing. The Panel Secretary shall then notify the Parties of the change in question.

Protections for Panel Members and Others

6.20 Each Party shall, jointly and severally with each other Party, indemnify, and keep indemnified:

6.20.1 each Panel Member (whether as a Panel Member or as a director of DCUSA Ltd);

6.20.2 each Alternate (whether acting as a Panel Member or as a director of DCUSA Ltd);

6.20.3 the Panel Secretary (whether as Panel Secretary or as the company secretary of DCUSA Ltd);

6.20.4 each person who serves on a Working Group;

6.20.5 any employee of a Party, or of an Affiliate of a Party, who is seconded to (or otherwise providing services to) the Secretariat; and

6.20.6 each Party, or an Affiliate of a Party, as employer of any person referred to in Clauses 6.20.1 to 6.20.4 (inclusive),

from and against any and all costs (including legal costs), charges, expenses, damages or other liabilities properly incurred or suffered by that person or Party in relation to the exercise of the person's powers, duties or responsibilities under this Agreement, including where such powers duties or responsibilities are exercised negligently (and, for the avoidance of doubt, such indemnity shall extend to the persons who acted as directors of DCUSA Ltd in the period prior to the date on which this Agreement became effective).

6.21 The indemnity set out in Clause 6.20 shall not apply to any costs, charges, expenses, damages or other liabilities that are:

6.21.1 recovered in accordance with the procedures set out in Clause 8;

- 6.21.2 in respect of any charge for the time of those persons referred to in Clause 6.20;
 - 6.21.3 recovered under any policy of insurance in favour of any or all of the persons and Parties referred to in Clause 6.20; or
 - 6.21.4 suffered or incurred or occasioned by the wilful default or bad faith of, or breach of contract by, the relevant person.
- 6.22 DCUSA Ltd shall hold the benefit of Clause 6.20 (subject to Clause 6.21) as trustee and agent for each person (other than a Party) referred to in Clause 6.20.
- 6.23 As between themselves, each of the Parties shall be liable, in respect of any amounts properly payable by any Party under Clause 6.20, in accordance with the same proportions as are used to calculate that Party's Cost Contribution under Clause 8 (calculated on the basis of Metering Point registrations in the month in which the cost, charge, expense, damage or other liability referred to in Clause 6.20 was incurred).

7. OPERATION OF THE PANEL

The Panel Chairman

- 7.1 The **Panel Chairman** shall be the Panel Member appointed as such, from time to time, by a simple majority of the Panel Members.
- 7.2 The Panel Chairman may at any time be removed from the office of Panel Chairman by a simple majority of the Panel Members or at the direction of the Authority. Where a Panel Member is removed from the office of Panel Chairman he may not be reappointed as such without the Authority's prior consent.
- 7.3 The Panel Chairman shall preside at every meeting of the Panel at which he is present. If the Panel Chairman is unable to be present at a meeting, he may nominate, by notice in writing to the Panel Secretary, another Panel Member (or his Alternate) to act as Panel Chairman for that meeting. If neither the Panel Chairman nor any person nominated by him in accordance with this Clause 7.3 is present at a Panel meeting, the Panel Members present may, by simple majority, appoint any one of their number to preside at that meeting.
- 7.4 The Panel Chairman shall be entitled to vote in his capacity as a Panel Member. The Panel Chairman shall in no circumstances be entitled to an extra or casting vote.

The Panel Secretary

- 7.5 The **Panel Secretary** shall be appointed, or removed from office, by the Panel. In no event shall the Panel Secretary be an employee of any Party or any of its Affiliates.
- 7.6 The Panel Secretary shall be entitled to attend and speak (but not to vote) at Panel meetings.
- 7.7 The Panel Secretary's duties shall be to facilitate the operations of the Panel and in particular to:
- 7.7.1 attend to the requisition of meetings and serve the necessary notices;
 - 7.7.2 maintain a register of names and addresses, from time to time, of the Panel Members, and of the Alternates allocated to each Panel Member;

- 7.7.3 keep minutes of all meetings; and
 - 7.7.4 circulate all relevant notices, papers and minutes.
- 7.8 The Panel shall be responsible for ensuring that the Panel Secretary undertakes these duties.

Meetings of the Panel

- 7.9 The Panel shall hold meetings at such times as it may decide but in any event shall meet at least once every three months. The venues for meetings shall be determined by the Panel Members.
- 7.10 No business shall be transacted at any meeting of the Panel unless a quorum is present at that meeting. The quorum for each Panel meeting shall be four Panel Members, at least one of whom must have been elected by the DNO Parties and at least one of whom must have been elected by the Supplier Parties.
- 7.11 The Panel may, subject to the other provisions of this Agreement, regulate the conduct of its meetings as it sees fit.
- 7.12 Any Panel Member may, by written notice to the Panel Secretary:
- 7.12.1 request the requisition of an additional Panel meeting. Any such notice given to the Panel Secretary must contain a list of matters to be included in the agenda for the meeting. Following receipt of such a notice, the Panel Secretary shall proceed to convene the meeting within five Working Days; and
 - 7.12.2 request the consideration of additional matters at a meeting for which notice has already been given. Provided such notice is given at least three Working Days before the date of the relevant meeting, the Panel Secretary shall amend the agenda for that meeting to include the additional matters.
- 7.13 Nothing shall prevent a meeting from being held by telephone or other technological means, so long as all the criteria regarding notice and minutes are met.

Notice of Meetings

- 7.14 All meetings of the Panel shall be convened by the Panel Secretary on at least five Working Days' notice (subject to any requirements, under Section 1C, for meetings to be held within a shorter period). Such notice (which may be given by e-mail) must be given to:
- 7.14.1 the Panel Members and the Alternates;
 - 7.14.2 the appointed persons referred to in Clause 5.7;
 - 7.14.3 (where the Panel has resolved to invite representatives of one or more of them) one or more (as applicable) of BSCCo, MRASCo and/or SECCo; and
 - 7.14.4 the Parties.
- 7.15 The notice of each Panel meeting shall contain the time, date and venue of, and an agenda and any supporting papers for, the relevant meeting. The Panel Secretary shall circulate amendments to the agenda where necessary.
- 7.16 The accidental omission to give notice of a meeting to, or the non-receipt of notice of a Panel meeting by, a person entitled to receive notice shall not invalidate the proceedings of that meeting.

Representation and Voting

- 7.17 Each Panel Member shall be entitled to attend, and to speak and vote at, every meeting of the Panel.
- 7.18 Any Party shall be entitled to send a representative to attend a Panel meeting provided it gives the Panel Secretary two Working Days' notice in advance of such meeting. Such a representative shall be admitted as an observer, and shall (at the Panel Chairman's invitation) be entitled to speak (but in no circumstances vote) at the meeting. The Panel Chairman may, at his sole discretion, exclude a representative of a Party from a meeting (or any part thereof) where matters being discussed are confidential.

- 7.19 All decisions of the Panel shall be by resolution. In order for a resolution of the Panel to be passed at a meeting, a simple majority of those Panel Members present at that meeting must vote in favour of that resolution.
- 7.20 A resolution in writing signed by or on behalf of all the Panel Members shall be as valid and effective as if it had been passed at a meeting of the Panel duly convened and held. Such a resolution may be signed in any number of counterparts.

Minutes of Panel Meetings

- 7.21 The Panel Secretary shall, as soon as practicable (and in any event within five Working Days) following each Panel meeting, circulate copies of the minutes of that meeting to each person who was entitled to receive a notice of that meeting.
- 7.22 If any Panel Member disagrees with any item of the minutes, he shall, within five Working Days of receipt of the minutes, notify the Panel Secretary of those items with which he disagrees, and the Panel Secretary shall incorporate those items upon which there is disagreement into the agenda for the next following meeting of the Panel, as the first item for resolution.
- 7.23 The Panel Secretary shall maintain a record of all resolutions voted on by the Panel, indicating how each Panel Member voted on each resolution, and shall make such record available on request to any Party.

Establishing Working Groups

- 7.24 The Panel may establish sub-committees (each a **Working Group**) for the purposes of doing, or assisting the Panel in doing, anything to be done by the Panel pursuant to this Agreement. The Panel may dissolve any Working Group it has previously established. In particular, the Panel may establish, dissolve and subsequently re-establish either or both of the DCUSA Standing Issues Group and the DCMDG.
- 7.25 The Panel may delegate to each Working Group such of the Panel's duties, powers and functions under this Agreement as the Panel may specify.
- 7.26 Each Working Group shall be subject to such written terms of reference and such written procedures as the Panel may specify from time to time; save that the terms of

reference for the DCUSA Standing Issues Group and the DCMDG must be consistent with the terms of reference and procedures given in Schedule 7 and Schedule 28 (respectively). Subject to the applicable terms of reference and procedures, each Working Group shall otherwise conduct its business as it sees fit. No Working Group may further delegate any of its duties, powers and functions unless expressly authorised to do so by such terms of reference.

- 7.27 Each Working Group shall publish, on the Website, details of that Working Group's:
- 7.27.1 membership;
 - 7.27.2 terms of reference;
 - 7.27.3 timetable for business and meetings;
 - 7.27.4 minutes of meetings; and
 - 7.27.5 governance procedures.

Membership of Working Groups

- 7.28 Each Working Group shall be composed of such persons with experience and expertise suitable to the Working Group's remit, and who are willing to serve, as the Panel may direct. Each Working Group shall be chaired by such person (the **WG Chairman**) as the Panel may direct, or as (in the case of the DCUSA Standing Issues Group) is elected pursuant to Schedule 7 or (in the case of the DCMDG) is appointed pursuant to Schedule 28.
- 7.29 Before establishing each Working Group, the Panel shall invite (by such means as it considers appropriate) applications from individuals who wish to serve on that Working Group.
- 7.30 Once a Working Group is established, the WG Chairman shall (unless the Panel otherwise directs) be entitled to admit such additional persons to serve on that Working Group as the WG Chairman considers appropriate. The Panel may, at its discretion, subsequently remove any such additional persons from service on that Working Group.

- 7.31 The Authority shall be entitled to send, to any Working Group meeting, a representative who shall be entitled to speak (but not to vote) at that meeting. Any Party shall be entitled to send a representative to attend and (at the WG Chairman's invitation) speak (but in no circumstances vote) at any Working Group meeting.

Duties of those Serving on Working Groups

- 7.32 Each Working Group shall act in a manner designed to achieve the Panel Objectives.
- 7.33 Those persons serving on a Working Group from time to time, when acting in that capacity, shall:
- 7.33.1 act independently, not as a delegate, and without undue regard to the interests, of any Related Person (save that this requirement shall not apply to those serving on the DCMDG);
 - 7.33.2 exercise reasonable skill and care to the standard reasonably expected of a director of a company under the Companies Act 2006 (save that this requirement shall not apply to those serving on the DCMDG); and
 - 7.33.3 act in a manner designed to facilitate the performance by the Working Group of the duties delegated to it.
- 7.34 Unless the Panel otherwise directs, a person who is to serve on a Working Group shall not be appointed to that Working Group unless he has first confirmed in writing to DCUSA Ltd (for the benefit of itself and each Party) that he agrees to act in accordance with Clause 7.33 (save that this requirement shall not apply to those serving on the DCMDG).

Decisions of Working Groups

- 7.35 Resolutions of Working Groups shall not have binding effect unless the Panel has formally delegated the decision-making powers to the Working Group or has ratified the resolution in question.

Secretariat

7.36 The Panel may, from time to time, appoint and remove, or make arrangements for the appointment and removal of, any such person or persons (such person or persons to be known as the **Secretariat**) as the Panel requires to assist:

7.36.1 the Panel;

7.36.2 the Panel Secretary; and/or

7.36.3 any Working Group,

in the proper performance of its, his or their duties and responsibilities under this Agreement.

7.36A The Secretariat shall perform the role of code administrator in respect of this Agreement. Accordingly, the Secretariat shall (in addition to any other roles allocated to it under this Agreement):

7.36A.1 from time to time, together with other code administrators, publish, review and (where appropriate) report to the Panel and the Authority on any proposed amendments to the Code Administration Code of Practice;

7.36A.2 where the Authority approves any proposed amendments to the Code Administration Code of Practice, working together with other code administrators, amend the Code Administration Code of Practice in accordance with such approval;

7.36A.3 periodically review and report to the Panel on whether the provisions of this Agreement are consistent with the Code Administration Code of Practice (to the extent relevant);

7.36A.4 have regard to, and (to the extent relevant) act in a manner consistent with, the principles contained in the Code Administration Code of Practice; and

7.36A.5 provide assistance (insofar as is reasonably practicable and on reasonable request) to Parties (including, in particular, Small Participants) and (to the extent relevant) consumer representatives that request the Secretariat's

assistance in relation to this Agreement; such assistance to include assistance with:

- (A) drafting Change Proposals;
- (B) understanding the operation of this Agreement;
- (C) their involvement in, and representation during, the Change Proposal processes (including in respect of Panel or Working Group meetings);
and
- (D) accessing information relating to Change Proposals.

7.37 The Panel shall be responsible for ensuring that the Secretariat undertakes any responsibilities and duties that are either assigned to it under Clause 7.36 or ascribed to it in this Agreement. In particular, the Panel shall ensure that the arrangements under which the Secretariat is appointed shall oblige the Secretariat to undertake such duties and responsibilities on the same applicable terms as are provided for under this Agreement.

7.38 Subject to Clause 7.37, any appointment by the Panel under Clause 7.36 shall be on such terms and conditions and in return for such remuneration as the Panel sees fit.

7.39 In no event shall the Secretariat be a Party, an Affiliate of a Party, an employee of a Party, or an employee of an Affiliate of a Party.

DCUSA Ltd

7.40 The provisions of Schedule 10 shall apply in respect of DCUSA Ltd.

7.41 The Panel is deemed to have approved all the acts of DCUSA Ltd undertaken before this Agreement became effective, and the Parties hereby confirm that such approval is properly given.

8. COSTS OF THE DCUSA

Recovery of Costs

8.1 The Panel shall be entitled to recover, in accordance with the procedures set out in this Clause 8, all the **reasonable costs** and expenses properly incurred by:

- 8.1.1 the Panel;
- 8.1.2 the Panel Secretary;
- 8.1.3 any Working Group;
- 8.1.4 the Secretariat; and
- 8.1.5 DCUSA Ltd,

in performing their respective duties, powers and functions under this Agreement (the Recoverable Costs), which may include their general administration costs and expenses, any costs and expenses they incur in holding, or travelling to, meetings, any costs and expenses of any professional advisers properly retained by them, and any tax payable by DCUSA Ltd. Recoverable Costs shall not include any payment to Panel Members, to directors of DCUSA Ltd or to those who serve on Working Groups in respect of their time.

Preparation of Draft Budgets

8.2 In respect of:

- 8.2.1 the Financial Year ending on 31 March 2007, the Panel shall, as soon as reasonably practicable following the date on which this Agreement becomes effective; and
- 8.2.2 each subsequent Financial Year, the Panel shall (not earlier than 60, nor later than 30, Working Days before the commencement of that Financial Year),

prepare, circulate to all the Parties, and invite comments on, a draft budget for that Financial Year (a Draft Budget).

- 8.3 Each Draft Budget shall be accompanied by a detailed work plan showing the activities and projects to which the relevant costs and expenses relate, and shall set out the Panel's good-faith estimate of the Recoverable Costs that it anticipates will either be:
- 8.3.1 incurred in the Financial Year to which the Draft Budget relates; or
 - 8.3.2 committed to in the Financial Year to which the Draft Budget relates, even though the Recoverable Costs are not expected to be incurred until a subsequent Financial Year.
- 8.3A The Draft Budget shall separately identify the Panel's good-faith estimate of the Recoverable Costs that it anticipates will be invoiced in each Quarter of the Financial Year to which the Draft Budget relates, split between each Party Category.
- 8.3B The Draft Budget for a Financial Year shall be accompanied by the Panel's latest estimate of the likely outcome of the annual review for the previous Financial Year, which will be carried out pursuant to Clause 8.12.
- 8.3C The Draft Budget for a Financial Year shall be accompanied by the Panel's best estimate of the dates on which it will raise invoices for each Quarter of the Financial Year.

Approval of Budgets

- 8.4 The Draft Budget for the Financial Year ending on 31 March 2007 shall, on its preparation, automatically become the Approved Budget for that Financial Year. The Panel shall, nevertheless, consider any comments received from the Parties in the 20 Working Days following its circulation, and the Panel shall, where it considers it appropriate to do so, amend such Approved Budget in the light of those comments.
- 8.5 In respect of the Draft Budget for each subsequent Financial Year, the Panel shall:
- 8.5.1 arrange for publication on the Website of all of the comments received from the Parties regarding the Draft Budget and/or the accompanying work plan in the 20 Working Days following their circulation;

- 8.5.2 consider, and (where it considers it appropriate to do so) respond to, those comments;
- 8.5.3 to the extent that it considers it appropriate to do so, amend the Draft Budget and/or the accompanying work plan in the light of those comments; and
- 8.5.4 no less than 20 Working Days following such circulation, approve the Draft Budget (as so amended) as the **Approved Budget** for the relevant Financial Year.

Amendments to Budgets

- 8.6 The Approved Budget relating to each Financial Year may be amended by the Panel from time to time, provided that the Panel has first:
 - 8.6.1 circulated and invited comments on the proposed amendments in accordance with Clause 8.2 as if it were a Draft Budget; and
 - 8.6.2 published and considered any comments received on the proposed amendments within 20 Working Days of such circulation on the same basis as is referred to in Clause 8.5.

Payment of Costs Incurred

- 8.7 Where the Panel, the Panel Secretary, any Working Group, the Secretariat or DCUSA Ltd wishes to recover any cost or expense under this Clause 8, details of the cost or expense in question shall be submitted to the Panel (or a named person approved by the Panel) for approval. Such cost or expense shall only be approved to the extent that it falls within a category of Recoverable Cost provided for in an Approved Budget, and only if such cost or expense:
 - 8.7.1 will not (in aggregate with those costs and expenses previously approved for the Financial Year, and those likely to be approved for the remainder of the Financial Year) cause the total Approved Budget to be exceeded to a material extent; and
 - 8.7.3 is submitted in a timely manner (and in any event on or before the 20th Working Day following the end of the relevant Financial Year).

Once approved, details of the cost or expense shall be submitted to the Secretariat or DCUSA Ltd (as directed by the Panel or such named person) for payment.

- 8.8 Upon receipt of an invoice or other statement relating to costs or expenses that have been approved in accordance with Clause 8.7, the Secretariat or DCUSA Ltd (as applicable) shall pay the amount stated in such invoice or other statement (together with VAT thereon, if applicable) to the person named in such invoice or other statement.

Share of Costs

- 8.9 Subject to Clause 8.9A, the amount (a **Cost Contribution**) that each Party shall be obliged to bear as its share of the Recoverable Costs, in respect of each Quarter, shall:

8.9.1 in the case of each CVA Registrant (in its capacity as such), the OTSO Party and each Gas Supplier Party (in its capacity as such), be zero; and

8.9.2 in the case of each other Party, be calculated as follows:

$$CC = 50\% \times \frac{N}{TN} \times RC$$

where:

CC is the relevant Party's Cost Contribution (other than that which is subject to Clause 8.9A) in respect of that Quarter;

N is, in respect of a DNO Party or an IDNO Party, the aggregate number of Metering Points which each such Party has on its MPAS Registration System; and, in respect of a Supplier Party, the aggregate number of Metering Points against which that Party is registered across all of the MPAS Registration Systems (based, in each case, on the average figure for the three months comprising that Quarter and provided under clause 27.6 of the MRA);

TN is, in respect of each Party and that Quarter, the aggregate number of Metering Points across all of the MPAS Registration Systems (based on the average aggregate figure for the three months comprising that Quarter and provided under clause 27.6 of the MRA); and

RC is the total amount of the Recoverable Costs (other than those which are subject to Clause 8.9A) incurred, or otherwise accounted for, in that Quarter.

8.9A In respect of the Recoverable Costs relating to the Theft Risk Assessment Service Arrangements and/or the Energy Theft Tip-Off Service (including their development), each Party's Cost Contribution (in respect of each Quarter) shall not be calculated in accordance with Clause 8.9 and shall instead:

8.9A.1 in the case of all Parties other than Supplier Parties (in their capacity as Parties other than Supplier Parties), be zero; and

8.9A.2 in the case of each Supplier Party (in its capacity as such), be calculated as follows:

$$\mathbf{SC} = (\mathbf{N}/\mathbf{TN}) \times \mathbf{TRC}$$

Where:

SC is the relevant Supplier Party's Cost Contribution in respect of that Quarter and the Recoverable Costs relating to the Theft Risk Assessment Service Arrangements and the Energy Theft Tip-Off Service;

N has the same meaning as in Clause 8.9;

TN has the same meaning as in Clause 8.9; and

TRC is the total amount of the Recoverable Costs relating to the Theft Risk Assessment Service Arrangements and/or the Energy Theft Tip-Off Service incurred, or otherwise accounted for, in that Quarter.

Recovery of Budgeted Costs

8.10 The Panel shall, in respect of each Party and within 7 days after the start of each Quarter:

- 8.10.1 calculate the Panel's best estimate (by reference to the Approved Budget) of that Party's Cost Contribution (together with VAT thereon, if applicable) in respect of that Quarter; and
- 8.10.2 arrange for an invoice or other statement, on such terms as the Panel may from time to time prescribe, for an amount equal to such estimate to be sent to that Party. Such invoices shall separately identify Recoverable Costs for TRAS Liabilities and for ETTOS Liabilities. Such invoices shall be sent by post, by email, or by post and email, as specified by the receiving Party from time to time (or, where no preference has been specified, by post only). Such invoices shall ordinarily be payable within 30 days, or within such shorter period as the Panel may specify for TRAS Liabilities and/or ETTOS Liabilities.
- 8.11 Each Party shall, on receipt of an invoice or other statement submitted under Clause 8.10, pay the amount requested of it in accordance with (and within the time period prescribed by) the terms referred to in Clause 8.10.
- 8.11A Failure by a Party to pay (in cleared funds) an amount in accordance with Clause 8.11 shall be a **"DCUSA Payment Default"**.
- 8.11B Where a Party commits a DCUSA Payment Default, the Panel shall send a notice (a **"DCUSA Late Payment Notice"**) to the Party:
- 8.11B.1 setting out the amount owed by the Party;
- 8.11B.2 stating to whom payment should be made;
- 8.11B.3 specifying that the payment must be made by a method of same day payment, such as CHAPS; and
- 8.11B.4 stating that failure to pay may lead to an Event of Default under this Agreement.
- 8.11C Failure by a Party to remedy a DCUSA Payment Default may give rise to an Event of Default under and in accordance with Clause 54.1, and may lead to the Panel suspending a Supplier Party's rights in accordance with Clause 54.2.
- 8.11D If a DCUSA Payment Default of one or more Supplier Parties will cause DCUSA Ltd

to be unable to pay the TRAS Service Provider in accordance with the TRAS Contract and/or the ETTOS Service Provider in accordance with the ETTOS Contract, then the Panel shall consider whether additional funding is required. Where additional funding is required the Panel shall be entitled (as set out in paragraph 2.4 of Schedule 25 or paragraph 2.4 of Schedule 26, as applicable) to invoice all other Supplier Parties for the amount in default, calculating their share in accordance with Clause 8.9A (but without reference to the Supplier Parties in default). Where a Supplier Party that was in default subsequently pays some or all of the outstanding amount, the non-defaulting Supplier Parties shall be credited with the amount previously invoiced under this Clause 8.11D (as set out in paragraph 2.4 of Schedule 25 or paragraph 2.4 of Schedule 26, as applicable).

Annual Reconciliation of Costs

- 8.12 Within 40 Working Days following the end of each Financial Year, the Panel shall calculate each Party's actual Cost Contribution in respect of each Quarter of that Financial Year, and shall reconcile the actual amounts against the amounts paid (or payable) by that Party in accordance with Clause 8.11.
- 8.13 Where, in respect of a Financial Year and any Party, the aggregate amount paid in accordance with Clause 8.11:
- 8.13.1 is greater than the aggregate amount calculated in accordance with Clause 8.12, the Panel shall arrange for that Party to be reimbursed with the difference by means of either (at the Panel's discretion but so that each Party to be reimbursed in respect of a Financial Year is reimbursed by the same means):
- (A) a cheque payment prior to the next invoice to be raised pursuant to Clause 8.10; or
 - (B) a credit against the next invoice to be raised pursuant to Clause 8.10;
- or
- 8.13.2 is less than the aggregate amount calculated in accordance with Clause 8.12, the Panel shall arrange for the difference to be added to the next invoice raised pursuant to Clause 8.10.

Interest

8.14 The Panel shall be entitled, without prejudice to any other right or remedy, to charge (and where charged, a Party shall pay) interest on any payment not duly made in accordance with Clause 8.11, calculated from day to day at a rate per annum equal to the Default Interest Rate from the day after the date on which payment was due up to and including the date of payment, together with an administration charge as notified by the Panel to the Parties from time to time.

Audit

8.15 The Panel shall arrange for the costs and expenses recovered under this Clause 8 to be audited by a firm of chartered accountants on an annual basis in order to verify that all such costs and expenses were Recoverable Costs provided for in an Approved Budget.

8.16 The Panel shall copy the auditor's report to all Parties within 15 Working Days of receipt.