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## **DSC Terms and Conditions v 42**

### **1 Context**

- 1.1 This document is, and comprises, the DSC Terms and Conditions as referred to in the DSC Agreement and the Code DSC Provisions.
- 1.2 The DSC Terms and Conditions may be amended from time to time pursuant to the Code DSC Provisions, but not otherwise.

### **2 Interpretation and Definitions**

- 2.1 Any capitalised term used in the DSC shall have the meaning given to it in the DSC. Any capitalised term used in the DSC that is not defined in the DSC shall have any meaning given to it in, and be interpreted in accordance with, the Uniform Network Code.
- 2.2 In the DSC (including the DSC Agreement and each CDSP Service Document), the following terms shall have the following meanings:

**Accession Agreement** means an agreement between the Authorised Person (on its own behalf and on behalf of all other Parties) and an Applicant, in the form in the Annex to the DSC Agreement;

**Accession Requirements** means the applicable requirements to be complied with by an Applicant or a New Party (as the case may be) pursuant to the DSC Terms and Conditions before the Applicant may be admitted as a New Party and / or a Customer (as the case may be), as set out in Clause 4.3;

**Additional Services** has the meaning given to it in the CDSP Service Description, and **Additional Service** shall be construed accordingly;

**Annual Charging Statement** has the meaning given to it in the Budget and Charging Methodology;

**Applicable Network Code** means the Uniform Network Code or the IGT Code as applicable;

**Applicant** means a person (other than a Party) who wishes to be admitted as a New Party;

**Authorised Person** means, for the purposes of the DSC, the CDSP;

**Budget and Charging Methodology** means the document of that title identified pursuant to the Code DSC Provisions, as such document may be amended from time to time in accordance with the DSC;

**Business Day** means, subject to Clause 2.4, a day (other than a Saturday or a Sunday) on which banks are open in London, England for the transaction of general business;

**CDSP** means Xoserve Limited (company number 05046877) whose registered office is at 1-3 Strand, London WC2N 5EH, being the person appointed by the Transporters pursuant to the CDSP Licence Condition;

**CDSP Licence Condition** means Standard Special Condition A15A of the Gas Transporter's Licences;

**CDSP Service Description** means the document of that title identified pursuant to the Code DSC Provisions, as such document may be amended from time to time in accordance with the DSC;

**CDSP Service Document** has the meaning given to it in Clause 3.3, and **CDSP Service Documents** shall be construed accordingly;

**CDSP Year** means a year commencing on 1 April;

**Change Management Procedures** means the document of that title identified pursuant to the Code DSC Provisions, as such document may be amended from time to time in accordance with the DSC;

**Charges** means the Charges (as defined in the Budget and Charging Methodology) payable by Customers to the CDSP pursuant to the DSC from time to time;

**Code DSC Provisions** means the provisions of the Uniform Network Code for the establishment and governance of the DSC, including GT Section D and Section 3 of Part I of the Transition Document;

**Committee** means a DSC Committee (including any sub-committee) as defined in the Uniform Network Code;

**Competent Authority** means the Authority, or any local, national or supra-national agency, authority, department, inspectorate, minister, official, court, tribunal or public or statutory person (whether autonomous or not) of the United Kingdom (or the government thereof) or the European Communities which has jurisdiction over the CDSP or Customer (as the case may be) or the subject matter of the DSC;

**Contract Data** means data (that are not Party Data) concerning the contract management, reporting and governance of the DSC, including performance data, billing data in connection with CDSP's charges, CDSP's business plans and budgets, periodic and specific reports generated by or on behalf of the CDSP and papers prepared for and minutes of Committee meetings, and any description or specification of any DSC Service (including any Additional Service);

**Contract Management Arrangements** means the document of that title identified pursuant to the Code DSC Provisions, as such document may be amended from time to time in accordance with the DSC;

**Controller Data** means all personal data that are:

- (a) supplied or in respect of which access is granted to the data processor (or any Sub-processor) by the data controller; or
- (b) produced or generated by or on behalf of the data processor (or any Sub-processor) in connection with the DSC Services under the DSC;

**Credit Default** means any Default which is (or may be) the subject of measures provided for in the Credit Policy, and **Credit Defaults** shall be construed accordingly;

**Credit Policy** means the document of that title identified pursuant to the Code DSC Provisions, as such document may be amended from time to time in accordance with the DSC;

**Customer** means a Party that is not the CDSP and that has satisfied the Accession Requirements, and **Customers** shall be construed accordingly;

**Data Breach** means any breach of security leading to the accidental or unlawful destruction, loss, alteration or unauthorised disclosure of, or access to, Controller Data, or unlawful processing, disclosure of, or access to, Controller Data;

**Data Protection Law** means any applicable national or international data privacy and data protection laws and regulations in any territory in which the DSC Services are provided or used, including the GDPR;

**Default** means any breach of the obligations of a Customer (including, but not limited to, fundamental breach or breach of a fundamental term or breach of warranty) or any default, wrongful act or omission, negligence or mis-statement of that Customer, its employees, officers, contractors, staff, agents or sub-contractors in connection with or in relation to the subject matter of the DSC;

**Direct Services** means the Services identified as such in the CDSP Service Description;

**Disclosing Party** has the meaning given to it in Clause 9.1;

**DSC or Data Services Contract** means the contract which is constituted by and comprises the DSC Agreement, the DSC Terms and Conditions and each CDSP Service Document, as may be acceded to by any New Party or in relation to which any Party may become a Withdrawing Party from time to time;

**DSC Agreement** means the agreement of that title entered into by the CDSP and certain other persons and pursuant to which the parties to it agree to give effect to and be bound by the DSC Terms and Conditions;

**DSC Default** has the meaning given to it in Clause 16.2;

**DSC Services** means Services provided by the CDSP to Customers pursuant to the DSC, and **DSC Service** shall be construed accordingly;

**DSC Terms and Conditions** means this document;

**Effective Date** means:

- (a) with respect to each of the Original Parties, the date of the DSC Agreement; and
- (b) with respect to any New Party and (as respects such New Party) each other Party, the date of the relevant Accession Agreement;

**Expert** means a person appointed pursuant to Clause 30.1;

**Force Majeure Event** means any cause or circumstance beyond the reasonable control of a Party which results in or causes that Party to fail to perform any one or more of its obligations under the DSC, if that failure or delay could not have been prevented or overcome by that Party acting reasonably and prudently, including complying with all business continuity obligations under the DSC;

**Gas Transporter's Licence** means a licence granted or treated as granted under Section 7(2) of the Gas Act 1986, and **Gas Transporter's Licences** shall be construed accordingly;

**GDPR** means Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, as and when it becomes applicable;

**IGT Code** means the uniform network code prepared by independent gas transporters pursuant to Standard Condition A9(5) of the Gas Transporter's Licence, as from time to time modified, and as made contractually binding (as incorporated into an individual gas transporter's individual network code) by the relevant framework agreement;

**Individual Contract Manager** has the meaning given to it at paragraph 5.1 of the Contract Management Arrangements;

**Insolvency Event** means the occurrence of any one or more of the following events or circumstances in respect of a Customer:

- (a) it becomes unable or is deemed to be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986;
- (b) it proposes or makes any arrangement or composition with or assignment or moratorium for the benefit of its creditors generally or any class of creditors;
- (c) it passes a resolution or takes or is subject to any other step (including any court application or order) with a view to its winding up or dissolution (otherwise than for the purpose of solvent reconstruction or amalgamation or pursuant to a frivolous or vexatious winding up petition provided the same is dismissed within seven (7) days), or the appointment in respect of it or any of its assets of a trustee, supervisor, administrative or other receiver, administrator, provisional liquidator or liquidator;
- (d) it suffers a third party taking possession over all or (with the exception, in the reasonable opinion of CDSP, of any such action having a "de minimis" effect) a part of its assets; or
- (e) if any event analogous to those referred to in paragraphs (a) to (d) occurs in any other jurisdiction;

**IPR** means any right, title or interest in patents, utility models, inventions, copyright, moral rights, trade marks, business names and domain names, get-up, goodwill, designs, computer software or circuit layouts, database rights and all other intellectual property, and the right to sue for passing off, in each case whether registered or unregistered and including all applications and rights to apply for and be granted renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world, whether legal or beneficial;

**Late Payment Act** means the Late Payment of Commercial Debts (Interest) Act 1998;

**Law** means any and all:

- (a) laws, statutes, orders or rules of any court, regulations, directives and codes; and
- (b) licences, decisions, orders, directives, guidance or mandates issued by any regulator,

in each case which have legal effect and which apply in respect of a Party or its activities and / or the rights or obligations of a Party under the DSC, and **Laws** shall be construed accordingly;

**New Party** means a person admitted as an additional party to the DSC Agreement after the date of the DSC Agreement;

**Original Parties** means the persons whose names are set out in the DSC Agreement;

**Other IPR** means any IPR that is not governed by the provisions of Clauses 7.1 to 7.7;

**Parties** means the parties to the DSC Agreement from time to time, and **Party** means any of them;

**Party Data** means, in relation to a Party, data about that Party, that are provided by or on behalf of that Party or otherwise obtained by another Party, such as a Party's corporate data, back office and similar data, and personal data relating to its staff;

**Pre-existing IPR** means any IPR existing prior to the Effective Date;

**Receiving Party** has the meaning given to it in Clause 9.1;

**Receiving Party Group Company** means the Receiving Party's subsidiaries, holding companies and / or subsidiaries of such holding companies as they may change from time to time, "subsidiary" and "holding company" having the meaning ascribed to them in Section 1159 of the Companies Act 2006 as amended from time to time;

**Receiving Party's Staff** means any employees and directors of the Receiving Party, any Receiving Party Group Company, and any contractors, representatives, agents or third parties engaged by the Receiving Party to perform any part of the DSC;

**Relevant Requirements** has the meaning given to it in Clause 32;

**Services** means CDSP Services (whether such services are provided by the CDSP under the DSC or otherwise and whether provided to Customers or third parties);

**Services Data** means any data (that are not Contract Data or Party Data) that are sent by a Customer to the CDSP or by the CDSP to a Customer or otherwise processed by the CDSP, each in the course of, or for the purposes of, DSC Services provision, including supply point data, metering data, volume data, and end user data;

**Specific Services** has the meaning given to it in the CDSP Service Description, and **Specific Service** shall be construed accordingly;

**Sub-contracting Arrangement** means a contract between the CDSP and a person (whether a UNC Party or a third party) for the provision by that person of goods and / or services in connection with the performance of all or any part of the CDSP's rights or obligations under the DSC (including the sub-contracting of any such rights and / or obligations), and **Sub-contracting Arrangements** shall be construed accordingly;

**Supervisory Authority** means any competent data protection or privacy authority in any jurisdiction in which the data controller is established, the data processor provides the DSC Services and / or in which the data processor processes personal data;

**Third Party and Additional Services Policy** means the document of that title identified pursuant to the Code DSC Provisions, as such document may be amended from time to time in accordance with the DSC;

**Third Party Service** has the meaning given to it in the Third Party and Additional Services Policy;

**Transitional Arrangements Document** means the document of that title identified pursuant to the Code DSC Provisions, as such document may be amended from time to time in accordance with the DSC;

**UK Link Enhancements** has the meaning given to it in Clause 7.7(a);

**UK Link Manual** means the document of that title identified pursuant to the Code DSC Provisions, as such document may be amended from time to time in accordance with the DSC;

**UNC Party** means a "Party" to and as defined in the Uniform Network Code other than a "Trader User" as defined therein;

**Uniform Network Code** and **UNC** mean the uniform network code prepared pursuant to Standard Special Condition A11(6) of the Gas Transporter's Licence, as from time to time modified, and as made contractually binding (as incorporated into a Transporter's individual network code) by the relevant framework agreement;

**Use** means to use, copy, store, modify, adapt, translate, make available, exploit and otherwise deal with;

**Withdrawal Date** means the date on which a Customer becomes a Withdrawing Party;

**Withdrawal Requirements** has the meaning given to it in Clause 17.4; and

**Withdrawing Party** means a Customer that ceases to be a Party or (as the context requires) intends to cease to be a Party.

2.3 In the DSC (including the DSC Agreement and each CDSP Service Document):

- (a) headings are for reference only and shall not affect the construction of the DSC;
- (b) words importing one gender include any other and words in the singular include the plural and vice versa and references to a person include any individual, firm or body corporate, joint venture, government state or agency of a state or any partnership or association (whether or not having a separate legal personality);
- (c) where reference is made to a statutory provision, this includes all subsequent enactments, amendments and modifications relating to that provision and any subordinate legislation made from time to time under it;
- (d) unless otherwise stated, a reference to a Clause is to a clause of the DSC Agreement or the DSC Terms and Conditions (as the case may be); to a paragraph is to a paragraph of the relevant CDSP Service Document; and to an Annex or Appendix is to an annex or appendix to a CDSP Service Document;
- (e) except to the extent expressly stated otherwise in the DSC, in the event of any conflict or inconsistency between any documents or provisions contained in the DSC, such conflict or inconsistency shall be resolved for the purposes of the DSC by applying the documents or provisions in the following order:
  - (i) the DSC Agreement;
  - (ii) the DSC Terms and Conditions;
  - (iii) the Transitional Arrangements Document;
  - (iv) the other CDSP Service Documents;
- (f) any reference to a **GT Section** means a reference to a section respectively of the General Terms part of the Uniform Network Code;
- (g) any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- (h) **personal data, sensitive personal data, data controller, data processor, processing** and **data subject** shall bear the meaning ascribed under the Data Protection Act 1998 or the GDPR (as applicable), and the term **process** shall be construed accordingly; and
- (i) a reference to the **CDSP Service Description** includes any document produced by the CDSP pursuant to or in connection with the CDSP Service Description which contains a description or specification of any DSC Service.

2.4 In the CDSP Service Description and the UK Link Terms and Conditions (as defined in the UK Link Manual), **Day** and **Business Day** shall have the meaning given to them in the Uniform Network Code, and **Days** and **Business Days** shall be construed accordingly.

### 3 Key Provisions

3.1 The CDSP shall provide DSC Services to Customers in accordance with the DSC.

3.2 Each Customer shall pay Charges to the CDSP in accordance with the DSC.

3.3 Each of the:

- (a) Budget and Charging Methodology;
- (b) CDSP Service Description;
- (c) Change Management Procedures;
- (d) Contract Management Arrangements;
- (e) Credit Policy;
- (f) Third Party and Additional Services Policy;
- (g) Transitional Arrangements Document; and
- (h) UK Link Manual

(each a **CDSP Service Document**) is hereby given effect and forms an integral part of the DSC. The Parties shall be bound by, and each Party agrees to comply with, each CDSP Service Document.

3.4 The CDSP shall perform the Non-Service Functions of the CDSP, and shall do so in an efficient, economic and effective manner (including where the CDSP procures the operation of UK Link).

3.5 Each CDSP-Related Provision of the Uniform Network Code is given effect and made binding as between the CDSP and the Customers as if the CDSP-Related Provision were incorporated into the DSC. In the event of any conflict or inconsistency between any CDSP-Related Provision and any provision contained in the DSC, the CDSP-Related Provision shall take precedence.

3.6 The CDSP shall not be, or be appointed as, agent of any Customer except to the extent that the Applicable Network Code or a CDSP Service Document expressly provides that the CDSP shall be, and be appointed as, agent of such Customer.

3.7 To the extent that the Applicable Network Code or a CDSP Service Document expressly provides that the CDSP shall be, and be appointed as, agent of any Customer, each such Customer:

- (a) hereby appoints the CDSP as that Customer's agent; and
- (b) agrees to indemnify and keep indemnified and hold harmless the CDSP in respect of any claim, loss, demand, expenses (including legal costs and expenses), fines or other liability incurred or suffered by the CDSP or its directors or personnel whatsoever and howsoever arising as a result of or in connection with the CDSP's performance of such agency to the extent that the CDSP was acting within the scope of such agency.

3.8 The CDSP shall:

(a) provide or otherwise procure the CDSP Services effectively to help facilitate the efficient and integrated operation of the gas industry; and

(b) ensure CDSP Costs are incurred in an economic and efficient manner.

#### 4 Accession

- 4.1 From time to time, an Applicant may be admitted as a New Party by entering into an Accession Agreement, and become a Customer, subject to and in accordance with this Clause 4.
- 4.2 An Applicant or a New Party (as the case may be) may not:
- (a) be admitted as a New Party (except as provided in Clause 4.6); or
  - (b) become a Customer,
- unless the Accession Requirements are satisfied in relation to that Applicant or New Party (as the case may be).
- 4.3 The Accession Requirements are that the Applicant or New Party (as the case may be):
- (a) subject to Clause 4.4, is a UNC Party (that is, party to a Network Code);
  - (b) has complied with the provisions of the Credit Policy which are stated to be conditions of becoming a Customer;
  - (c) has provided to the CDSP the information required in Clause 4.5;
  - (d) complies with the requirements of the UK Link Manual which are stated to be conditions of becoming a UK Link User; and
  - (e) has paid the applicable charge for accession to the Uniform Network Code and the DSC (which shall be non-refundable).
- 4.4 The requirement in Clause 4.3(a) is satisfied if the Applicant or New Party (as the case may be) will become a UNC Party subject only to the condition that it becomes a New Party.
- 4.5 The information required to be provided by an Applicant is:
- (a) the information to be provided by the Applicant in order to become a UNC Party;
  - (b) the addressee and address to whom the CDSP's invoices should be submitted for payment;
  - (c) the Applicant's Individual Contract Manager for the purposes of the Contract Management Arrangements; and
  - (d) such further information as the CDSP may reasonably require.
- 4.6 The CDSP may permit an Applicant to be admitted as a New Party before all or any of the Accession Requirements in Clauses 4.3(a), 4.3(b) and / or 4.3(d) are satisfied, but without prejudice to Clause 4.2(b).
- 4.7 If (pursuant to Clause 4.6) an Applicant is admitted as a New Party and the Accession Requirements are not fully satisfied within six (6) months thereafter, the CDSP may give notice to the New Party that the New Party shall cease to be a Party and the New Party shall automatically cease to be a Party upon such notice.
- 4.8 The Parties acknowledge that (pursuant to a DSC Service specified in the CDSP Service Description) the CDSP will manage on behalf of the Transporters the procedure pursuant to which a person may become a UNC Party; and accordingly it is agreed that:
- (a) an application by any person to become a UNC Party shall operate as an application (by such person as Applicant) to become a New Party and Customer;

- (b) the CDSP may include in the prescribed form of application for the purposes of the Uniform Network Code such provision as is appropriate for the purposes of Clause 4.8(a); and
  - (c) the CDSP shall operate a single coordinated procedure for the admission of such a person as UNC Party and New Party and for such person to become a User or DN Operator or Independent Gas Transporter (as the case may be) and a Customer.
- 4.9 A New Party shall become a Customer with effect from the later of:
- (a) the date on which the New Party becomes a User or DN Operator or Independent Gas Transporter (as the case may be) for the purposes of and as provided in the Uniform Network Code; and
  - (b) the date on which the New Party satisfies all of the Accession Requirements.
- 4.10 Until such time as a New Party becomes a Customer, references in the DSC Terms and Conditions to a Customer shall be deemed to include that Party except in Clauses 3.1, 4 and 6.2.
- 4.11 Notice given (pursuant to the Uniform Network Code) to UNC Parties by the CDSP on behalf of the Transporters that a person has become a User or DN Operator or Independent Gas Transporter (as the case may be) shall operate as notice that such person (as Applicant) has become a Customer.
- 4.12 Each Customer shall notify the CDSP promptly in writing of any change to any of the information provided to the CDSP pursuant to Clause 4.3(c).

## **5 Invoicing and Payment**

- 5.1 Except to the extent that the Budget and Charging Methodology expressly provides otherwise:
- (a) in accordance with and by the date specified in the Budget and Charging Methodology, the CDSP shall submit one or more invoices to each Customer for the Charges payable by the Customer in respect of each month; and
  - (b) each invoice submitted by the CDSP pursuant to the DSC shall be in the format provided for in the Budget and Charging Methodology.
- 5.2 Subject to the Credit Policy, each Customer shall, within twenty (20) Business Days following the date of the invoice, pay each invoice submitted by the CDSP in full and in cleared funds to a bank account nominated in writing by the CDSP. No sum payable due from a Customer under the DSC shall be subject to any deduction, set-off or withholding of any nature except to the extent expressly permitted pursuant to the DSC.
- 5.3 Each Customer shall notify the CDSP after receipt of an invoice if it disputes the invoice or if it considers that any part of the invoice is incorrect (such notification to be given no later than eighteen (18) months after the date of the invoice). Notwithstanding that it disputes the invoice, the Customer concerned shall (except in the case of manifest error or fraud) in any event pay the amount of such invoice in accordance with this Clause 5 and the disputed portion of the invoice shall be referred for resolution in accordance with the applicable provisions of the Contract Management Arrangements. Where, upon the resolution of the dispute, it is agreed or determined that any amount or part of any disputed portion of an invoice should not have been paid, the CDSP shall include adjustments (together with interest at a rate of one per cent (1%) above the base rate of Barclays Bank PLC as accrued on a daily basis on such adjustments from the date on which payment was made) necessary to reflect the disputed amount agreed or determined to be due to the Customer in the next invoice submitted by the CDSP following resolution of that dispute, or as otherwise agreed between the CDSP and the Customer concerned.

- 5.4 If a Customer fails to pay any sum by the due date for payment in accordance with the DSC:
- (a) the Customer shall pay interest to the CDSP on that sum (before as well as after judgment) at the prevailing rate of statutory interest (as defined in the Late Payments Act) on the day the payment became due, that interest to be calculated on a daily basis from the date upon which such sum became due, to be compounded with monthly rests and to be payable on demand provided that the interest referred to in this Clause 5.4(a) shall be treated as a contractual remedy and not as statutory interest;
  - (b) the Customer shall in addition pay the CDSP in respect of the sum in question an amount equal to the compensation that would be payable to the CDSP were that sum a qualifying debt under the Late Payments Act; and
  - (c) the CDSP may exercise its rights pursuant to, and the Customer shall comply with, the provisions of the Credit Policy in connection with a Customer failure to pay a sum due to the CDSP by the due date for payment.

## **6 UK Link**

- 6.1 The CDSP shall (or shall procure that third parties shall) establish and operate UK Link.
- 6.2 The CDSP shall permit a Customer to access and use UK Link in accordance with Clause 7.7(b).
- 6.3 Each Party shall, at all times, comply with the provisions of the UK Link Manual. In the event that a Customer fails to do so, the CDSP shall be entitled to exercise its rights pursuant to the UK Link Manual in connection with a Customer failure to comply with the provisions of the UK Link Manual.
- 6.4 Each Customer acknowledges and agrees that (subject to the further provisions of the DSC) the CDSP may from time to time permit third parties to access and use UK Link in accordance with the UK Link Manual.

## **7 Intellectual Property Rights**

- 7.1 Save as expressly set out in these DSC Terms and Conditions:

- (a) the DSC does not assign any Pre-existing IPR; and
- (b) no Party shall assert ownership of any Pre-existing IPR of any other Party.

### **7.2 Services Data**

- (a) Subject to Clauses 7.2(b) and 7.5, the CDSP shall not acquire any IPR or other rights in any Services Data, including any Services Data provided by or on behalf of any Customer that are adapted, modified or enhanced by or on behalf of the CDSP.
- (b) In the case of Direct Services only, as between the CDSP and each Customer, all IPR in any Services Data created by or on behalf of the CDSP or its sub-contractors, suppliers or agents (including any data adaptations, modifications and enhancements) shall be owned by the CDSP.
- (c) For the avoidance of doubt, as between Customers, the IPR and related rights position in respect of Services Data is governed by the Applicable Network Code.
- (d) If the CDSP provides to Customers any data (that are not Contract Data or Party Data) relating to the gas industry or persons engaged in or connected with the gas industry, other than pursuant to a DSC Service or a Third Party Service provided to a Customer, such data shall be treated as Services Data falling within Clause 7.2(b) for the purposes of the DSC.

### 7.3 **Contract Data**

As between the CDSP and each Customer, all IPR in Contract Data created by or on behalf of the CDSP or its sub-contractors, suppliers or agents shall be owned by the CDSP.

### 7.4 **Party Data**

Subject to Clauses 7.5(a) and 7.6(a), no Party shall acquire any IPR or other rights in any Party Data of another Party.

### 7.5 **Grant of Licence to CDSP**

Each Customer hereby grants to the CDSP:

- (a) a royalty-free, non-exclusive, irrevocable licence to Use all Services Data (excluding those referred to in Clause 7.2(b)) and Party Data provided to the CDSP by or on behalf of the relevant Customer or otherwise; and
- (b) the full power to sub-license or assign the rights granted under Clause 7.5(a) to:
  - (i) any sub-contractor, supplier and other third party; and
  - (ii) any other Customer or (subject to the Third Party and Additional Services Policy and in respect of Services Data (excluding those referred to in Clause 7.2(b)) only) any other person to which the CDSP provides Services,

for the purposes only of the CDSP providing Services or performing its obligations and exercising its rights under or in connection with the DSC or any agreement with any third party.

### 7.6 **Grant of Licence to Customers**

The CDSP hereby grants to each Customer:

- (a) a royalty-free, non-exclusive licence to Use all Services Data referred to in Clause 7.2(b), Contract Data and Party Data provided to that Customer by or on behalf of the CDSP; and
- (b) the full power to sub-license or assign the rights granted under Clause 7.6(a) to:
  - (i) any sub-contractor, supplier and other third party;
  - (ii) any other Customer,

for the purposes only of the Customer performing its obligations and exercising its rights under or in connection with the DSC.

### 7.7 **UK Link**

- (a) As between the CDSP and Customers, all IPR in UK Link, including any additions, developments and enhancements to UK Link created by or on behalf of the CDSP (the **UK Link Enhancements**) shall be owned by (or, in the case of UK Link Gemini, licensed to) the CDSP, excluding, for the avoidance of doubt, the IPR in any data, which is governed by the other provisions of this Clause 7. The CDSP shall procure that it owns, or is licensed to use in the provision of the DSC Services, UK Link and any UK Link Enhancements.
- (b) The CDSP hereby grants to each Customer a non-exclusive licence to access and use such parts of UK Link as are required to use, access and receive the Services on, and subject to, the terms specified in the UK Link Manual, GTD Section D5 and the DSC.

## 7.8 Other IPR

- (a) As between the CDSP and each Customer, Other IPR created or used by or on behalf of the CDSP or its sub-contractors, suppliers or agents shall be owned by the CDSP.
- (b) The CDSP hereby grants to each Customer:
  - (i) a royalty-free, non-exclusive licence to Use all Other IPR provided to that Customer by or on behalf of the CDSP; and
  - (ii) the full power to sub-license or assign the rights granted under Clause 7.8(a) to any sub-contractor, supplier and other third party,

for the purposes only of the Customer performing its obligations and exercising its rights under or in connection with the DSC.

## 8 Data Security and Protection

8.1 Each Party will process data (whether Contract Data, Party Data or Services Data), which may include personal data (such as the personal data of end users or a Party's staff), for the purposes of performing its obligations and exercising its rights under or in connection with the DSC.

8.2 When acting as a data processor, the relevant Party shall:

- (a) process Controller Data:
  - (i) only on the documented instructions of the data controller. For the purposes of the DSC, those instructions are as set out in this Clause 8, the CDSP Service Description, or as otherwise notified in writing by the data controller to the data processor. The data processor reserves the right to charge the data controller for any material change or addition to the instructions set out in the DSC; and
  - (ii) as required by European Union or English law applicable to the data processor, in which case the data processor shall first inform the data controller of the legal requirement, unless that law prohibits such prior notification;
- (b) not engage any sub-processor if such engagement will have a material adverse effect on the data controller (and the relevant data controller hereby authorises the data processor to engage a sub-processor, provided such engagement will not have a material adverse effect on the data controller);
- (c) not transfer any Controller Data to any country or territory outside the European Economic Area without obtaining the prior written consent of the data controller and provided that such transfer also complies with Data Protection Law;
- (d) implement appropriate technical and organisational measures to ensure the security of the Controller Data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage; and
- (e) permit the data controller, or a third party auditor acting on the data controller's behalf and bound by a confidentiality agreement that is acceptable to the data processor, to conduct, at the data controller's cost, annual audits concerning the data processor's compliance with the DSC. The data controller is entitled to more frequent audits if this is required by Data Protection Law. The data processor may provide sufficient evidence of its compliance with these procedures in lieu of conducting any such audits.

8.3 In addition to Clause 8.1, when acting as a data processor, the relevant Party shall:

- (a) where this is technically possible, implement appropriate technical and organisational measures and provide the data controller with assistance in promptly complying with

any data subject right requests (including access requests) received by the data controller in respect of the Controller Data. Such assistance shall involve following the data controller's detailed written instructions to release, modify or delete, or restrict access to, the Controller Data. The data processor reserves the right to charge the data controller for its compliance with this Clause 8.3(a);

- (b) notify the data controller without undue delay if it becomes aware of any Data Breach that, in its reasonable opinion, is likely to result in a risk to the rights and freedoms of natural persons. Such notification shall include the following information, to the extent it is available:
  - (i) the nature of the Data Breach;
  - (ii) the nature of the personal data affected;
  - (iii) the categories and number of data subjects concerned;
  - (iv) the approximate number of personal data records concerned; and
  - (v) measures taken or proposed to be taken by the data processor to address the Data Breach;
- (c) on request of the data controller, provide a summary of the technical and organisational security measures it has implemented under Clause 8.2(d) in respect of the Controller Data;
- (d) notify the data controller prior to adopting any new type of processing in respect of Controller Data that, in the data processor's reasonable opinion, is likely to result in a risk to the rights and freedoms of natural persons;
- (e) assist the data controller in preparing a data protection impact assessment in respect of any new type of processing proposed to be performed under the DSC. The data processor reserves the right to charge the data controller for its compliance with this Clause 8.3(e); and
- (f) provide reasonable assistance to the data controller where the data controller is required by law to consult a Supervisory Authority regarding any new type of processing proposed under Clause 8.3(d). The data processor reserves the right to charge the data controller for its compliance with this Clause 8.3(f).

8.4 When acting as a data controller, the relevant Party shall provide the data processor with such assistance and co-operation as the data processor may reasonably request to enable the data processor to comply with its obligations under Data Protection Law and the DSC, including the following:

- (a) on request of the data processor, promptly providing all information necessary for the data processor to comply with any obligations imposed on it by Data Protection Law or the DSC in relation to the Controller Data; and
- (b) informing the data processor immediately in writing of any enquiry, complaint, notice or other communication it receives from any Supervisory Authority (including the Information Commissioner's Office) or any data subject relating to the performance of the DSC Services by the data processor.

8.5 The data controller warrants that:

- (a) it shall at all times collect, transfer to the data processor and otherwise process all Controller Data in accordance with Data Protection Law and the DSC;

- (b) without limiting Clause 8.5(a), it has provided all required notices and obtained all required consents from affected data subjects; and
- (c) in light of the nature of the Controller Data, the technical and organisational security measures that the data controller has adopted and the data processor has implemented under Clause 8.2(d) ensure a level of security appropriate to the risk.

## 9 Confidentiality

- 9.1 Subject to Clauses 9.5 and 9.6, each Party (the **Receiving Party**) shall treat as confidential all information (including Party Data) obtained from any other Party (the **Disclosing Party**) pursuant to the DSC.
- 9.2 A Receiving Party shall not, without the prior written consent of the Disclosing Party, use or divulge such information to any person, except:
- (a) for the purposes of performing its obligations and exercising its rights under or in connection with the DSC and / or the Applicable Network Code;
  - (b) to the Receiving Party's Staff, the Receiving Party sub-contractors' staff and the Receiving Party agents' staff, and then only to any such staff who need to know the information;
  - (c) to the Receiving Party's auditors, professional advisers, the Authority, HM Inspector of Taxes, HM Customs and Excise, and any other person or body having a statutory or regulatory right to receive that information and then only in pursuance of such right; or
  - (d) where it concerns financial information, to any shareholder or provider of finance of the Receiving Party who needs to have that information for the purposes of monitoring the activities of the Receiving Party in its capacity as a shareholder or provider of finance of the Receiving Party,

provided that this Clause 9 shall not extend to information that:

- (i) was rightfully in the possession of the Receiving Party prior to the commencement of its dealings with the Disclosing Party (provided that such information was not originally given to it by the Disclosing Party);
  - (ii) is already public knowledge or which becomes so at a future date (otherwise than as a result of breach of this Clause 9);
  - (iii) is trivial or obvious; or
  - (iv) is required by law to be disclosed.
- 9.3 Each Receiving Party undertakes to ensure that the persons and bodies mentioned in Clause 9.2:
- (a) are made aware, prior to the disclosure of any information, that the information is confidential; and
  - (b) except in the case of the Authority, HM Inspector of Taxes, HM Customs and Excise, and any other statutory or regulatory person or body, agree to keep it confidential.
- 9.4 The foregoing obligations as to confidentiality shall remain in full force and effect notwithstanding any expiry or termination of the DSC.
- 9.5 Clause 9.2 shall not apply in respect of Services Data received by a Customer from the CDSP, except for any data comprised (pursuant to the specification of the Service) in the Services Data that are confidential to a person who is not a UNC Party.

9.6 For the avoidance of doubt, as between Customers, the confidentiality provisions under the Applicable Network Code apply.

9.7 Without prejudice to the Parties' other rights and remedies pursuant to the DSC, each Party agrees that damages alone may not be an adequate remedy for any breach of this Clause 9 by another Party. Accordingly, each Party shall be entitled to seek any legal and / or equitable relief, including an injunction, in the event of any breach of this Clause 9.

## **10 Warranties**

10.1 The CDSP warrants and undertakes to each Customer that:

- (a) it will perform its obligations under the DSC in compliance with all Laws and maintain all consents required by Law;
- (b) it will have in place and available the resources, infrastructure and systems appropriate for the provision of, and fit for the purpose of providing, the DSC Services;
- (c) it has the authority, and all rights necessary, to grant to a Customer all rights to be granted to the Customer pursuant to Clause 7.6; and
- (d) it will perform its obligations under the DSC using reasonable skill, care and diligence.

10.2 Each Customer warrants and undertakes to the CDSP that:

- (a) it will perform its obligations under the DSC in compliance with all Laws and maintain all consents and licences required by Law;
- (b) it has the authority, and all rights necessary, to grant to the CDSP all rights to be granted to the CDSP pursuant to Clause 7.5; and
- (c) it will perform its obligations under the DSC using reasonable skill, care and diligence.

10.3 Save as expressly set out in the DSC Terms and Conditions, all representations, warranties, conditions and other terms, whether express or implied, are excluded to the fullest extent permitted by law.

## **11 Data Services**

11.1 Each of the Parties acknowledges and agrees that:

- (a) the CDSP shall only assess and / or verify the condition of data processed by the CDSP pursuant to or in connection with the DSC Services to the extent expressly specified in the CDSP Service Description; and
- (b) the condition of any data provided by the CDSP pursuant to or in connection with the DSC Services is dependent on the condition of the data provided to the CDSP in connection with the provision of the DSC Services.

11.2 For the purposes of Clause 11.1, the condition of any data means the accuracy, completeness, quality, fitness for purpose or any other aspect of those data.

## **12 Liability**

### **12.1 No Limitation**

Notwithstanding any other provision of the DSC, neither the CDSP nor any Customer excludes or limits liability to the other for:

- (a) death or personal injury caused by its own negligence;

- (b) liability for fraud or fraudulent misrepresentation; or
- (c) any other liability the exclusion and / or limitation of which is expressly prohibited by statute or at law.

## 12.2 General Limitation on Liability

- (a) Except as expressly stated in the DSC, neither the CDSP nor any Customer shall be liable to the other under the DSC for any:
  - (i) loss of profits;
  - (ii) loss of business;
  - (iii) loss of revenue;
  - (iv) loss of goodwill;
  - (v) loss of anticipated savings; and / or
  - (vi) indirect, special or consequential loss or damage.
- (b) Clause 12.2(a) shall not exclude or limit the CDSP's or a Customer's right under the DSC to claim for any of the following under an indemnity expressly given by a Customer or the CDSP (as appropriate) or, in the case of the CDSP, which results from a Default or other act or omission by a Customer:
  - (i) any loss or damage to tangible property;
  - (ii) any loss or damage caused by infringement of any third party IPR or breach of any obligations of confidence; or
  - (iii) any loss or damage to software, applications or data.

## 12.3 CDSP Liability to Customers

- (a) Subject to Clauses 12.1 and 12.2(b), as between the CDSP and Customers, the CDSP shall have no liability to any Customer for any loss, damage, cost or harm whatsoever and whether in contract, tort, negligence, for wilful default or otherwise arising under or in connection with the DSC, the performance of the DSC or the DSC Services, UK Link or the performance of UK Link.
- (b) Without limitation but subject to Clauses 12.1 and 12.2(b), pursuant to Clause 12.3(a), as between the CDSP and Customers, the CDSP shall have no liability to any Customer:
  - (i) for any loss, damage, cost or harm sustained or incurred by a Customer as a result of any failure of the CDSP to provide the DSC Services or to do so to any applicable service standards or in accordance with any performance indicators;
  - (ii) for any loss, damage, cost or harm suffered by any gas supplier, meter operator or consumer;
  - (iii) for any financial liabilities arising in respect of any failure of any Party to comply with any obligation or meet any performance standard under the Applicable Network Code; and
  - (iv) for the accuracy of any data.

## 12.4 Appropriateness of Liability Provisions

- (a) It is acknowledged that, pursuant to the CDSP Licence Condition, the Uniform Network Code and the Budget and Charging Methodology:
  - (i) the CDSP is not intended to make profits (beyond a margin to fund working capital) or losses, and will not distribute profits to its shareholders;
  - (ii) any surplus (beyond such margin) or deficit of the CDSP is returned to or borne by the Customers collectively; and
  - (iii) if any Customer or Customers were to make any claim against the CDSP the financial consequences of such claim would be borne by the Customers themselves.
- (b) Accordingly, the Parties agree that, given the nature of the DSC Services, the manner in which they are to be performed and the nature of the relationship between the CDSP and Customers, the limitations and exclusions set out in this Clause 12 are fair and reasonable in the circumstances.

### 12.5 Customer Indemnity

- (a) Each Customer agrees to indemnify and keep indemnified and hold harmless the CDSP in respect of any claim, loss, demand, expenses (including legal costs and expenses), fines or other liability incurred or suffered by the CDSP or its directors or personnel whatsoever and howsoever arising as a result of or otherwise in connection with:
  - (i) any claim made against the CDSP by any person connected with the Customer (other than pursuant to a contract entered into by the CDSP with the relevant person) in connection with the DSC or any DSC Service; and
  - (ii) any loss or destruction of, or damage to, UK Link and / or any data processed by the CDSP (or any part(s) of them) arising as a result of Default or other act or omission of the Customer.
- (b) For the purposes of Clause 12.5(a)(i) a person connected with a Customer is any employee, officer, contractor or agent of the Customer, or any customer, gas supplier or meter operator of the Customer, but does not include a UNC Party or a party to the IGT Code.

### 13 Insurance

The CDSP shall at its own expense effect and maintain for the duration of the DSC such insurances as are required by Law and as appropriate in respect of its obligations under the DSC.

### 14 Change

14.1 The DSC Terms and Conditions may only be amended as set out in Clause 1.2.

14.2 Each CDSP Service Document may be amended:

- (a) in accordance with the Change Management Procedures; and
- (b) in accordance with any provisions for its amendment contained in the CDSP Service Document.

### 15 Force Majeure

15.1 No Party shall be liable for any failure or delay in performing its obligations under the DSC as a result of a Force Majeure Event, provided that:

- (a) the date for performance of any contractual obligation which has been delayed by the Force Majeure Event shall be deemed suspended only for a period equal to the delay caused by that event; and
- (b) the Party seeking to exempt itself from liability by virtue of this Clause 15.1 shall:
  - (i) give written notice to the CDSP's Individual Contract Manager (in the case of a Customer) or the Customer's Individual Contract Manager (in the case of the CDSP) within twenty-four (24) hours of becoming aware of the Force Majeure Event, which notice shall give such information as is available as to the nature and extent of the failure or delay, the reasons for the failure or delay and the steps being taken by the Party seeking to exempt itself to remedy it, together with an estimate of the period of time required to remedy it;
  - (ii) within ten (10) days of giving the notice referred to in Clause 15.1(b)(i), and thereafter upon request, give a detailed report amplifying the information given in the earlier notice and giving such additional explanations and factual information relating to the failure or delay as may have been requested; and
  - (iii) take all necessary steps to remedy the failure or delay.

15.2 The following shall be deemed not to constitute or give rise to a Force Majeure Event:

- (a) any dispute between a Party and its staff or any sub-contractor of that Party and its staff; or
- (b) shortage of labour or inability to pay any sum due.

15.3 The Party seeking to exempt itself from liability by virtue of this Clause 15 shall give written notice to the CDSP's Individual Contract Manager (in the case of a Customer) or the Customer's Individual Contract Manager (in the case of the CDSP) as soon as reasonably practicable once the Force Majeure Event ceases or has been remedied.

## 16 Customer Default

16.1 Without prejudice to the CDSP's other rights and remedies pursuant to the DSC, the CDSP may:

- (a) suspend the provision of any Specific Services or Additional Services (each as defined in the CDSP Service Description) to a Customer pursuant to the DSC immediately by giving written notice to the Customer; and / or
- (b) give notice to each Transporter to the effect that the Customer is in default of the DSC and send a copy of such notice to the Authority,

in the event of a DSC Default of that Customer.

16.2 A **DSC Default** is:

- (a) a material Default (that is not a Credit Default) by the Customer that is either:
  - (i) incapable of remedy; or
  - (ii) not remedied by the Customer within ten (10) Business Days of being notified of the Default by the Customer;
- (b) the Customer persistently committing Defaults (which are not Credit Defaults) which, when taken together, constitute a material Default;

- (c) an Insolvency Event affecting the Customer; or
  - (d) an event or circumstance referred to in the Credit Policy as a DSC Default.
- 16.3 Notwithstanding any other provision of the DSC, where a Customer is in Default in respect of any obligation or requirement under the UK Link Manual in relation to UK Link, the CDSP may take the measures provided for in the UK Link Manual.
- 16.4 Where the effect of a Default of a Customer is to prevent, obstruct or delay the provision of any DSC Service by the CDSP to the Customer or any other Customers, the CDSP's obligation to provide the DSC Service shall be suspended or reduced accordingly.
- 16.5 Where a material Default of a Customer (other than a Credit Default or a Default addressed by measures provided for in the UK Link Manual) causes or is likely to cause material risk or prejudice to any other Customer or Customers (including the CDSP's performance of its obligations to such other Customer or Customers under the DSC), the CDSP may take any reasonable measure available to it to reduce or mitigate such risk or prejudice, and shall not be in breach of its obligations under the DSC to the Customer or any other Customers as a result of taking any such measure.
- 16.6 Any suspension of the provision of any Specific Services or Additional Services (each as defined in the CDSP Service Description) pursuant to Clause 16.1(a) shall be effective until such time as:
- (a) the DSC Default in respect of the relevant Customer has been, and the CDSP notifies the relevant Customer in writing that the DSC Default has been, remedied to the CDSP's reasonable satisfaction; or
  - (b) if the DSC Default is incapable of remedy, the relevant Customer has satisfied such requirements in connection with such DSC Default and / or the prevention of any future DSC Default(s), as the CDSP may notify to the relevant Customer.
- 16.7 The CDSP may suspend the provision of Services to a Customer pursuant to the DSC immediately by giving written notice to the Customer in the event the Customer is a Premises Termination User.

## 17 Ceasing to be a Party

- 17.1 A Customer may not cease to be a Party unless and until it ceases to be a UNC Party.
- 17.2 If, and on the date that, a Customer ceases to be a UNC Party (for whatever reason), the Customer shall automatically cease to be a Party.
- 17.3 A Withdrawing Party shall comply with the Withdrawal Requirements and, if a Customer wishes to cease to be a UNC Party for whatever reason, the Customer must comply with the Withdrawal Requirements before it ceases to be a UNC Party.
- 17.4 The **Withdrawal Requirements** are that the Withdrawing Party:
- (a) pays in cleared funds all outstanding sums payable to the CDSP pursuant to the DSC and any applicable Charge in connection with the removal and / or decommissioning of any items referred to in Clause 17.6;
  - (b) complies with the provisions of the UK Link Manual which apply where a person ceases or wishes to cease to be a UK Link User;

- (c) remedies any breach of the DSC that is capable of remedy and that the CDSP has notified to the Customer in writing;
  - (d) immediately ceases to use any Services Data referred to at Clause 7.2(b), Contract Data and Party Data of the CDSP in the possession, control or custody of the Customer; and
  - (e) subject to Clause 17.3 and notwithstanding Clause 7.6, no later than seven (7) days after the Withdrawing Party ceases to be a Party, returns all materials containing Services Data referred to at Clause 7.2(b), Contract Data and Party Data of the CDSP in the possession, control or custody of the Withdrawing Party or, at the request of the CDSP, destroys all such materials, and supplies a certificate to the CDSP signed by an authorised officer of the Withdrawing Party confirming that the Withdrawing Party has complied with this Clause 17.4(e).
- 17.5 The CDSP shall inform the Transporters when the Withdrawal Requirements are satisfied in relation to a Withdrawing Party, and the Transporters shall notify the CDSP when a Party ceases to be a UNC Party; but it is acknowledged that (similar to what is described in Clause 4.8) the CDSP will manage on behalf of the Transporters the process pursuant to which a person ceases to be a UNC Party, and the CDSP shall operate a single coordinated process for a person ceasing to be a Party and a UNC Party.
- 17.6 In the event that a Withdrawing Party fails to return any item(s) to the CDSP which are required to be returned to the CDSP by a Withdrawing Party pursuant to the DSC in accordance with Clause 17.4(e) and/or the UK Link Manual (as appropriate), at the Withdrawing Party's cost:
- (a) the CDSP may enter the Withdrawing Party's property to decommission and retrieve such item(s) (as appropriate) and the Withdrawing Party hereby grants to the CDSP (or its nominee) such access, rights and co-operation to the Withdrawing Party's (and any relevant third party's) premises, infrastructure, equipment, systems, information technology, staff and resources as the CDSP may require to do so; or
  - (b) at the CDSP's sole option, where such item(s) are required to be returned to the CDSP pursuant to the UK Link Manual, the Withdrawing Party shall reimburse the CDSP for the cost of such item(s) as notified by the CDSP to the Withdrawing Party.
- 17.7 Notwithstanding the DSC Agreement:
- (a) a Withdrawing Party shall be and remain liable for, and shall pay to the CDSP, all Charges payable in respect of the period prior to the Withdrawal Date; and
  - (b) a Customer's becoming a Withdrawing Party shall not affect any rights or remedies of any Party accruing in respect of the period before the Withdrawal Date.
- 17.8 Notwithstanding the fact that a Customer becomes a Withdrawing Party, the following provisions of the DSC shall not be affected and shall continue in full force and effect:
- (a) any provision that is expressed or intended to survive or operate in the event of a Customer becoming a Withdrawing Party (which shall include Clauses 2, 3.6, 3.7, 5, 7, 8, 9, 10.3, 11, 17, 20, 26, 27, 28, 29, 30 and 31, and any provisions of the UK Link Manual that are expressed or intended to survive or operate in the event of a Customer ceasing to be a UK Link User); or
  - (b) any provision that, in consequence of the continuation of any specific terms under the DSC, is needed for the proper efficacy, operation or interpretation of the DSC in the event of a Customer becoming a Withdrawing Party.

## **18 Service Provision**

Subject to the other provisions of the DSC Terms and Conditions and the CDSP Service Documents, the CDSP shall determine (in its sole discretion) all management, staff, information

technology, infrastructure and other equipment, premises, materials and resources appropriate to provide the DSC Services.

## **19 Customers**

Except to the extent expressly set out in the DSC Terms and Conditions, the DSC does not, and does not intend to, create any rights and / or obligations as between Customers.

## **20 Cumulative Remedies**

The rights and remedies of the Parties pursuant to the DSC may be exercised successively in respect of any one or more failures by another and are in addition and without prejudice to any other right they may have against each other.

## **21 Assignment and Sub-contracting**

21.1 No Party shall assign or otherwise transfer the DSC or any of its rights and obligations under it whether in whole or in part, save as set out in Clause 21.2.

21.2 A Party shall, if it assigns its rights pursuant to the Uniform Network Code, similarly assign its rights pursuant to the DSC and shall not assign its rights pursuant to the Uniform Network Code unless it also similarly assigns its rights pursuant to the DSC.

21.3 The CDSP shall be entitled to enter into Sub-contracting Arrangements. No Party shall be relieved from any of its obligations under the DSC by entering into any sub-contract for the performance of all or any part of its obligations under the DSC.

21.4 Without prejudice to TPD Section V6.1 of the Uniform Network Code, nothing in the DSC shall prevent or restrict a Customer from appointing another person to be the agent or similar of the Customer for the purposes of the DSC and where a Customer wishes to appoint an agent or similar it shall give notice to the CDSP's Individual Contract Manager specifying the identity of the proposed person, the purposes in respect of which that person is to be appointed and the date from which the appointment is to take effect.

## **22 Notices**

22.1 Subject to Clause 23, any notice given under the DSC 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 to:

(a) in the case of the CDSP, the address set out below; **and**

(b) in the case of a Customer, the address provided pursuant to Clause 4.5,

or to such other address(es) as may be notified for this purpose, and shall be effective notwithstanding any change of address(es) not notified.

### **CDSP:**

Email: [to be confirmed]

Address: [to be confirmed]

F.A.O: [to be confirmed]

22.2 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 or 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.

22.3 For the avoidance of doubt, this Clause 22 shall not apply in respect of any Code Communication.

## **23 Publication**

- (a) Subject to Clause 23(b), where any provision of the DSC requires the CDSP (other than in the provision of a DSC Service) to send, submit, provide, make available or publish any document or information to Customers (or Customers of a Customer Class) collectively, or to a DSC Committee, or to any person or body under the Uniform Network Code:

- (i) the CDSP may comply with such requirement by making the relevant document or information available on its website; and
- (ii) the CDSP shall be taken to have complied with such requirement if the Code Administrator publishes such document or information,

but subject to any provision of the DSC which requires the use of a restricted part of the CDSP's website and to the provisions of Clause 9.

- (b) The CDSP shall first discuss and agree with the Contract Management Committee (or, in relation to the Change Management Procedures, the Change Management Committee) whether and on what basis the approach in Clause 23(a)(i) and / or Clause 23(a)(ii) is to apply in relation to any particular requirement for the CDSP to send, submit, provide, make available or publish any document or information.

## **24 Severance**

If any provision of the DSC shall be declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability or legality of the remaining provisions of the DSC.

## **25 Further Assurance**

Each Customer shall execute all further documents and do all such acts and things necessary, or reasonably required by the CDSP, to give full effect to the DSC and, in particular, to vest to the CDSP the applicable rights in respect of the applicable IPR in accordance with Clause 7.

## **26 Entire Agreement**

The DSC supersedes all prior agreements, arrangements and understandings between the Parties and constitutes the entire agreement between the Parties relating to the subject matter of the DSC. Each Party affirms that it has not been induced to enter into the DSC by any prior representations whether oral or in writing, except as specifically contained in the DSC Terms and Conditions, and hereby waives any claim for breach of any such representations which are not so specifically incorporated.

## **27 Waiver**

No forbearance, delay or indulgence by any Party in enforcing the provisions of the DSC shall prejudice or restrict the rights of that Party nor shall any waiver of its rights operate as a waiver of any subsequent breach. No right, power or remedy in the DSC conferred upon or reserved for any Party is exclusive of any other right, power or remedy available to that Party and each such right, power or remedy shall be cumulative.

## **28 No Partnership**

The CDSP shall at all times be an independent contractor and nothing in the DSC shall be deemed to constitute a partnership between the Parties.

## **29 Rights of Third Parties**

The Parties do not intend that any term of the DSC shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a Party.

## **30 Expert Determination**

30.1 Where the DSC expressly provides for determination of a matter or dispute in accordance with this Clause 30 or the Customer(s) concerned and the CDSP each agree in writing to determine a matter or dispute in accordance with this Clause 30, a matter or dispute shall be referred for determination:

- (a) to a person suitably qualified to determine such matter or dispute, who shall be nominated jointly by the Customer(s) concerned and the CDSP; or
- (b) failing agreement as to such nomination within seven (7) days, to such person as may be appointed, on the application of either the Customer(s) concerned or the CDSP, by the President of the Law Society of England and Wales.

30.2 The Customer(s) concerned and the CDSP shall on request promptly supply to the Expert, for the time being, such assistance, documents and information as may be required for the purpose of the determination and the Customer(s) and the CDSP shall use all reasonable endeavours to procure the prompt determination of that reference.

30.3 The Expert shall be deemed to act as an expert and not as an arbitrator and his determination shall be conclusive and binding on the Parties involved.

30.4 The costs of the Expert shall be divided equally between the CDSP and Customer(s) concerned, save as may be otherwise directed by the Expert.

## **31 Governing Law and Jurisdiction**

The DSC shall be governed by and construed in all respects in accordance with English law and it is irrevocably agreed that the courts of England are to have exclusive jurisdiction to settle any claim or matter arising in relation to the DSC.

## **32 Anti-Bribery**

32.1 Each Party warrants that it has at all times in connection with obtaining the DSC complied with all Laws relating to anti-bribery and corruption. Each Party undertakes that it:

- (a) shall at all times in connection with the DSC comply with all Laws relating to anti-bribery and corruption ("Relevant Requirements");
- (b) shall not engage in any activity, practice or conduct which constitute an offence under the Bribery Act 2010 if such activity, practice or conduct has been carried out in the United Kingdom; and
- (c) has and maintains in place at all times (in order to ensure compliance with the Relevant Requirements) its own anti-bribery and corruption policies and procedures, and shall comply with and shall procure that its personnel shall comply with such policies where appropriate.

32.2 Each Party shall immediately upon becoming aware of, or suspecting, any failure to comply with the provisions of this Clause 32 (including any request or demand by any third party for any inducement in connection with the performance of the DSC) give written notice to the CDSP's

Individual Contract Manager (in the case of the Customer) or the Customer's Individual Contract Manager (in the case of the CDSP).