



## **DSC Credit Rules**

**17<sup>th</sup> July 2023**

**Prepared by Credit Risk Management – Xoserve Limited (the CDSP)**

**Version 2.4 – Approved**

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## Introduction

Xoserve Limited has been appointed by the Transporters pursuant to Standard Special Condition A15A of the Gas Transporters Licence as the CDSP and has entered into the DSC. The Data Services Contract Credit Rules are the “DSC Credit Rules” referred to in the Data Services Contract (DSC) and the Credit Policy (as defined in the DSC). The Credit Policy is referred to in GT Section D 3.1.4(iii) and 3.3(h) of the DSC Terms and Conditions and is a CDSP Service Document. The Credit Policy is an integral part of and is incorporated in the DSC.

The purpose of this document is to set out the DSC Credit Rules in support of the Credit Policy. These rules apply to all Services provided by the CDSP whether under the DSC, The UK Link User Agreement or any other agreement with any party.

The Rules are written to protect parties to the DSC against financial loss arising from commercial default (see Paragraph 2.2 below). The DSC Credit Rules are to be followed by all employees/agents of the CDSP who are involved in proposing, assessing, monitoring or managing credit exposure arising under the DSC, in order to minimise avoidable financial loss to Customers.

This document has been designed to provide existing and prospective Customers with all the information they need about the DSC Credit Rules and how they are applied, in a transparent and readily accessible manner.

These Rules aim to answer those questions that are most commonly asked by Customers and gives an overview of how DSC Credit Limits are established, secured and monitored by the CDSP on behalf of the Parties to the DSC. For ease of reference, we have also provided cross-references to the DSC to provide you with a fuller explanation of a particular legal or technical issue.

Once you have read this document, we will be pleased to discuss your requirements further and to answer any questions that you may have. Contact details can be found in paragraph 8 below.

If circumstances dictate that the DSC Credit Rules need to change, any such changes will be authorised by the DSC Credit Committee.

**NB: Liability of the CDSP is outlined in paragraph 2.5 of the Credit Policy.**

## Section A

### Glossary

Abbreviation	Description
CDS	Central Data Services
CDSP	Central Data Services Provider
DSC	Data Service Contract
FGO	Funding, Governance and Ownership arrangements
UUA	UK-Link User Agreement
S&P	Standard & Poor's Corporation
LoC	Letter of Credit
MCLOC	Multiple Customer Letter of Credit
PCG	Parent Company Guarantee
IP	Insolvency Practitioner

### Terminology

In this document:

- (a) Uniform Network Code (UNC) means the Uniform Network Code prepared pursuant to Standard Special Condition A11(6) of the gas transporter's licence, as from time to time modified;
- (b) DSC Terms and Conditions means DSC Terms and Conditions as defined in GT Section D;
- (c) Terms defined in the DSC Terms and Conditions and not otherwise defined in this Document have the meanings given to them in the DSC Terms and Conditions;
- (d) Terms defined in any other DSC Service Document and not otherwise defined in this Document have the meanings given to them in that DSC Service Document;
- (e) The further provisions of the DSC as to interpretation apply.

### Definitions

- (a) Approved Credit Rating is a Credit Rating published by an Approved Rating Agency.
- (b) Approved Credit Rating Agency means Credit Rating Agency approved by the DSC Credit Committee in line with Section 1.4.1(b) of the Credit Policy. Credit Rating Agencies

currently approved by the committee are Standard and Poor's Corporation and Moody's Investment Services for Financial Institutions (where a Letter of Credit is placed). The DSC Credit Committee have also approved Creditsafe and Experian for the provision of corporate ratings. (where a Letter of Credit or Deposit Deed has not been placed). Note: Creditsafe Nederland BV part of Creditsafe Group announced the acquisition of Graydon in March 2022. It was originally thought that Graydon was to remain running as a separate entity to Creditsafe, however there were concerns with the standard of the Graydon portal. Creditsafe replaced Graydon in November 2022.

- (c) DSC Credit Committee means the Committee set up pursuant to 1.4.1(c) of the Credit Policy.
- (d) Credit Default Notice means a notice substantially in the form set out in the DSC Credit Rules to the effect the Customer is in default of the DSC;
- (e) Services means all Services provided by the CDSP whether under the DSC, The UK Link User Agreement, or any other agreement with any party.

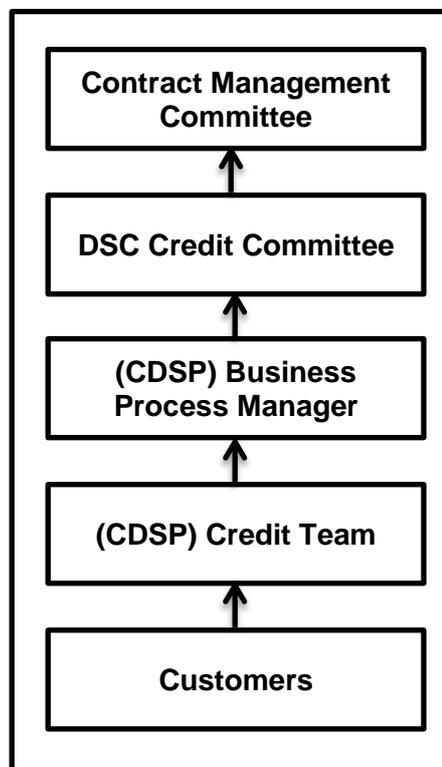
## Section 1: Key Objectives of the Credit Rules

- 1.1 The DSC Credit Committee has a set of key objectives it aims to achieve in setting Credit Rules as outlined in Section 3.1 of this document.
- 1.2 As noted above, for completeness, this document refers to certain provisions of the DSC where they are relevant to the DSC Credit Rules. Whilst all reasonable efforts have been made to verify the information in this document, it can only ever be a high-level summary of some of the key provisions in the DSC. This document is not a substitute for reading the detailed provisions of the Code DSC Provisions and must not be relied upon when making any contractual business or other decision. No representation or warranty is made as to the accuracy or completeness of the information contained herein.

**Any capitalised terms used in the DSC Credit Rules shall have the same meaning given to them in the DSC.**

### 1.3 Organisation and Responsibility of the Credit & Risk Management Function

The governance structure in respect of the operations of this Credit Policy is as follows:



## Section 2: The Data Service Contract Credit Rules (DSC Credit Rules)

### 2.1 Administration of the Rules

- (a) The DSC Credit Rules are the processes and procedures described in this document revised from time to time in accordance with the DSC and they provide the framework by which all Customers exposure to financial loss is managed.
- (b) As set out under Section 3.1 of the Credit Policy, with the approval of the DSC Credit Committee the DSC Credit Rules may be revised upon giving notice to all Customers of not less than 2 months or such shorter period as may in any particular case be approved by the DSC Credit Committee.
- (c) For the avoidance of doubt where it is determined that the DSC Credit Committee or a Customer have proposed a change to the Credit Policy the DSC Credit Committee shall give consideration to the proposal prior to making any decision to approve any revision to the prevailing DSC Credit Rules.

### 2.2 Responsibility for Financial Loss

If a Customer or multiple Customers fail to pay the Charges in-accordance with the DSC, such unrecoverable costs will be included as soon as reasonably practicable in the Costs (as defined in the Budget and Charging Methodology Document) and such Costs will be payable by the Customers as set out in the Budget and Charging Methodology Document.

**The effect of the provisions of the Budget and Charging Methodology Document is that if Customers fail to make payment of any invoice issued when due, all other Customers shall become liable for (in aggregate) for an equivalent amount (together with an amount in respect of the cost of financing such non-payment).**

## Section 3: The Data Services Contract Credit Committee (DSC Credit Committee)

### 3.1 Role and Function of the DSC Credit Committee

The DSC Credit Committee is comprised of a body of industry representatives whose role is to assist the CDSP in connection with the management of credit risk to the committee. The functions of the committee include:

- (a) Giving direction to the CDSP in respect of the management of credit risk to the CDSP or in relation to any provision of the Credit Policy
- (b) Approving changes to the DSC Credit Rules or to the form of any DSC Security
- (c) Directing the CDSP in the event of non-payment or credit default
- (d) To establish credit arrangements and associated governance that is consistent with the Credit Policy.
- (e) To minimise, as far as practically possible, CDSP's Customers (who form part of the CDSP's "mutual" community) risk from avoidable financial loss resulting from another Customer's default.
- (f) To ensure the CDSP's consistent application of processes and procedures in a manner that is not unduly discriminatory between the CDSP's customers.
- (g) Agree a suite of Management Information for the CDSP to provide reporting information to agree key credit related KPIs and allow transparency of performance.
- (h) Work with the CDSP to ensure DSC Customers operate within the Credit Policy and Credit Rules.
- (i) Work with the CDSP to develop and maintain a consistent credit limit framework for limiting CDSP's exposure to the risk of financial loss resulting from the provision of CDSP Specific Services or Additional Services or UUA Services or Direct Services or Third-Party Services or any other Service(s) as outlined in the CDSP Service Description Document.

### 3.2 General

- (a) References to the Committee in this document refer to the DSC Credit Committee, a sub-Committee of the Contract Management Committee established by it and comprising of such members, and on such terms, as the Contract Committee decides.

- (b) The DSC Credit Committee is chaired by the Joint office and is attended by up to 12 industry representatives the CDSP's Business Process Manager and/or their alternate. The DSC Credit Committee may invite other persons to attend, in a non-voting capacity.

### 3.3 Members and Appointment

3.3.1 Members are elected annually on the 1<sup>st</sup> October and at other times when vacancies occur from time to time following the decision of the Contract Management Committee. These elections are conducted by the Joint Office. Industry representatives are the only persons who are entitled to vote and have the power to appoint a standing alternate to vote on their behalf.

- (a) A member must appoint an alternate either on a standing basis or on a meeting-by-meeting basis. Such appointments shall be made in writing or by email to [enquiries@gasgovernance.co.uk](mailto:enquiries@gasgovernance.co.uk).

3.3.2 Where a member has not appointed a standing alternate and either:

- (i) Resigns; **or**
- (ii) Cannot be contacted and is absent from two consecutive regular committee meetings.

The Joint Office, on behalf of the DSC Credit Committee, will notify the Contract Management Committee that a vacancy has occurred.

3.3.3 Members are representatives in their own right and do not represent the company by which they are employed. It is recommended that members should have relevant credit management or gas industry experience. Except for interim appointments outlined above the election rules permit no more than one member per Customer. Member or alternate members of the DSC Credit Committee can hold concurrent appointments on both the DSC Credit Committee and the Energy Balancing Credit Committee (EBCC). Where members and their alternates are both unable to attend a meeting, a member may pass on their voting Proxy to another standing member of the committee by advising the chair of such prior to any meeting.

## 3.4 Meetings

- 3.4.1 The Committee endeavours to meet at least quarterly and for the purposes of voting 'Committee Representatives (of whom at least two (2) shall be Shipper Representatives representing at least two (2) Shipper Classes (excluding ANC allocated votes) and three (3) shall be DNO Representatives, NTS Representatives or IGT Representatives, excluding the Committee Chairperson) present at a meeting of a DSC Committee who can exercise six (6) votes shall be a quorum. Decisions are made by a simple majority vote.
- 3.4.2 An agenda for each meeting will be published on the Joint Office website at least five Business Days prior to the meeting and minutes published no more than five days after the meeting. A monthly operational summary will be published prior to the meeting. If the minutes are of a sensitive nature, then members can agree to circulate certain elements of the minutes to members and standing alternates only.
- 3.4.3 In addition to the regular meetings detailed above, should the need arise for the CDSP to reasonably consult with the Committee on a particular issue or in relation to any aspect of its functions, an operational meeting can be called.
- 3.4.4 A teleconferencing facility will be provided for members.
- 3.4.5 Where necessary the DSC Credit Committee may also be convened for an emergency meeting as soon as reasonably practical for the purpose including, but not limited to, discussion of the Customer's suspension of Specific Services or Additional Services or UUA Services or Direct Services or Third-Party Services or any other Services outlined within CDSP Service Description Document. For voting a quorum 'Committee Representatives (of whom at least two (2) shall be Shipper Representatives representing at least two (2) Shipper Classes (excluding ANC allocated votes) and three (3) shall be DNO Representatives, NTS Representatives or IGT Representatives, excluding the Committee Chairperson) present at a meeting of a DSC Committee who can exercise six (6) votes shall be a quorum. Due to their sensitive nature, minutes of these meetings are only circulated to members and standing alternates. In these situations, the DSC Credit Committee chair may be an Operational Manager within the CDSP. An agenda will be provided to members as soon as is reasonably practicable and pursuant to Section 2.4.3 of the Credit Policy.
- 3.4.6 The CDSP will keep the DSC Credit Rules under review subject to Section 2.1(b) of the DSC Credit Rules and the CDSP will review the DSC Credit Rules with the DSC Credit Committee at least once a year. Following any such review the CDSP shall revise the DSC Credit Rules where requested.

3.4.7 Where the CDSP brings a matter to the attention of the DSC Credit Committee relating to a particular customer this will be subject to the conditions in paragraph 2.4.3 of the Credit Policy.

## Section 4: Operation of the Credit Risk Framework

- 4.1 All contract exposure entered by the CDSP in relation to the DSC entered into at any time must be identified and measured on a continuing basis.
- 4.2 As set out in Clause 4 of the DSC Terms and Conditions, in order to accede to the DSC, Applicants must satisfy certain Accession Requirements. The conditions of being a Customer referred to in Clause 4.3(b) include:
1. All Customers shall be credit assessed by the CDSP prior to entering into an Accession Agreement. Please refer to Paragraph 4.7 below.
  2. All Customers shall provide security in the specified form and within the stipulated timeframe if requested by the CDSP. The specified forms of security and timeframes are set out in Paragraphs 4.9 to 4.12 below.
  3. All Customers shall be assigned a DSC Credit Limit. All Customers from time to time shall be required to increase their security in the event that the DSC Credit Limit is exceeded.
- 4.3 In addition to the monitoring and reassessment of the DSC Credit Limits, all Customers and all third-party security guarantors who provide security will be monitored as detailed within 4.12
- 4.4 Customer's total gross indebtedness is calculated as:

**Invoiced** (All amounts invoiced to the Customer in relation to the Services)

+

**Accrued** (Amounts not yet invoiced in relation to the Services)

-

**Disputed Sums**

-

**Payments in Advance**

=

**Total Gross Indebtedness**

**NOTE: Invoiced services are inclusive of VAT.**

## 4.5 DSC Credit Limit

- 4.5.1 A Customer's DSC Credit Limit will be reviewed and may be revised from time to time in accordance with the DSC Credit Rules on not less than thirty (30) days' notice (or any lesser period agreed by the Customer) to the Customer:
- (i) at intervals of not less than twelve (12) months;
  - (ii) where the review is requested by the Customer.
- 4.5.2 A Customer's DSC Credit Limit may be reviewed and revised immediately in accordance with the DSC Credit Rules:
- (i) where any Credit Rating is revised downwards.
  - (ii) where (without prejudice to any requirement in the DSC Credit Rules) any instrument of DSC Security expires.
  - (iii) following the appointment of any Supplier of Last Resort (as defined in TPD Section G2.1.7) by the Authority and TPD Section G2.18 applies, where the Customer is a Last Resort User (as defined in TPD Section G2.1.7)
  - (iv) where at any time the CDSP has reasonable grounds to believe that the effect of the review would be to reduce the Customer's DSC Credit Limit.
- 4.5.3 The DSC Credit Limit represents the value of unsecured credit limit plus any security (if) provided by a Customer which in the event of a default may be realised to meet its outstanding invoices, un-invoiced sums and any other costs incurred during the collection of the amounts in default.
- (i) Credit limits are applied on an individual Customer basis and are determined in accordance with the standard detailed credit assessment. Where a customer reaches 80% of their credit limit then the CDSP will inform the customer so that additional security can be lodged if necessary.

## 4.6 Approved Credit Rating Agency

The Customer may choose either the Creditsafe or Experian unsecured credit rating. Note:- Creditsafe Nederland BV part of Creditsafe Group announced the acquisition of Graydon in March 2022. It was originally thought that Graydon was to remain running as a separate entity to Creditsafe, however there were concerns with the standard of the Graydon portal. Creditsafe replaced Graydon in November 2022.

## 4.7 Principles of Credit Assessment

- 4.7.1 Once a Customer's Credit Application is received, a credit assessment will be performed prior to any Services being provided to ensure the customer has (at a minimum) a sufficient credit rating to cover the value of 2.5 months of CDSP invoices for the Services that they will incur charges for.
- 4.7.2 The credit assessment will comprise of the Customer being credit checked for an acceptable published credit rating by an approved rating agency assessment of any supporting data, as detailed in Section 1.4(b) of Credit Policy and, may be factored into any decision made to provide or extend credit.
- 4.7.3 The Credit Assessment shall consider the following factors including but not limited to;
- (i) Additions/changes to the Customer's business activity
  - (ii) Measurement of credit risk exposure
  - (iii) Monitoring of credit risk exposure
  - (iv) Escalation of the credit risk notification
  - (v) Escalation, default and recovery of debt
  - (vi) Increase in Security requirements
- 4.7.4 All Customers are required to maintain a DSC Credit Limit at all times in order to provide sufficient protection for the DSC community from a Customer failure. The CDSP will monitor each customer's credit limit against the services being received to ensure that sufficient security cover is always in place. Where a customer reaches 80% of their credit limit then the CDSP will inform the customer so that additional security can be lodged if necessary.

## 4.8 Types of Acceptable Security

- 4.8.1 When it is determined that a Customer does not have an appropriate Published Rating to cover exposures in respect of their activity, they shall be required to lodge adequate Security. Such security may be in the form set out below in Sections 4.9 to 4.12 of these rules and shall have a deemed value of zero one month prior to maturity.

## 4.9 Letter of Credit (LoC)

4.9.1 An Irrevocable Standby Letter of Credit, issued by a UK branch of a financial institution with a long-term credit rating of not less than A3 (refer to the Rating Comparison Table in 4.13) provided by Moody's Investor Services or such equivalent rating by Standard and Poor's Corporation (where such ratings conflict, the lower of the two ratings will be used).

- (i) The Letter of Credit must be issued in favour of the CDSP.
- (ii) The Letter of Credit will not be accepted unless one authorised signature is obtained from the Financial Institution.
- (iii) The Letter of Credit will have a deemed value of zero for the purposes of security one month prior to maturity.

4.9.2 The accepted format of the Irrevocable Standby Letter of Credit is set out in Appendix I and is compliant with the UCP 600 and current prevailing legislation.

## 4.10 Multiple Customer Letter of Credit (MCLOC)

4.10.1 A Multiple Customer Irrevocable Standby Letter of Credit issued by a UK branch of a financial institution with a long-term credit rating of not less than A3 Refer Rating Table in 4.14 provided by Moody's Investment Services or such equivalent rating by Standard and Poor's Corporation (where such ratings conflict, the lower of the two ratings will be used).

- (i) The Multiple User Letter of Credit must be issued in favour of the CDSP.
- (ii) The Multiple Customer Letter of Credit will not be accepted unless one authorised signature is obtained from the Financial Institution.
- (iii) The Multiple Customer Letter of Credit will have a deemed value of zero for the purposes of security one month prior to maturity.
- (iv) If this form Security is the preferred option, the companies that are covered under the Multiple Customer Letter of Credit must have the same Parent Company in common.
- (v) A side letter outlining the DSC Credit Limits that have been assigned to each Customer must accompany the Multiple Customer Letter of Credit.

4.10.2 The accepted format of the Multiple Customer Letter of Credit is set out in Appendix II. The accepted format of the side letter outlining the Credit Limits that have been assigned is set out in Appendix III.

## 4.11 Parent Company Guarantee (PCG)

A **Parent Company Guarantee (PCG)** is a **guarantee** given by a customer's ultimate or intermediate holding **company** in favour of the CDSP to secure the performance of that customer's obligations under the contract.

4.11.1 A Parent Company Guarantee shall only be accepted in the following circumstances;

- (i) The Parent Company Guarantee is from an ultimate or intermediate holding company.
- (ii) The terms of the PCG shall be based upon an indemnity / demand guarantee basis.
- (iii) The issuer of the PCG must have an acceptable credit rating by an approved rating agency.

4.11.2 The accepted format of the Parent Company Guarantee is set out in Appendix IV.

**NB: Any deviation made from the accepted format of any Security Template Document will result in the rejection of that document.**

**NB: The CDSP manages all DSC security activity on behalf of Customers. To avoid unnecessary delay, it is the responsibility of the Customer to ensure that correctly completed Security Template Documents are provided directly to the CDSP at the address detailed in paragraph 8 of this Document.**

## 4.12 Financial Institution and Corporate Ratings

4.12.1 Only Financial institutions with a Moody's long term credit rating of A3 or above or Standard and Poor's equivalent as detailed below will be acceptable. Ratings are monitored daily and in the event that an organisation is placed on watch for a possible downgrade. Affected Customers may be notified and requested to confirm contingency arrangements, in the case that a downwards rating change occurs Customers affected will be notified as soon as reasonably practicable. The following table explains the rating action that will be taken by the CDSP in the event that the rating of an organisation providing Security falls below the acceptable rating.

### 4.13 Rating Comparison Table

Ratings Comparison		Aggregate Limit (Maximum exposure acceptable for an individual Financial Institution)	Rating Action
Moody's	S&P		
Aaa Aa1 Aa2 Aa3	AAA AA+ AA AA-	£12,000,000	Rating is acceptable provided that the maximum Aggregate limit is not exceeded.
A1 A2 A3	A+ A A-	£5,000,000	Rating is acceptable provided that the maximum Aggregate Limit is not exceeded.
Baa Baa1 Baa2 Baa3	BBB+ BBB BBB-	Zero	Rating is not acceptable. In the event of a downgrade below Moody's A3 or equivalent, Customer(s) will be notified to provide alternative Security <u>within 30 days</u> . If alternate Security is not provided within 30 days, the Customer(s) DSC Credit Limit may prevent further Services being provided and indebtedness will be managed via the NTPFS process and DSC Credit Limit process.
Ba1 Ba2 Ba3 Or below	BB+ BB BB- or below	Zero	Rating is not acceptable. In the event of a downgrade below Moody's Baa3 or equivalent, the Customer(s) will be notified to provide alternative Security and the Customer's DSC Credit Limit will be set to zero with immediate effect. Indebtedness will be managed via the NTPFS process and DSC Credit Limit process.

4.13.1 The amount of any costs, expenses or other amounts incurred by the CDSP for the procurement of Credit Rating Services from third parties shall be recovered as an amount to be included as detailed in the Budget & Charging Methodology Document.

#### **4.14 Non-Registrable Deposit Deed**

4.14.1 A Non-Registrable Deposit Deed is a deed containing terms (i.e. protection from default) relating to the depositing of Cash that can be for an amount that is either part or all of the agreed Secured Credit Limit. Cash deposited with Xoserve Limited for the purpose of security must be subject to a Non-Registrable Deposit Deed.

- (i) The Non-Registrable Deposit Deed must be issued in favour of Xoserve Limited.
- (ii) The Non-Registrable Deposit Deed will not be accepted unless returned with two authorised signatories included.
- (iii) The cash held in the form of the Non-Registrable Deposit Deed will be held in a separate designated account.

The accepted format of the Non-Registrable Deposit Deed is set out in Appendix V.

NB: Any deviation made from the accepted format will not be accepted.

#### **4.15 Renewal of Security**

4.15.1 In the event that a renewal of Security is required, the Customer(s) will be notified in writing of not less than 60 days before the expiry date, to put in place revised Security 30 days prior to the existing Security's expiry.

4.15.2 If accepting this revised Security would cause the Aggregate Limit of a Financial Institution to be exceeded, the Customer(s) will be notified by email immediately upon the Customer notifying the CDSP and will be asked to make alternative provisions.

4.15.3 Where a Customer fails to put in place revised Security 30 days prior to the existing Security's expiry date the Customer will be required to provide immediate cash payment of an adequate sum to be held until the revised Security is in place based on prevailing exposures.

4.15.4 Where a Customer's DSC Indebtedness:

- (i) Exceeds 80% of the Customer's Credit Limit, the CDSP shall give the Customer notice to that effect;
- (ii) Following notice under Paragraph (i), if the indebtedness exceeds 100% of the Customer's DSC Credit Limit, the CDSP will notify;
  - (i) the Customer to such effect and requests the Customer to provide additional DSC Security in such amount as required to reduce the Customer's DSC Indebtedness to below 90% of the Customer's Credit Limit.

#### 4.16 Rating Downgrades and Security

4.16.1 Should the rating of an organisation providing Security (where a Letter of Credit has been placed) fall below Moody's rating A3 or Standard and Poor's equivalent paragraph 4.14 above, the Customer(s) will be required to provide acceptable alternative Security within 30 days of the CDSP's request.

4.16.2 Notwithstanding the above, the Customer(s) shall be permitted an extension of 30 days where:

- (i) The Customer(s) has made a written request for an extension within 7 days of the CDSP's request for alternative security: and
- (ii) The Customer(s) has been required to provide acceptable alternative Security as a result of the rating of a Financial Institution providing the Customer(s) Security falling below Moody's rating A3 or Standard and Poor's equivalent once within the preceding 6 months;

4.16.3 Customer(s) shall be permitted an extension of 60 days where:

- (i) The Customer(s) has made a written request for an extension within 7 days of the CDSP's request: for alternative security and
- (ii) The Customer(s) has on two or more occasions within the preceding 6 months, been required to provide acceptable alternative Security as a result of the rating of a financial institution providing the Customer(s) Security falling below Moody's rating A3 or Standard and Poor's equivalent.

**NB: Extension provisions will not apply where a Customer(s) original Security is due to expire within the extension period.**

- 4.16.4 Where the rating of a Financial Institution providing security falls below Baa3 (provided by Moody's Investor Services or such equivalent rating by Standard and Poor's Corporation), or where an insolvency practitioner is appointed to manage the affairs of said financial institution of company institution or company, CDSP shall give notice to downgrade the Customer's DSC Credit Limit to zero with immediate effect in accordance with Paragraph 4.16 below and Paragraph 4.14 above.
- 4.16.5 For the avoidance of doubt, the CDSP will continue to hold the original Security provided until such time as an acceptable alternative has been received and the CDSP has confirmed that the replacement security meets the requirements of the DSC Credit Rules.

#### **4.17 Revisions to a Customer's DSC Credit Limit**

- 4.17.1 As outlined in section 3 of the Credit Policy a Customer's DSC Credit Limit will be reviewed at least every 12 months. However, a review may be initiated at any other time if it is deemed there are reasonable grounds to do so in the event that a Customer's circumstances have changed. For the avoidance of doubt, the CDSP will continue to hold the original Security provided until such time as an acceptable alternative has been received and the CDSP has confirmed that the replacement security meets the requirements of the DSC Credit Rules. A Customer may apply at any time to increase its DSC Credit Limit.
- 4.17.2 A Customer who has provided DSC Security may request the CDSP to release such DSC Security (in whole or part), and following such request, provided the requirements of Section 3.3.3 of the CDSP Credit policy are satisfied, the CDSP will as soon as reasonably practicable and in any event within thirty (30) days after such request, comply with such request.
- 4.17.3 The requirement is that at the date two (2) Business Days before the date of release or reduction the amount of security the Customer's DSC Indebtedness is less than 90% of the Customer's DSC Credit Limit (as calculated after considering the proposed release or reduction of the DSC Security).
- 4.17.4 An instrument of DSC Security shall not form part of the DSC; and no provision or modification of the DSC, nor any inconsistency between the DSC and any such instrument, and nothing done by the CDSP pursuant to the DSC, shall prejudice or invalidate such instrument.

## 4.18 Special Arrangements for Transporters

- 4.18.1 Further to the DSC Credit Committee held on 16<sup>th</sup> February 2017 it was agreed that Transporters would be excluded from the requirement to provide security. Note this does not include Independent Gas Transporters.

## Section 5: Operation of the Further Security Process

### 5.1 Notice to Provide Further Security (NTPFS) Process

- 5.1.1 In accordance with paragraph 4.15.4 of the DSC Credit Rules where a Customer's DSC Indebtedness:
- (i) Exceeds 80% of the Customer's Credit Limit, the CDSP shall give the Customer notice to that effect, in the form of a Notice of Credit Limit Utilisation;
  - (ii) Following notice under Paragraph (i), if the indebtedness exceeds 100% of the Customer's DSC Credit Limit, the CDSP will notify; the Customer to such effect and request the Customer to provide additional DSC Security in such amount as required to reduce the Customer's DSC Indebtedness to below 90% of the Customer's Credit Limit. This will be in the format of a Notice to Provide Further Security.
- 5.1.2 The Customer must lodge the Further Security with the CDSP by 12:00 hours on the 10<sup>th</sup> Business Day following the date of issue of the NTPFS.
- 5.1.3 The CDSP shall not be under any obligation to pay any credit invoices falling due to a Customer until the NTPFS has been satisfied (Security lodged or NTPFS successfully appealed and withdrawn).
- 5.1.4 Any credit invoice falling due will be paid into the Customer's Cash Deposit Account on its due date.
- 5.1.5 The CDSP shall not be liable to pay any interest if a credit invoice is subsequently paid to a Customer after its due date.

## 5.2 Right of Appeal

- 5.2.1 A Customer may Appeal in the following circumstances where;
- (a) A NTPFS (the “**relevant**” Further Security Request) has been submitted to a Customer; and
  - (b) The Customer considers it inappropriate that it should be required to provide a further, additional or revised Security.
- 5.2.2 The Customer may, not later than 12:00 hours on the 3rd Business Day following the day on which the Further Security Request was submitted, so notify the CDSP, specifying in as much detail as possible the Customer’s reasons for appeal.
- 5.2.3 In the event that the Appeal is not successful. The Customer must provide the CDSP with full satisfaction of the NTPFS within 24 hours of the Notice of Outcome of the Appeal Decision or in any event no later than the expiry of the NTPFS.
- 5.2.4 Following review of the DSC Credit Committee a Notice of Outcome will be issued which may result in the:
- (a) Re-instatement of the NTPFS if the DSC Credit Committee considers the appeal to be invalid.
  - (b) Issue a revised NTPFS if the DSC Credit Committee considers the appeal does not fully mitigate the NTPFS.
  - (c) Issue a withdrawal if the DSC Credit Committee considers the appeal to be fully valid.

## 5.3 Failure to Provide Further Security

- 5.3.1 Where a Customer fails to lodge further security in accordance with the NTPFS, the CDSP shall submit to the Customer a Notice of Failure to Provide Further Security – Credit Default (NFTPFS) in the form set out in the DSC Credit Rules.
- 5.3.2 The CDSP shall notify the DSC Credit Committee that such a notice has been issued and
- (i) In the case if a Customer who is a Shipper User, each Transporter;
  - (ii) In the case of a Customer who is a Transporter, the Authority.
- 5.3.3 Where and for as long as the Customer's DSC Indebtedness exceeds the relevant percentage of the Customer's DSC Credit Limit as specified in the DSC Credit Rules the CDSP may suspend the provision of any Specific Service or

Additional Service which the CDSP is providing to the Customer until such time as the Customer's DSC Indebtedness is reduced to less than 100% of the Customer's DSC Credit Limit.

#### **5.4 Process after a Notice of Failure to Provide Further Security is Issued**

Where and for as long as the defaulting Customer's DSC Indebtedness for the time being exceeds 100% of the Customer's DSC Credit Limit, the CDSP may convene a meeting of the Committee and the Committee may direct the CDSP to give a Credit Default Notice to the defaulting Customer in which case the CDSP will send a Credit Default Notice to the defaulting Customer, with a copy to:

- (a) in the case of a defaulting Customer who is a Shipper User, each Transporter and the Authority; and
- (b) in the case of a defaulting Customer who is an independent Transporter, to the Authority.

## Section 6: Payment of Invoices

### 6.1 Failure to Pay an Invoice

6.1.1 A Notice of Failure to Pay Invoice – Credit Default (NFTPI) (pursuant to Paragraph 4 of the Credit Policy) will be issued on the next Business Day following the due date where a Customer fails to pay an invoice in respect of Services provided by the CDSP. This will request that the Customer settles the amount in full by two Business Days after issue of the Notice. Late Payment charges will accrue in accordance with the Terms and Conditions of the Contract. All payments due to the Customer will be withheld, late payment interest will not accrue (against payments withheld by the CDSP) and any monies will be paid into the Customer's Cash Deposit Account.

6.1.2 Where a Customer does not comply within two Business Days following the issue of the NFTPI, the CDSP may:

- (a) notify the Committee of the Customer's failure to pay Charges by the due date for payment;
- (b) convene a meeting of the Committee, at which meeting the Committee may direct the CDSP to take one or more of the DSC Remedial Steps; and
- (c) take such DSC Remedial Steps as directed by the Committee.

6.1.3 Remedial Steps may comprise:

- (a) reviewing and revising the defaulting Customer's DSC Credit Limit;
- (b) notifying other Customers of the defaulting Customer's failure to pay Charges by the due date for payment;
- (c) accelerating the due date of payment for future invoices submitted to the defaulting Customer (by such period as approved by the Committee);
- (d) suspending the provision of any Specific Service, Additional Service, or any other Service which the CDSP is providing to the defaulting Customer;
- (e) taking such DSC Recovery Steps as approved by the Committee; and
- (f) enforcing and realising DSC Security provided to the CDSP by the defaulting Customer.

The Defaulting Customer will be advised of Remedial steps taken.

- 6.1.4 Upon expiry of the NFTPI where a Customer has not settled any of the sums due, for more than £10,000 the CDSP may convene a meeting of the DSC Credit Committee and the Committee may direct the CDSP to issue a Credit Default Notice to the defaulting Customer, in which case the CDSP will send a Credit Default Notice to the defaulting Customer pursuant to paragraph 4.1.4 of the Credit Policy.

## **6.2 Withholding Against an Invoice**

- 6.2.1 A Customer may not withhold payment against a DSC CDSP Invoice. Any queries must be notified by the Customer to the CDSP in writing within 18 months from the date the invoice was issued, in accordance with clause 5.3 of the DSC Terms & Conditions.

## **6.3 DSC Recovery Steps**

In accordance with Section 4 of the DSC Credit Policy where the DSC Credit Committee authorises the CDSP to take further enforcement action in respect of any amounts outstanding, the CDSP shall keep the Committee reasonably informed as to progress of such recovery steps.

- 6.3.1 Any costs incurred by the CDSP in pursuing such action and any unrecovered amounts shall be recovered from Customers in accordance with the Budget and Charging Methodology.
- 6.3.2 Where uncovered amounts are less than £1000 (excluding VAT) then the CDSP will inform the Credit Committee before arranging for the debt to be written off.
- 6.3.3 Where unrecovered amounts exceed £1000 (excluding VAT) then the CDSP will pursue the debt until such time as instructed by the committee.
- 6.3.4 Should debt exceeding £1000 (excluding VAT) be deemed unrecoverable (e.g., no further dividends following administration) then the Credit Committee/CDSP may notify (depending on the value of the debt) the Contract Management Committee of the debt value and recovery steps taken for their awareness.

## Section 7: Appointment of Insolvency Practitioner (IP) to a Customer

Where an Insolvency Practitioner (IP) is appointed, assurances are required within two Business Days to provide an undertaking to cover ongoing exposures. Should the IP fail to provide an undertaking within two Business Days of its appointment, an emergency meeting of the DSC Credit Committee shall be convened to determine if a Suspension Notice for CDSP Services should be issued and the CDSP shall inform the Transporters of the failure of the IP to provide such undertaking as required.

7.1 The CDSP shall convene a meeting of the DSC Credit Committee as soon as reasonably practicable following the failure of the receiver, administrator, trustee-in-bankruptcy or foreign insolvency practitioner (as appropriate) to provide those assurances referred above and shall consult with the DSC Credit Committee to determine whether the CDSP should be obliged to issue the Suspension Notice, pursuant to Paragraph 4.1.2(d) of the Credit Policy or whether the DSC Credit Committee should defer taking such step.

Subject to Paragraph 4.1.4 and 4.2.1 of the Credit Policy, the CDSP shall be entitled to take such action as the DSC Credit Committee recommends.

## Section 8: Contact Details

8.1 If you require further information please contact Brendan Gill, CDSP, at the address below:

**Credit Risk Management  
Xoserve Limited  
Lansdowne Gate  
65 New Road  
Solihull  
West Midlands  
B91 3DL**

**Tel No: 0121 229 2085**

**[box.Xoserve.CRM\\_Xoserve@Xoserve.com](mailto:box.Xoserve.CRM_Xoserve@Xoserve.com)**

8.2 Each Customer shall provide to the CDSP:

- (a) A single telephone number, a single address, a single email address by means of which the CDSP may contact a representative of the Customer for any purpose connected with this Document.
- (b) The name(s) and title(s) of the Customer's representative at such numbers and addresses.

8.3 Each Customer shall give the CDSP notification of any amendment to the details provided under Paragraph 2.6.1 of the DSC Credit Policy no later than the day following the day on which such amendment has effect.

## Appendix I – Proforma Irrevocable Standby Letter of Credit

To: Xoserve Limited (company number: 05046877)

Lansdowne Gate

65 New Road

Solihull

B91 3DL

(“**Xoserve**”)

Date: [.....]

### IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER [.....]<sup>1</sup>

- 1) We, by this letter, establish in your favour our irrevocable standby letter of credit (this “**Letter of Credit**”) for the account of [.....]<sup>2</sup> (the “**Company**”). This Letter of Credit is issued in connection with the Company’s obligations to you pursuant to the agreement(s) which Xoserve and the Company are parties (the “**Agreements**” which term shall include any of the Agreements as from time to time amended, varied, modified, supplemented, restated, novated or reduced).
- 2) We understand that the Company and you may from time to time agree to amendments to, or other variations or extensions of, the terms of any of the Agreements and that any of the Agreements may from time to time be modified, varied, restated or amended. Our obligations under this Letter of Credit, as set out herein, will apply notwithstanding any such modifications, amendments, variations, restatements or extensions or change in the parties to any of the Agreements or the termination of any of the Agreements provided that our maximum liability to you under this Letter of Credit shall not exceed [£ .....]<sup>3</sup>:
- 3) We shall make payments to you under this Letter of Credit on your written demand for payment provided such demand is:

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<sup>1</sup>Insert Number

<sup>2</sup>Insert full name, company number, country of incorporation and registered address of Company.

<sup>3</sup>Insert maximum amount payable under this Letter of Credit

- a) presented to us at [.....]<sup>4</sup> ;
  - b) accompanied by your certificate that the Company has failed to honour, in whole or in part, its obligations to you under any of the Agreements and the amount of your demand under this Letter of Credit is not greater than the total amount of sums then due and payable to you by the Company pursuant to those obligations;
  - c) subject to clause 2 above;
  - d) not received by us after the Expiry Date; and
  - e) lawfully made by you.
- 4) This Letter of Credit will become effective on [.....]<sup>5</sup> and expire [.....]<sup>6</sup> (the “**Expiry Date**”) and the demand(s) and certificate(s) referred to in paragraph 3 of this Letter of Credit must be presented by you to us on or before the Expiry Date. We undertake that all demands made in accordance with this Letter of Credit will be met with due honour.
- 5) This Letter of Credit is a transaction separate from any other on which it may be based.
- 6) This Letter of Credit and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) is subject to the (2007 revision), International Chamber of Commerce Publication No. 600, and, to the extent not inconsistent therewith, shall be governed by and construed in accordance with English law. In the event of any dispute relating to this Letter of Credit and any non-contractual obligations arising out of or in connection with it, we hereby agree to submit to the exclusive jurisdiction of the courts of England.
- 7) All payments by us under this Letter of Credit shall be made in full, without set-off or counterclaim and, save as provided below, free and clear of any deductions or withholdings in immediately available, freely transferable, cleared funds for value on the date specified in your demand or as soon as practically possible but no later than 3 business days from the date specified in your demand<sup>7</sup> to the account notified by you to us. If at any time we are required by law to make any deduction or withholding in respect of any taxes, duties or other charges or withholdings from any payment due under this Letter of Credit, the sum due from us in respect of such

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<sup>4</sup>Insert address of U.K. bank to which demands under this Letter of Credit are to be sent

<sup>5</sup>Insert date.

<sup>6</sup>Insert date.

<sup>7</sup> ICC rules currently allow the issuer 5 business days to assess the demand

payment shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, you receive on the due date and retain (free of any liability in respect of such deduction or withholding) a net sum equal to the sum which you would have received had no such deduction or withholding been required to be made.

Yours faithfully

.....

duly authorised signatory for and on behalf of [.....]<sup>8</sup>

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<sup>8</sup>Insert name of U.K. bank providing this Letter of Credit

## Appendix II – Proforma Multiple Customer Irrevocable Standby Letter of Credit

To: Xoserve Limited (company number: 05046877)

Lansdowne Gate

65 New Road

Solihull

B91 3DL

(“Xoserve”)

Date: [.....]

### IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER [.....]<sup>9</sup>

- 8) We, by this Letter of Credit (this “**Letter of Credit**”), establish in your favour our irrevocable standby letter of credit for the account of [Customer #1], a company incorporated in [ ] with registered number [ ] whose registered office is at [ ], [Customer #2], a company incorporated in [ ] with registered number [ ] whose registered office is at [ ] and [Customer ], a company incorporated in [ ] with registered number [ ] whose registered office is at [ ], (each being a “**Customer**” and together the “**Customers**”). This Letter of Credit is issued in connection with the Customers’ obligations to you pursuant to the agreement(s) specified in the Appendix to this Letter of Credit to which Xoserve and all or any of the Customers are parties (the “**Agreements**” which term shall include any of the Agreements as from time to time amended, varied, modified, supplemented, restated, novated or reduced).
- 9) We understand that any or all of the Customers and you may from time to time agree to amendments to, or other variations or extensions of, the terms of any of the Agreements and that any of the Agreements may from time to time be modified, varied, restated or amended. Our obligations under this Letter of Credit, as set out herein, will apply notwithstanding any such modifications, amendments, variations, restatements or extensions or change in the parties to any of the Agreements or the termination of any of the Agreements provided that

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<sup>9</sup>Insert Number

- a) our maximum liability to you under this Letter of Credit shall not exceed [£ .....]<sup>10</sup>;  
and
- b) we shall not be required to pay claims made by you under this Letter of Credit which are received by us after the Expiry Date.

10) We shall make payments to you under this Letter of Credit on your written demand for payment provided such demand is presented to us at [.....]<sup>11</sup> accompanied by your certificate that all or any of the Customers has failed to honour, in whole or in part, its obligations to you under any of the Agreements and the amount of your demand under this Letter of Credit is not greater than the total amount of sums then due and payable to you by the Customers pursuant to those obligations. For the avoidance of doubt, it is acknowledged that you may demand payment hereunder on any number of occasions but subject to clause 2 above; and any demand hereunder may be lawfully made by you or any person on your behalf.

11) This Letter of Credit will become effective on [.....]<sup>12</sup> and expire on 30 days after the final payment obligation is due under the Agreements (the “**Expiry Date**”) and the demand(s) and certificate(s) referred to in paragraph 3 of this Letter of Credit must be presented by you to us on or before the Expiry Date. We undertake that all demands made in accordance with this Letter of Credit will be met with due honour.

12) This Letter of Credit is a transaction separate from any other on which it may be based.

13) This Letter of Credit and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) is subject to the Uniform Customs and Practice for Documentary Credits (2007 revision), International Chamber of Commerce Publication No. 600, and, to the extent not inconsistent therewith, shall be governed by and construed in accordance with English law. In the event of any dispute relating to this Letter of Credit and any non-contractual obligations arising out of or in connection with it, we hereby agree to submit to the exclusive jurisdiction of the courts of England.

14) All payments by us under this Letter of Credit shall be made in full, without set-off or counterclaim and, save as provided below, free and clear of any deductions or withholdings in immediately available, freely transferable, cleared funds for value

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<sup>10</sup>Insert maximum amount payable under this Letter of Credit

<sup>11</sup> Insert address for service of notice

<sup>12</sup>Insert date.

on the date specified in your demand and/or as soon as practically possible but no later than three business days from the date specified in your demand<sup>13</sup> to the account notified by you to us. If at any time we are required by law to make any deduction or withholding in respect of any taxes, duties or other charges or withholdings from any payment due under this Letter of Credit, the sum due from us in respect of such payment shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, you receive on the due date and retain (free of any liability in respect of such deduction or withholding) a net sum equal to the sum which you would have received had no such deduction or withholding been required to be made.

Yours faithfully

.....

duly authorised signatory for and on behalf of [.....]<sup>14</sup>

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<sup>13</sup> ICC rules currently allow the issuer 5 business days to assess the demand

<sup>14</sup>Insert name of U.K. bank providing this Letter of Credit

## Appendix III – Multiple User Letter to Xoserve Ltd – Data Services Contract Letter of Credit

To: Xoserve Ltd  
Lansdowne Gate  
65 New Road  
Solihull  
B91 3DL

Company No: 05046877  
("Xoserve")

Date

Dear Sirs

### **Letter of Credit dated [insert date] granted by [ ] in favour of Xoserve (the "Letter of Credit")**

We refer to the Letter of Credit described above which relates to the liabilities of **[insert details of all Users]** (each a "User" and together the "Users").

For the purposes of this letter:

- (a) **"Data Services Contract"** shall mean the document (as the same may be modified, varied or amended from time to time) prepared by the Transporters for the purposes of their Transporter's Licences;
- (b) the terms **"DSC"**, **"Secured Credit Limit"**, **"User Default"**, shall (subject to paragraph (c) below) have the meanings given to them from time to time in the **Data Services Contract**; and
- (c) in the definitions **"Data Services Contract"**, **"CDSP"** shall mean **Xoserve Ltd**:

In consideration of your agreeing to accept one letter of credit in respect of the Secured Credit Limits of all of the Users, we have agreed to enter into this letter and to be bound by its terms.

We acknowledge that:

- a) pursuant to the Data Services Contract, each User has currently been allocated a Secured Credit Limit, as set out below:

[User 1] Secured Credit Limit: £ [ ]

[User 2] Secured Credit Limit: £ [ ]

[User 3] Secured Credit Limit: £ [ ]

- (b) the total of the Users' individual Secured Credit Limits is currently £ [ ]; and
- (c) the Secured Credit Limit of each User may be altered as provided for in the Code at any time (whether before or after any demand referred to in paragraph number 1 below of this letter). Any such alteration shall not affect the provisions of this letter.

We are writing to acknowledge and confirm our agreement with the following:

1. If a demand is made by Xoserve Ltd under the Letter of Credit in relation to the liabilities of any one or more of the Users to Xoserve Ltd will, where practicable, discuss with each of the other User(s) whether any of the Secured Credit Limits of the other User(s) need to be adjusted. If the amount demanded is a sum greater than the then Secured Credit Limit of the User(s) in relation to which the demand is made, Xoserve Ltd will (whether or not it has been able to discuss the same with such other User(s)) be entitled to reduce the Secured Credit Limit(s) of any one or more of the other User(s) as it thinks fit. Any such reduction(s):
  - (a) shall take effect immediately on determination of such reduction by Xoserve Ltd without the need under the DSC or otherwise for any notice or specified amount of notice to the relevant User(s) (and the Users hereby waive any right to any such notice);
  - (b) shall take effect notwithstanding that it may result in Xoserve Ltd being able to give a Termination Notice to any one or more of the Users and/or cause a User Default to occur in relation to any one or more of the Users.
2. Xoserve Ltd will notify a User as soon as reasonably practicable of any reduction in its Secured Credit Limit pursuant to paragraph number 1 of this letter.
3. For the avoidance of doubt:
  - (a) in making any reduction in any Secured Credit Limit(s) pursuant to paragraph number 1 of this letter, Xoserve Ltd owes no duty to any User(s) to make such reduction proportionately or equitably or on any particular basis between any User(s) but shall be entitled to determine the Secured Credit Limit of each particular User as it in its absolute discretion thinks fit; and
  - (b) if subsequent to any reduction in its Secured Credit Limit under paragraph number 1 of this letter any User wishes to increase its Secured Credit Limit it shall only be entitled to do so as provided for in the Code.
4. Each of the Users hereby authorises Xoserve Ltd to disclose any information it may have in relation to any User (including without limitation its Secured Credit Limit and/or any actual or proposed security or other arrangements and any proposed change in its Secured Credit Limit whether under this letter or otherwise) to any of the other Users. For the avoidance of doubt, nothing in this letter shall oblige Xoserve Ltd to disclose any such information.
5. We acknowledge and agree that the rights of and protections afforded to Xoserve Ltd pursuant to this letter may be exercised and claimed by Xoserve Ltd and by any person authorised by Xoserve Ltd.
6. This letter is and is intended to be legally binding and is subject to the laws of England.

Please sign and return to us the enclosed copy to acknowledge your receipt of this letter and confirm your acceptance of its terms.

Yours faithfully

for and on behalf of  
[User 1]

for and on behalf of  
[User 2]

for and on behalf of  
[User 3]

-on duplicate-

We acknowledge receipt of the letter from [Users] dated [ ] (of which the above is a copy) and confirm our acceptance of its terms.

Yours faithfully

for and on behalf of  
Xoserve Ltd

## Appendix IV – Proforma Parent Company Guarantee

[GUARANTOR] (1)

In favour of

XOSERVE LIMITED (2)

### GUARANTEE

THIS GUARANTEE is made on .....<sup>15</sup> by  
[.....]<sup>16</sup> a company registered in [.....]<sup>17</sup> with  
company number [.....]<sup>18</sup> and having its registered office at  
[.....]<sup>19</sup> (herein called the “**Guarantor**”) in favour of Xoserve  
Limited a company registered in England and Wales (No. 5046877) having its registered office  
a Lansdowne Gate, 65 New Road, Solihull, B91 3DL herein called the “**Service Provider**”.

### WHEREAS

- (a) This Guarantee is supplemental to the agreements specified in the Schedule to this  
Guarantee to which the Service Provider and [.....]<sup>20</sup>, a company  
registered in [.....]<sup>21</sup> with company number [.....]<sup>22</sup>  
and having its registered office at [.....]<sup>23</sup>  
(herein called the “**Company**”) are or may become parties and such other agreements  
to which the Company may from time to time become bound by virtue of the  
agreements specified in the Schedule. The agreements specified in the Schedule  
and all such other agreements are herein called the “**Agreements**” (which term shall

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<sup>15</sup> Insert Date

<sup>16</sup> Insert Guarantor’s name

<sup>17</sup> Insert jurisdiction of registration. Particular care should be taken if the guarantor is not (1) a private company limited by shares or (2) registered in England and Wales. Specialist legal advice should be sought in such circumstances

<sup>18</sup> Insert company number

<sup>19</sup> Insert registered address

<sup>20</sup> Insert name of principal contractor

<sup>21</sup> Insert jurisdiction of registration

<sup>22</sup> Insert company number

<sup>23</sup> Insert address

include any of the Agreements as from time to time amended, restated, varied, modified, supplemented, novated or reduced).<sup>24</sup>

- (b) The Service Provider has entered or agreed to enter into one or more of the Agreements and/or permit the Company to incur (or as the case may be, to continue to incur) indebtedness pursuant to one or more of the Agreements subject to the Guarantor guaranteeing performance by the Company of its obligations pursuant to the Agreements.
- (c) The Guarantor is the parent company of the Company and has agreed to guarantee the Company's obligations under the Agreement in accordance with the terms and conditions contained in this Deed.

NOW THIS DEED WITNESSETH and the Guarantor hereby agrees as follows:

## **1 Guarantee and Indemnity**

- 1.1 In consideration of the Service Provider entering into the Agreements, the Guarantor irrevocably and unconditionally guarantees the due and punctual performance by the Company of the Company's duties and obligations to the Service Provider under the Agreements (the "**Guaranteed Liabilities**") PROVIDED that the liability of the Guarantor hereunder shall not exceed £ [.....]<sup>25</sup> ([..... pounds sterling]).
- 1.2 As a separate and independent obligation, the Guarantor (as a primary obligor and not merely as a surety) agrees that it shall remain liable in respect of an obligation or liability of the Company even if that obligation or liability is not or ceases to be valid or enforceable against the Company for whatever reason, whether or not known to the Service Provider, as if the same were fully valid and enforceable.
- 1.3 If the Company fails to observe or perform any of its duties or obligations to the Service Provider under any of the Agreements, or if the Company fails to pay any sum, loss, debt, damage, interest, cost or expense due from the Company to the Service Provider under or in connection with any of the Agreements, the Guarantor (as a separate and independent obligation and liability from its obligations and liabilities under clause 1.1) shall indemnify the Service Provider against all loss, debt, damage, interest, cost and

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<sup>24</sup> The definition of "Agreements" purports to extend to additional documents entered into in the future in connection with the agreements listed in the Schedule.

<sup>25</sup> Insert maximum liability.

expense incurred by the Service Provider by reason of such failure or non-payment and shall, on first written demand, pay to the Service Provider, without any deduction or set-off, the amount of that loss, debt, damage, interest, cost and expense.

## **2 Interest and Costs**

- 2.1 The Guarantor agrees to pay interest on each amount demanded under this Guarantee and on any interest compounded under this clause 2.1 from the date of demand until payment (as well after as before judgment) at a rate of 2 per cent per annum above Barclays Bank plc base rate accruing daily. Such interest shall be calculated and compounded monthly if not paid on demand but without prejudice to the Service Provider's right to require payment of such interest.<sup>26</sup>
- 2.2 The Guarantor agrees to pay legal and other costs and expenses (on a full and unqualified indemnity basis) incurred by the Service Provider whether before or after the date of demand on the Guarantor: (i) in enforcing or reasonably endeavouring to enforce the payment of any money due under this Guarantee or otherwise in relation to this Guarantee; and (ii) in resisting or reasonably endeavouring to resist any claims or defences made against the Service Provider in connection with the liabilities or alleged liabilities of the Company guaranteed hereunder or any money or benefits received by or any preference or alleged preference given to the Service Provider by or from the Company.

## **3 Service Provider Protections**

- 3.1 The liability of the Guarantor under this Guarantee shall not be impaired or discharged by reason of any of the following (whether or not the Guarantor has notice thereof):
- (a) any amendment, variation or waiver (however fundamental) of any provision of any of the Agreements;
  - (b) any grant of time, indulgence, waiver, concession or forbearance shown by the Service Provider towards the Company or the Guarantor whether as to payment or time for payment or any arrangement entered into, or composition accepted by the Service Provider modifying (by operation of law or otherwise) the rights and remedies of the Service Provider under any of the Agreements with regard to payment or time for payment;

- (c) any variation (whether pursuant to the Agreements or otherwise) of the Company's credit limit (as allocated by the Service Provider to the Company) (the "**Credit Limit**") or by the Company exceeding its Credit Limit for any reason;
- (d) any action lawfully taken by any party to the Agreements to determine any of the Agreements as respects the Company or any other party thereto, or because of which the Company ceases to be a party to any of the Agreements;
- (e) any change in the relationship between the Guarantor and the Company;
- (f) any disability, legal limitation, incapacity or change in the status or constitution of the Company, the Guarantor or the Service Provider;
- (g) the bankruptcy, liquidation, dissolution, winding-up or insolvency of the Company or any receivership, administration, moratorium, composition of creditors or other analogous event affecting the Company or any of its property;
- (h) any third party becoming or ceasing to be a party to any of the Agreements;
- (i) any failure or delay by the Service Provider to assert any of its rights under this Guarantee;
- (j) any composition discharge release or other variation of liability entered into with or granted to the Company;
- (k) the invalidity or unenforceability of the obligations of the Company under any of the Agreements;
- (l) any intermediate payment, settlement of account or discharge in whole or in part of the Guaranteed Liabilities; or
- (m) any other act or omission of the Service Provider or any other circumstance which but for this provision might discharge the Guarantor.

3.2 This Guarantee shall:

- (a) be in addition to any present or future Collateral Instrument (as defined in clause 3.6 below), right or remedy held by or available to the Service Provider; and
- (b) not be in any way prejudiced or affected by:

- (i) the existence of any Collateral Instrument, rights or remedies; or
- (ii) any Collateral Instrument becoming wholly or in part void, voidable or unenforceable on any ground; or
- (iii) the Service Provider dealing with, exchanging, varying or failing to perfect or enforce any Collateral Instrument; or
- (iv) the Service Provider giving time for payment or indulgence or compounding with any person liable for the Guaranteed Liabilities.

3.3 The Service Provider shall not be obliged to make any claim or demand on the Company or to resort to any Collateral Instrument or other means of payment now or in future held by or available to it before enforcing this Guarantee.

3.4 No action taken or omitted by the Service Provider in connection with any Collateral Instrument or other payment or any variation, amendment, supplement, novation or replacement of any Collateral Instrument shall discharge, reduce, prejudice or affect the Guaranteed Liabilities or liability of the Guarantor under this Guarantee.

3.5 The Service Provider shall not be obliged to apply any money or other property received or recovered in consequence of any enforcement or realisation of any Collateral Instrument or other payment in reduction of the Guaranteed Liabilities.

3.6 For the purposes of this clause “**Collateral Instruments**” means notes, bills of exchange, certificates of deposit and other negotiable and non-negotiable instruments, guarantees, indemnities and other assurances against financial loss, and any other documents or instruments which contain or evidence an obligation (with or without security) to pay, discharge or be responsible directly or indirectly for, any indebtedness or liabilities of the Company, and includes any document or instrument creating or evidencing an encumbrance, however defined and includes, without limitation, letters of credit, deposit agreements and escrow agreements.

3.7 The Guarantor shall exercise only in accordance with any of the Service Provider’s instructions:

- (a) its rights of subrogation, contribution and indemnity in connection with any payment by the Guarantor pursuant to this Guarantee;
- (b) its right to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Company obligations held by the Service Provider; and

- (c) its right to prove or claim in the bankruptcy, liquidation, dissolution or insolvency of the Company or any receivership, administration, moratorium, composition of creditors or other analogous event affecting the Company or any of its property.

Any amount recovered as a result of the exercise of such rights shall be paid to the Service Provider on demand.

## **4 Representations and Warranties**

4.1 The Guarantor hereby represents and warrants to the Service Provider on the date of this Guarantee and on each day thereafter until the Termination Date that:

- (a) the Guarantor is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has power to carry on its business as now being conducted and to own its property and other assets;
- (b) the Guarantor has full power and authority to execute, deliver and perform its obligations under this Guarantee and no limitation on the powers will be exceeded as a result of the Guarantor entering into this Guarantee;
- (c) the execution, delivery and performance by the Guarantor of this Guarantee and the performance of its obligations under this Guarantee have been duly authorised by all necessary corporate action and do not contravene or conflict with:
  - (i) the Guarantor's memorandum and articles of association or other equivalent constitutional documents; or
  - (ii) any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is a party, or which is binding upon it or any of its assets; or
  - (iii) the terms of any agreement or other document to which the Guarantor is a party or which is binding upon it or any of its assets; and
- (d) this Guarantee is the legal, valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms;

- (e) no litigation, arbitration or administrative proceedings are taking place, pending or, to the Guarantor's knowledge, threatened against it or any of its assets;
- (f) no event or circumstance is outstanding which constitutes a default under any deed or instrument which is binding on the Guarantor, or to which its assets are subject, which might have a material adverse effect on the Guarantor's ability to perform its obligations under this Guarantee; and
- (g) the Guarantor's payment obligations under this Guarantee rank at least *Pari passu* with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

4.2 The Guarantor acknowledges that the Service Provider has accepted this Guarantee in full reliance on the representations and warranties set out in this clause 4.

## **5 Payments**

5.1 All payments by the Guarantor under this Guarantee shall be made in full, without set-off or counterclaim and, subject to clause 5.2, free and clear of any deductions or withholdings in immediately available, freely transferable, cleared funds for value on the date specified in the Service Provider's demand to the account notified to the Guarantor by the Service Provider.

5.2 If at any time the Guarantor is required by law to make any deduction or withholding in respect of any taxes, duties or other charges or withholdings from any payment due under this Guarantee, the sum due from the Guarantor in respect of such payment shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the Service Provider receives on the due date and retains (free of any liability in respect of such deduction or withholding) a net sum equal to the sum which it would have received had no such deduction or withholding been required to be made.

## **6 Transfer**

6.1 The Guarantor may not assign or transfer any of its rights or obligations under this Guarantee. The Service Provider may only assign its rights under this Guarantee to a person in favour of whom an assignment has been made under the Agreements.

6.2 The Service Provider may disclose to a prospective assignee or transferee or to any other person proposing to enter into any agreement with the Service Provider in

relation to any of the Agreements such information about the Guarantor as the Service Provider thinks fit.

## **7 Severance**

- 7.1 If any provisions of this Guarantee become invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

## **8 Remedies and Waivers**

- 8.1 No amendment of this Guarantee shall be effective unless it is in writing and signed by, or on behalf of, each party (or its authorised representative).
- 8.2 No failure or delay by the Service Provider in exercising any right or remedy shall operate as a waiver, nor shall any single or partial exercise or waiver of any right or remedy preclude its further exercise or the exercise of any other right or remedy.
- 8.3 The Service Provider's rights under this Guarantee are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Service Provider deems expedient.

## **9 Third Party Rights**

A person who is not a party to this Guarantee (including any employee, officer, agent, representative or sub-contractor of any party) shall not have the right to enforce any term of this Guarantee which expressly or by implication confers a benefit on that person without the express prior agreement in writing of the Guarantor and the Service Provider, which agreement must refer to this clause 9.

## **10 Termination**

- 10.1 This Guarantee shall secure the ultimate balance of the Guaranteed Liabilities from time to time and shall be a continuing security and shall not be affected by any performance, payment, settlement, or other matter under or in respect of the Agreements or this Guarantee and shall (subject to clause 10.2) remain in full force and effect until

(a) the date of termination of all the Agreements as respects of the Company.

- 10.2 Notwithstanding clause 10.1 above and any release, discharge, termination or settlement between the Service Provider and the Guarantor the liability of the Guarantor under this Guarantee shall continue in full force and effect following the

Termination Date and/or such release, discharge, termination or settlement in relation to:

- (a) the Guaranteed Liabilities which shall have become due at the Termination Date; and
- (b) the Guaranteed Liabilities (including for the avoidance of doubt and without limitation contingent and unascertained liabilities) which may become due, owing or incurred by the Company to the Service Provider pursuant to any transaction, dealing, commitment or other engagement entered into or effected either (i) prior to the Termination Date or (ii) on or after the Termination Date pursuant to any commitment, expressed or implied, assumed or undertaken by the Company to the Service Provider prior to the Termination Date; and
- (c) the Guaranteed Liabilities if any moneys paid to the Service Provider in reduction of the indebtedness of the Company under any of the Agreements has to be repaid by the Service Provider by virtue of any provision or enactment relating to bankruptcy, liquidation, dissolution, administration, insolvency or other analogous event for the time being in force or on any other ground. If that happens the liability of the Guarantor under this Guarantee shall be computed as if such moneys had never been paid to the Service Provider at all; and
- (d) the Guaranteed Liabilities if any security, disposition or payment to the Service Provider from the Guarantor is liable to be void, set aside or ordered to be refunded pursuant to any enactment or law relating to bankruptcy, liquidation, dissolution, administration, insolvency or other analogous event or for any other reason whatsoever. If that happens, the Service Provider shall be entitled to recover from the Guarantor to the full extent of this Guarantee as if the release, discharge or settlement had not occurred and such payment had not been made.

10.3 The Service Provider shall be entitled to retain this Guarantee after as well as before the payment or discharge of all the Guaranteed Liabilities for such period as it may determine.

## **11 Evidence of Amounts and Certificates**

Any statement of account of the Company, signed as correct by an officer of the Service Provider, showing the amount of the Guaranteed Liabilities shall, in the absence of manifest error, be binding and conclusive on and against the Guarantor.

## 12 Notices

12.1 All notices or other communications under or in connection with this Guarantee shall be sent by email and a confirmatory copy of the notice shall be signed and delivered personally or by courier to the relevant Party or Parties or posted by recorded delivery. Unless proven otherwise, a notice shall be deemed to have been given:

- (a) if delivered personally or by courier or sent by email with confirmed receipt during 09.00 to 17.00 when left at the relevant address of receipt is confirmed (as applicable); and
- (b) Otherwise on the next day, unless that day is not a Business Day, in which case the notice will be deemed to have been given on the next Business Day.

12.2 [Subject to Clause 14]<sup>27</sup> the postal and email address for all notices under or in connection with this Guarantee are as follows, unless the other party has been notified otherwise at least five days before the notice is received:

- (a) in the case of the Guarantor:

Postal Address: [                    ]  
Email Address: [                    ]  
For the attention of: [                    ]<sup>28</sup>

- (b) in the case of the Service Provider:

Address:                    Lansdowne Gate  
                                  65 New Road  
                                  Solihull  
                                  B91 3DL

Email Address:            box.Xoserve.CRM\_Xoserve@Xoserve.com

For the attention of:    Business Process Manager (Credit) <sup>29</sup>

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<sup>27</sup> Delete if no process serving agent is used for a foreign company under clause 14.

<sup>28</sup> Insert relevant details

<sup>29</sup> Insert relevant details

12.3 Unless the contrary intention appears, a reference in this Guarantee to the Service Provider or Guarantor or the Company or a person includes its successors in title, permitted assigns and permitted transferees.

### **13 Governing Law and Jurisdiction**

13.1 This Guarantee and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) is governed by and shall be construed in accordance with the Laws of England and Wales.

13.2 Subject to clauses 13.4 and 13.5, the courts of England and Wales have exclusive jurisdiction to settle any disputes arising out of or connected with this Guarantee (including a dispute regarding the existence validity or termination of this Guarantee or the consequences of its nullity) (a “**Dispute**”).

13.3 Subject to clauses 13.4 and 13.5, the parties agree that the courts of England and Wales are the most appropriate and convenient courts to settle Disputes between them and accordingly that they will not argue to the contrary.

13.4 This clause 13 is for the benefit of the Service Provider only. As a result and notwithstanding clauses 13.2 and 13.3 it does not prevent the Service Provider from:

- (a) taking proceedings relating to a Dispute in any other courts (and the Guarantor waives any objection to proceedings in such courts on the grounds of venue or on the grounds that proceedings have been brought in an inappropriate forum);  
or
- (b) referring a Dispute to be finally settled by arbitration under the Rules of Arbitration and Conciliation of the International Chamber of Commerce by two or more arbitrators appointed pursuant to such Rules.

13.5 To the extent allowed by law, the Service Provider may take concurrent proceedings in any number of jurisdictions.

## 14 Agent for service

[The Guarantor authorises and appoints [.....]<sup>30</sup> [*legal representatives or related company in England and Wales*] of [.....][*address*]<sup>31</sup> (or such other person being a firm of solicitors in England as they may from time-to-time substitute by notice to the Service Provider) to accept service of all legal process arising out of or connected with this Guarantee. Service on such person (or substitute) shall be deemed to be service on the Guarantor. Except upon a substitution, the Guarantor shall not revoke any such authority or appointment and shall at all times maintain an agent for service of process in England. If any agent ceases for any reason to be an agent, the Guarantor shall forthwith appoint another agent and advise the Service Provider accordingly.]

## 15 Waiver of Immunity

The Guarantor waives any right of state immunity which it may have in respect of any proceedings or action (which shall include any attachment or arrest prior to judgment and any enforcement proceedings including execution) commenced against the Guarantor under or in connection with this Deed.]<sup>32</sup>

**IN WITNESS** whereof the Guarantor has caused this Guarantee to be executed as its deed but not delivered until the day and year first before written.

[The Common Seal of [*insert name of Guarantor*] was hereunto affixed in the presence of:

[.....] Director

[.....] Director/Company Secretary]

or

[Executed as a Deed by

**[*insert name of Guarantor*]** acting by:

[.....] Director

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<sup>30</sup> Insert

<sup>31</sup> This Clause 14.1 is only necessary if the Guarantor is a foreign company. The process agent should be an independent law firm or a professional process agent company.

<sup>32</sup> This Clause 15 is only necessary if the Guarantor is a governmental authority (whether foreign or in England and Wales)

[.....] Director/Company Secretary]<sup>33</sup>

SCHEDULE  
THE AGREEMENTS

The agreements are:

[            ]

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<sup>33</sup> Please delete as appropriate

Appendix V – DSC Deposit Deed

DATED [       ] 20[   ]

**DSC DEPOSIT DEED**  
**(Approved by the DSC Credit Committee**  
**for the use in accordance with the DSC Credit Policy**  
**and DSC Credit Rules)**

between

[       ]

and

**XOSERVE LIMITED**

**THIS DEED** is made on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

**BETWEEN:**

- (1) [ \_\_\_\_\_ ] a company registered in [ \_\_\_\_\_ ] (No. \_\_\_\_\_ )  
having its registered office at [ \_\_\_\_\_ ]<sup>34</sup> (the **Customer**); and
- (2) **Xoserve Limited** a company registered in England and Wales (No 05046877) having its registered office at Lansdowne Gate, 65 New Road, Solihull, B91 3DL (**Xoserve**).

**RECITALS:**

- (A) Xoserve acts as the central data services provider to the gas industry in Great Britain.
- (B) In such capacity, Xoserve has agreed to provide services to the Customer and the Related Parties (if any) (as defined below) under and pursuant to the terms of Relevant Agreements (as defined below).
- (C) This Deed is supplemental to each Relevant Agreement.

**NOW THIS DEED WITNESSETH AND IT IS AGREED AS FOLLOWS:**

1. In this Deed:

- (a) the following terms shall have the meaning set out opposite them:

<b>Affiliate</b>	any entity controlling, controlled by or under common control with the Customer where control means direct or indirect ownership of at least 50% of the voting stock of anybody corporate, or any comparable equity or ownership interest or the legal power to direct or cause the direction of the general management of any organisation (including any partnership, firm, trust, body corporate, government, government body, authority, agency, unincorporated body or association);
<b>CDSP</b>	shall have the meaning given in Section D of the Uniform Network Code – General Terms;
<b>Charges</b>	has the meaning given to that term in each Relevant Agreement and shall in any case, without limitation, include all charges payable by the Customer and each Related Party to Xoserve and all related costs, interest expenses and any applicable VAT thereon;
<b>Collateral Instrument</b>	means notes, bills of exchange, certificates of deposit and other negotiable and non-negotiable instruments, guarantees, letters of credit, deposit agreements, indemnities and other assurances against financial loss, and any other documents or instruments which contain or evidence an obligation (with or without security) to pay, discharge or be responsible directly or indirectly for, any indebtedness or liabilities of the Customer or any Related Parties, and includes any document or instrument creating or evidencing an encumbrance, however defined and includes, without limitation, escrow agreements and other trust arrangements;

<sup>34</sup> Xoserve team to insert full details of Customer note: Customer and Xoserve details also required in clause 5

<b>Credit Provisions</b>	has the meaning given in the Schedule;
<b>DSC Credit Policy</b>	shall have the meaning given in the DSC Terms and Conditions;
<b>DSC Credit Rules</b>	shall have the meaning given in the DSC Credit Policy;
<b>DSC Terms and Conditions</b>	shall have the meaning given in Section D of the Uniform Network Code – General Terms;
<b>Related Party</b>	each Affiliate of the Customer that has utilised services or incurred Charges under the Relevant Agreement including, without limitation those entities listed or described in the Schedule (if any) (together the <b>Related Parties</b> );
<b>Relevant Agreement</b>	each agreement relating to the provision of the Services entered into between Xoserve and (i) the Customer; and or (ii) any Related Party (including any variation, modification, amendment, supplement, novation or replacement of the same from time to time);
<b>Relevant Agreement Indebtedness</b>	shall mean all that indebtedness, present or future, actual or contingent, of the Customer and the Related Parties (if any) from time to time under, pursuant to, or in respect of, any Relevant Agreement, irrespective of whether such indebtedness arose prior to, on, or subsequent to the date hereof;
<b>Services</b>	shall have the meaning given in the DSC Terms and Conditions;
<b>UNC Party</b>	shall have the meaning given in the DSC Terms and Conditions (and <b>UNC Parties</b> shall be construed accordingly); and
<b>Value Added Tax</b>	value added tax or any equivalent tax chargeable in the UK or elsewhere.

- (b) Clause, Schedule and paragraph headings shall not affect the interpretation of this Deed. The Schedule forms part of this Deed and shall have effect as if set out in full in the body of this Deed. Any reference to this Deed includes the Schedule. References to clauses and the Schedule are to the clauses and Schedule of this Deed and references to paragraphs are to paragraphs of the Schedule.
- (c) A reference to a company shall include any company, corporation, or other body corporate, wherever and however incorporated or established. A reference to a holding company or a subsidiary means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006.
- (d) Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, shall include the singular.
- (e) This Deed shall be binding on, and endure to the benefit of, the parties to this Deed and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.

- (f) A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time and a reference to legislation or a legislative provision shall include all subordinate legislation made from time to time under that legislation or legislative provision.
- (g) A reference to writing or written excludes fax but not email.
- (h) Any reference to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English legal term in that jurisdiction.
- (i) A reference to this Deed or to any other Deed or document is a reference to this Deed or such other Deed or document, in each case as the same are amended, varied, modified and or restated from time to time (and for the purpose of the construction of this Deed, the amended, varied, modified and or restated version of a document that is in force for use by UNC Parties at the relevant time shall be the document referred to in this Deed).
- (j) Any words following the terms including, include, in particular, for example or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

## 2. DEPOSIT TERMS

- 2.1 In consideration of Xoserve agreeing to provide services to the Customer and, where relevant, its Related Parties the Customer agrees to enter into this Deed and to be bound by the terms hereof.
- 2.2 The Customer has paid (or will, on the date hereof, pay) the sum of [*words* ] pounds sterling (£[*figures*])<sup>35</sup> to Xoserve and may from time-to-time hereafter pay further sums to Xoserve in accordance with the terms of this Deed and the Relevant Agreement, all such sums to be held by Xoserve on, and subject to, the applicable terms of this Deed. All such sums, as well as any interest thereon (together the "**Deposit**"), will be returnable by Xoserve to the Customer subject to and in accordance with this Deed.
- 2.3 Xoserve shall place the Deposit in a separate bank account which is used for the purpose of holding such collateral and clearly identifiable as such. Notwithstanding the foregoing Xoserve is not obliged to secure any particular rate of interest and shall be entitled to open the relevant bank account with a bank of its choosing and/or move the Deposit to another separate bank account at the same or a different bank from time to time at its own discretion.
- 2.4 The Customer hereby acknowledges and agrees that the Deposit will be held by Xoserve on the express understanding that the Customer will have no interest in and or right to receive or require repayment of the Deposit (including, subject to clause 2.10, any accrued interest) until the earlier of the following dates to occur that:
  - (a) the Customer ceases to be a UNC Party and the Customer has and each and all of the Related Parties have no present or future, actual or contingent liability to Xoserve in respect of Relevant Agreement Indebtedness or otherwise; or
  - (b) the Customer provides any substitute deposit or any security on terms acceptable to Xoserve in all respects, to secure the Relevant Agreement Indebtedness relating to the Customer and each and all of its Related Parties; or

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<sup>35</sup> Xoserve team to insert amount of Initial Deposit in words and figures.

- (c) the Customer has requested a release of this Deed in accordance with the applicable terms of the DSC Credit Policy and pursuant to such request (and the satisfaction of the relevant conditions) Xoserve agrees in writing to such release,
- 2.5 None of the rights, entitlements or interests which the Customer may at any time have in or to the Deposit shall be capable of being assigned, transferred, charged, mortgaged or otherwise disposed of to any person other than Xoserve at any time whilst the Customer or each or any of its Related Parties has any present or future or actual or contingent liability to Xoserve in respect of Relevant Agreement Indebtedness or otherwise.
- 2.6 The required amount of the Deposit may be increased from time to time in accordance with the applicable terms of the DSC Credit Policy and the DSC Credit Rules and, to the extent that this shall occur, the Customer agrees to pay such sums and at such times to Xoserve as is required by the applicable terms of the DSC Credit Policy and the DSC Credit Rules which sums once received will form part of the Deposit and be held in accordance with the terms of this Deed.
- 2.7 Without prejudice to any other right or remedy which Xoserve may have under this Deed, or otherwise, Xoserve shall be entitled, at its sole discretion and without obligation, to apply all or any part of the Deposit (thereby reducing the amount of the Deposit) at any time and from time to time in or towards satisfaction of:
- (a) the amount of any sum which has become due for payment in respect of Charges;
- (b) the amount of any loss or damage suffered by Xoserve as the result of any breach of any obligation on the part of the Customer or each or any of its Related Parties arising under in relation to or in connection with the Relevant Agreement and / or this Deed including without limitation the amount of any legal or other costs incurred by Xoserve as a result of non-payment of amounts payable or other sums or expense on a full indemnity basis;
- (c) the amount of any Value Added Tax that Xoserve is liable to pay or the amount of any in consequence of the receipt of any part of the Deposit; and
- (d) any bank charges incurred in relation to the account in which the Deposit is held.

**Any sums applied by Xoserve pursuant to Clause 2 shall be the property of Xoserve.**

- 2.8 Xoserve shall notify the Customer in writing as soon as reasonably practicable and in any event within 14 days of any application of the Deposit pursuant to Clause 2.7.
- 2.9 The Customer shall immediately, following such notification referred to in Clause 2.8 above, pay to Xoserve an amount equivalent to any amount applied pursuant to Clause 2.7, and any further amounts required from time to time to ensure that the total of the Deposit held by Xoserve is not less than the amount of the Deposit prior to the date of relevant application and not less than the required amount referred to in Clause 2.2 as may be amended by the provisions of Clause 2.6.
- 2.10 Subject to Clause 2.11, the Customer may, so long as the Customer is not in default under any of its obligations to Xoserve and not more than once in any 6 month period, request Xoserve in writing to pay to the Customer interest (subject to any deduction of tax as required by law) earned, if any, on the Deposit by Xoserve.
- 2.11 If any sums are owing by the Customer to Xoserve pursuant to this Deed and/or there are outstanding from the Customer (or any of its Related Parties) to Xoserve any sums of the kind referred to in Clause 2.7 above, Xoserve may, instead of paying such of the interest due to the Customer as is equivalent to the amount outstanding, retain the whole or any part of such interest as an addition to the Deposit and/or apply the whole or any part of such interest in whole or partial discharge (as the case may be) of such outstanding amount and pay the balance of such interest (if any) to the Customer.

- 2.12 Xoserve will, if so, required in writing by the Customer, advise the Customer of the then amount of the Deposit as soon as reasonably practicable after receipt of such request (provided that no more than one such request may be made in any calendar month).
- 2.13 Nothing in this Deed shall require Xoserve to satisfy any liability of the Customer (or any of its Related Parties) out of the Deposit and unless and until Xoserve exercises its right to apply the Deposit against any such liability, neither the existence of the Deposit nor the availability of Xoserve's rights under this Deed shall have the effect of discharging any liability of the Customer (or any of its Related Parties) or of preventing Xoserve from enforcing any such liability (or any security which it may hold for, or any other rights it may have in respect of, any such liability) in any manner it thinks fit.
- 2.14 The existence of the Deposit shall not:
- (a) prejudice Xoserve's ability to proceed against the Customer (or any of its Related Parties) for any breach, without limitation including, any Relevant Agreement Indebtedness;
  - (b) entitle the Customer (or any of its Related Parties) to withhold any monies or fail to satisfy any Relevant Agreement Indebtedness; or
  - (c) be regarded as an advance or deemed payment of any Relevant Agreement Indebtedness.
- 2.15 The Customer represents and warrants, on the date of this Deed that:
- (a) all necessary corporate and other action has been taken to authorise it to enter into this Deed and perform the transactions contemplated in it; and
  - (b) its obligations under this Deed are legal, valid, binding and enforceable.

### **3. OTHER COLLATERAL INSTRUMENTS**

- 3.1 This Deed shall:
- (a) be in addition to any present or future Collateral Instrument, right or remedy held by or available to Xoserve; and
  - (b) not be in any way prejudiced or affected by:
    - (i) the existence of any Collateral Instrument, rights or remedies; or
    - (ii) any Collateral Instrument becoming wholly or in part void, voidable or unenforceable on any ground; or
    - (iii) Xoserve dealing with, exchanging, varying or failing to perfect or enforce any Collateral Instrument; or
    - (iv) Xoserve giving time for payment or indulgence or compounding with any person liable under a Collateral Instrument.
- 3.2 Xoserve shall not be obliged to make any claim or demand on the Customer (or any of its Related Parties) or to resort to any Collateral Instrument or other means of payment now or in future held by or available to it before enforcing this Deed.
- 3.3 Xoserve shall not be obliged to apply any money or other property received or recovered in consequence of any enforcement or realisation of any Collateral Instrument or other payment in reduction of the Relevant Agreement Indebtedness .

3.4 No action taken or omitted by Xoserve in connection with any Collateral Instrument or other payment or any variation, modification, amendment, supplement, novation or replacement of any Collateral Instrument shall discharge, reduce, prejudice or affect the liabilities or liability of the Customer under this Deed.

#### 4. GENERAL TERMS.

4.1 No failure or delay by Xoserve in exercising any power, right or remedy under this Deed or at law shall operate as a waiver of it nor shall any single or partial exercise or waiver of any such power right or remedy preclude its further exercise or the exercise of any other power, right or remedy.

4.2 Xoserve may assign its rights under this Deed to a person in favour of whom an assignment has been made in respect of the benefit of the Relevant Agreement Indebtedness (or any such person who assumes the benefit of this Deed as a successor to Xoserve in its capacity as CDSP).

4.3 Xoserve's rights under this Deed are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as Xoserve deems expedient.

4.4 Xoserve's rights under this Deed may be exercised by Xoserve or by any other person authorised by Xoserve.

4.5 A person who is not a party to this Deed (including any Related Party or any employee, officer, agent, representative or sub-contractor of the Customer or any Related Party) shall not have the right to enforce any term of this Deed which expressly or by implication confers a benefit on that person without the express prior agreement in writing of the Customer and Xoserve, which agreement must refer to this Clause.

4.6 Each of the provisions of this Deed is severable and distinct from the others. If at any time one or more of such provisions is or becomes invalid illegal or unenforceable the validity legality or unenforceability of the remaining provisions of this Deed shall not in any way be affected or impaired.

4.7 Any payments to be made by Xoserve to the Customer under this Deed shall be made to the account details notified by the Customer to Xoserve in writing specifically for such purpose from time to time. Payments to be made as a result of the occurrence of the Termination Date pursuant to Clause 2.10 will be made 10 Business Days after the later of (i) the Termination Date or the date of the relevant request made pursuant to Clause 2.10 (as the case may be) and; (ii) the date on which the receiving account for such purpose has been duly notified to and, where required by Xoserve policies from time-to-time, authorised by Xoserve.

#### 5. NOTICES

5.1 Subject to Clause 5.4, any notice given under this Deed shall be sent by hand, by post (by tracked delivery) or by email (and if by email a confirmatory copy of the notice shall be signed and delivered personally or by courier to the relevant party or posted by tracked delivery) to the relevant address set out below or to such other address(es) as may be notified for this purpose (in accordance with this Clause), and shall be effective notwithstanding any change of address(es) not notified.

<b>Xoserve<sup>36</sup></b>	<b>Customer<sup>37</sup></b>
Email:  box.xoserve.crm_xoserve@xoserve.com	Email:

<sup>36</sup> Xoserve team to insert relevant address

<sup>37</sup> Customer team to insert relevant address

Address:  Lansdowne Gate, 65 New Road, Solihull, West Midlands, B91 3DL	Address:
For the attention of:  Liz Bennett/Vicci Williams	For the attention of:

5.2 This Clause 5.2 sets out the delivery methods for sending a notice to a party under this agreement and, for each delivery method, the date and time when the notice is deemed to have been received:

- (a) if delivered by hand, at the time the notice is left at the address;
- (b) if sent by tracked pre-paid first-class post or other tracked next working day delivery service providing proof of postage, at 9.00am on the second Business Day after posting;
- (c) if sent by email, at the time of transmission.

5.3 If deemed receipt under Clause 5.2 would occur outside business hours in the place of receipt, it shall be deferred until business hours resume. In this Clause 5.3, business hours means 9.00am to 5.00pm on a Business Day.

5.4 For the avoidance of doubt, this Clause 5 shall not apply in respect of any Code Communication or to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## 6. LAW AND JURISDICTION

6.1 This Deed shall be governed by and construed in accordance with English Law.

6.2 The courts of England and Wales have exclusive jurisdiction to settle any disputes arising out of or connected with this Deed (including a dispute regarding its formation (including non-contractual disputes), the existence validity or termination of this Deed or the consequences of its nullity) (a "**Dispute**").

6.3 The parties agree that the courts of England and Wales are the most appropriate and convenient courts to settle Disputes between them and accordingly that they will not argue to the contrary.

## Schedule

Related Parties	<i>[Full details of each related entity to be inserted]</i> <sup>38</sup>
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<sup>38</sup> *Xoserve team to insert affiliates of the Customer to which Services are likely to be provided (following discussion with Customer re the same)*

**Execution page**

**THIS DEED** has been executed and delivered as a deed the day and year first above mentioned.

**EXECUTED** as a **DEED** by     )  
**XOSERVE LIMITED**                     )

Director .....  
Director/Secretary .....

**EXECUTED** as a **DEED** by     )  
[                                     ]     )

Director .....  
Director/Secretary .....

## Appendix V1: Notice of DSC Credit Limit Utilisation

<b>Customer Name:</b>	[insert name]		
<b>DSC Credit Limit</b>	% [insert value]	<b>Current Date:</b>	[insert date]
<b>Current Indebtedness</b>	£x [insert value]	<b>Ref:</b>	[insert reference]

Please note that your current level of Indebtedness is at [] % of your DSC Credit Limit.

**This Notice is given in pursuance of Section [5.1.1 (i)] of the DSC Credit Rules and Section [3.5.1 (a)] of the DSC Credit Policy and gives notice that you have exceeded [80%] of your DSC Credit Limit.**

Should you take no action following this notice and you exceed [100%] of your DSC Credit Limit you will be issued with a Notice to Provide Further Security, which will represent a request to provide security to reduce your indebtedness to 90% of your DSC Credit Limit within 10 days.

**All CDSP customers are required to maintain Outstanding Indebtedness at a level below 100% of their DSC Credit Limit.**

\_\_\_\_\_  
**Credit Lead (CDSP)**

\_\_\_\_\_  
**Date**

## Appendix VI: Notice to Provide Further Security (NTPFS)

<b>Customer Name:</b>	[insert name]		
<b>DSC Credit Limit</b>	% [insert value]	<b>Current Date:</b>	[insert date]
<b>Current Indebtedness</b>	£x [insert value]	<b>Ref:</b>	[insert reference]
<b>Further Security Requested</b>	£x [insert value]		

**CDSP Customers are required to maintain Outstanding Indebtedness at a level below [100%] of the DSC Credit Limit.**

Your recent level of Indebtedness is above [100%] of the DSC Credit Limit.

**This Notice is given in pursuance of Section [5.1.1 (ii)] of the DSC Credit Rules and Section [3.5.1 (b)] of the DSC Credit Policy and gives notice that you have exceeded [100%] of your DSC Credit Limit. This Notice represents a request for you to provide further security to reduce your DSC Indebtedness to 90%.**

If this requirement is not met, you will be issued with a Notice of Failure to Provide Further Security - Credit Default. Should you not comply with that Notice then the CDSP may suspend the provision of any Services. The DSC Credit Committee will be informed, and a meeting may be convened where the DSC Credit Committee may direct to issue a Credit Default Notice.

Xoserve Limited (The CDSP) shall withhold any amounts owed to you in respect of any outstanding Invoices to refund any monies held or due to be paid until this Notice has been satisfied.

If you intend to appeal against this Notice, you should follow the procedure outlined in paragraph [5.2] of the DSC Credit Rules.

\_\_\_\_\_  
**Credit Lead (CDSP)**

\_\_\_\_\_  
**Date**

## Appendix VIII: Notice of Failure to Pay Invoice – Credit Default

Customer Name:	[Insert name]		
Outstanding Invoice:	[Insert date]	Current Date:	[insert date]
Invoice Due Date:	[Insert date]	DSC Credit Limit	£x [insert value]
Invoice Amount:	£x [insert value]		

The DSC Credit Rules require that Customers pay the Net Invoice Amount under each DSC Invoice in full on the Invoice Due Date. Payment is required notwithstanding any outstanding Invoice Query.

We have not received payment of your Net Invoice Amount for the Invoice detailed above.

**Therefore, this Notice, issued in pursuance of Section [6] of the DSC Credit Rules and Section [4.1] of the DSC Credit Policy represents a demand for immediate payment of [insert sum] in cleared funds by [insert date] into the Xoserve Limited (The CDSP) bank account [insert details].**

Once we have received settlement of the invoice, you will be notified of the amount of interest and charges owing in respect of late payment.

Xoserve Limited (The CDSP) shall withhold any amounts owed to you in respect of any outstanding Invoices to refund any monies held or due to be paid until this Notice has been satisfied.

**Should you not comply with this Notice then the CDSP will:**

- (a) notify the DSC Credit Committee of the failure to pay Charges by the due date for payment; and
- (b) convene a meeting of the DSC Credit Committee, at which meeting the Credit Committee may direct the CDSP to take one or more of the DSC Remedial Steps; and
- (c) take such DSC Remedial Steps as directed by the Committee; and
- (d) if directed by the Credit Committee issue a Credit Default Notice Customer pursuant to paragraph [4.1.4] of the DSC Credit Policy.

Following the issuing of a Credit Default Notice the CDSP shall inform the DSC Credit Committee [the Transporter and/or OFGEM] of the Default.

\_\_\_\_\_  
**Credit Lead (CDSP)**

\_\_\_\_\_  
**Date**

## Appendix XIV: Notice of Failure to Provide Further Security – Credit Default

<b>Customer Name:</b>	[Insert Name]		
<b>DSC Credit Limit</b>	[insert value] %	<b>Current Date:</b>	[Insert Date]
<b>Current Indebtedness</b>	£x [insert value]	<b>Ref:</b>	[Insert Ref]
<b>Further Security Requested</b>	£x [insert value]		

CDSP Customers are required to maintain Outstanding Indebtedness at a level below [100%] of the DSC Credit Limit. Your recent level of Indebtedness has been above your DSC Credit Limit.

You were issued with a Notice to Provide Further Security on **[insert date]** requesting you to provide further security of **[insert amount]** by 12.00 hrs on **[insert date]**.

The further security requested has not been received in accordance with the Notice to Provide Further Security.

**This Notice represents a final reminder to provide further security of [Insert Amount]. It is issued in pursuance of Section [5.3] of the DSC Credit Rules and Section [3.5.1 (b)] of the DSC Credit Policy by [insert date].**

**Should you not comply with this Notice then the CDSP may:**

- (i) **suspend the provision of any Services;**
- (ii) **inform the DSC Credit Committee [the Transporter and/or OFGEM]**
- (iii) **convene a DSC Credit Committee who may direct to issue a Credit Default Notice.**

The DSC does not make provision for you to appeal the calculations used in a Notice of Failure to Provide Further Security – Credit Default

Xoserve Limited (The CDSP) shall withhold any amounts owed to you in respect of any outstanding Invoices to refund any monies held or due to be paid until this Notice has been satisfied.

\_\_\_\_\_  
**Credit Lead (CDSP)**

\_\_\_\_\_  
**Date**

## Appendix XV: Credit Default Notice

<b>Customer Name:</b>	[Insert Name]		
<b>DSC Credit Limit</b>	%	<b>Current Date:</b>	[Insert Date]
<b>Current Indebtedness</b>	£x [insert value]	<b>Ref:</b>	[Insert Ref]
<b>Outstanding [Invoice(s) and or Further Security Request] Amount</b>	£x [insert value]	<b>Current Security Amount</b>	£x [insert value]

CDSP Customers are required to maintain Outstanding Indebtedness at a level below [100%] of the DSC Credit Limit. Your recent level of Indebtedness has been above your DSC Credit Limit and you were issued with a Notice of Failure to Provide Further Security – Credit Default.

The DSC Credit Rules require that Customers pay the Net Invoice Amount under each DSC Invoice in full on the Invoice Due Date. Payment is required notwithstanding any outstanding Invoice Query. You have an outstanding payment[s] and you were issued with a Notice of Failure to Pay Invoice – Credit Default

[We have not received payment of your Net Invoice Amount for the Invoice(s) detailed above]  
[We have not received further security requested detailed above]

**Therefore, this Notice, issued in pursuance of Section [4.1.4 or 3.5.3] of the DSC Credit Policy, represents a final demand for [immediate payment of [insert sum] in cleared funds into the Xoserve Limited [The CDSP] bank account [insert details]] [and/or further security of [Insert Amount] by [insert date].**

**Your organisation is in a DSC Default pursuant to paragraph 5.1 of the DSC Credit Policy.**

A copy of this Notice has been sent to the DSC Credit Committee [the Transporter and/or OFGEM] advising them of the Default.

\_\_\_\_\_  
**Credit Lead (CDSP)**

\_\_\_\_\_  
**Date**

## Document Control

Version	Status	Date	Author(s)	Summary of Changes
1.1	Draft	26/06/2017	S Dworkin	<ul style="list-style-type: none"> <li>Added a Document Control at the end of the document.</li> <li>4.1.1 Reference to Deposit Deed removed.</li> <li>3.3 Membership appointment, amendment in Credit Rules to show <b>'Initial Appointment Year shall be the period for 1 April 2017 until and including 30 September 2018, as detailed in Transitional Arrangements Document 3.6.5'</b>.</li> <li>6.1 Clarity required regarding late payment charges which are referred to in the Terms and Conditions of the appropriate contracts. For the DSC it is in section 5.4. Wording added as follows: <b>'Late payment charges will accrue in accordance with the Terms and Conditions of the Contract'</b>.</li> <li>Escalation process highlighted discrepancies between Credit Policy states 'any sum due in excess of the amount specified in the DSC Credit Rules' Suggest adding a value of 10K to the DSC Credit Rules. Add wording as follows: in excess of £10,000.</li> </ul>
2.0	Approved	05/07/2017	S Dworkin	<ul style="list-style-type: none"> <li>DSC Credit Committee approved Draft 1.1 of the DSC Credit Rules.</li> </ul>
2.1	Draft	12/12/18	S Dworkin	<ul style="list-style-type: none"> <li>Updated Xoserve Logo</li> <li>Formatting reviewed</li> <li>PCG proforma amended</li> </ul>
	Final	21/1/19	S Dworkin	
2.3	Draft	14.08.20	B Gill	<ul style="list-style-type: none"> <li>Proposed change to section 3.2 and 7.1 to allow a CDSP alternate in the absence of the CDSP Business Process Manager,</li> <li>Propose removal of transitional arrangements in section 3.3.1 this no longer serves any purpose.</li> </ul>

				<ul style="list-style-type: none"> <li>• Section 8.2 Change Contact name and change Credit Risk location.</li> <li>• Section 4.6 relating to credit agencies states customer choice however, all customers assessed by 3 agencies.</li> <li>• Review of legal agreements within rules by Xoserve Legal.</li> </ul>
2.3	For Review	04.09.20		<ul style="list-style-type: none"> <li>• Additional clarity added to definitions section around Moody's and S&amp;P where a LOC or PCG has been placed.</li> <li>• Additional information added in 4.7 around the Credit Assessment.</li> </ul>
2.3	For Approval	04.06.21		<ul style="list-style-type: none"> <li>• Section 6 updated to include steps/values for debt recovery/write off.</li> </ul>
2.3	For Approval	09.08.21		<ul style="list-style-type: none"> <li>• Notices changed from Business Process Manager to Credit Lead.</li> <li>• 3.1a changed from guidance to direction</li> <li>• 6.3.4 reworded to remove set value and the purpose for raising with CoMC is awareness only.</li> </ul>
2.3	Approved	14.09.21		<ul style="list-style-type: none"> <li>• DSC Credit Committee Approval of version 2.3</li> </ul>
2.4	Approved	28.10.22		<ul style="list-style-type: none"> <li>• Change to credit agency Graydon being acquired by CreditSafe</li> <li>• Inclusion of Deposit Deed for security.</li> <li>• Proforma of Deposit Deed added to Appendix V</li> </ul>
2.4	Approved	17.02.23		<ul style="list-style-type: none"> <li>• Update MOD0815S - DSC Committee Quoracy</li> </ul>