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| **Appendix [TBC]: Notice to Provide Further Security (example)** |

**Request to Provide Further Security (RTFS)**

|  |  |  |  |
| --- | --- | --- | --- |
| **Customer Name:** | [insert name] | | |
| **Current Indebtedness** | % | **Current Date:** | [insert date] |
| **Current Security Amount** | £x | **Ref:** | [insert reference] |
| **Further Security Requested** | **£x** |

**The Data Services Credit Rules (DSCR) and the Data Services Credit Policy (DSCP) requires that Customers maintain Outstanding Indebtedness at a level below 85%of the DSC Credit Limit.**

Your recent level of Indebtedness has been above your 85% of the DSC Credit Limit

**This Notice, issued in pursuance of Section 3.5 of the DSCP, represents a request for you to provide further security to the value of £[insert amount] in cleared funds by 12:00 hrs on [insert date]. Alternatively you may wish to satisfy this notice through the provision of a Letter of Credit, Non Registerable Deposit Deed or Parent Company Guarantee as outlined in the prevailing DSCR.**

**If this requirement is not met you will be issued with a Failure to Provide Further Security Notice. Should you not comply with that notice then the matter will be referred to the DSCC and the decision may be made to issue a Suspension Notice, with the effect that you shall cease to receive services and goods from the date stated on the Suspension Notice. After termination we reserve the right to pursue all outstanding monies in full, which may include, but is not limited to, seeking a winding up order.**

Xoserve Limited (The CDSP) shall withhold any amounts owed to you in respect of any outstanding DSC Invoices pursuant to paragraph 5.10.1 of the DSCR 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 5.3 of the DSCR.

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Credit Risk Manager - Energy Date

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| Appendix [TBC]: Notice of Failure to Data Services Contract (DSC) Invoice (example) |

Failure To Pay Notice

|  |  |  |  |
| --- | --- | --- | --- |
| **Customer Name:** | [Insert name] | | |
| **Outstanding Invoice:** | [Insert date] | **Current Date:** | [insert date] |
| **Invoice Due Date:** | [Insert date] |
| **Invoice Amount:** | £x |
| **Security Account Balance** | £x |
| **Net Invoice Amount:** | **£x** |

The The Data Services Credit Rules (DSCR) and Data Services Credit Policy (DSCP) requires 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 DSCR and Section 4 of the DSCP , 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 the late payment.

If payment in full is not received by **[insert date]** then a Default Notice [pursuant to Section 4 of the DSCP] may be issued and the matter will be referred to the DSCC for a decision with the effect that such Notice shall be a Final Demand for payment

A copy of this notice has been sent to Ofgem and the DSCC will be informed that this notice has been issued.

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Credit Risk Manager - Energy Date

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| **Appendix [TBC] : Suspension of Notice to Provide Further Security Pending Outcome of Appeal (example)** |

|  |  |  |  |
| --- | --- | --- | --- |
| **Customer Name:** | [insert name] | | |
| **Current Indebtedness** | % | **Current Date:** | [Insert date] |
| **Current Security Amount** | £x | **Ref:** | [insert reference] |
| **Further Security Requested** | **£x** |

**The Data Services Credit Rules (DSCR) and the Data Services Credit Policy (DSCP) requires that Customers maintain Outstanding Indebtedness at a level below 85%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 requesting that you provide further security of £ **[insert amount]** in cleared funds by **[Insert date].**

**You have appealed against the Notice to Provide Further Security in pursuance of Section 3.5 of the DSCP. This Notice represents suspension of the Notice to Provide Further Security pending the outcome of the appeal.**

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Credit Risk Manager - Energy Date

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| **Appendix [TBC]: Notice of Outcome of Appeal Against Notice to Provide Further Security (Revised) (example)** |

RPFS NOTICE OF OUTCOME OF APPEAL

|  |  |  |  |
| --- | --- | --- | --- |
| **Customer Name:** | [insert name] | | |
| **Current Indebtedness** | % | **Current Date:** | [insert date] |
| **Current Security Amount:** | £x | **Ref:** | [insert reference] |
| **Further Security Requested:** | £x |
| **Revised Further Security Requested:** | **£x** |

**The Data Services Credit Rules (DSCR) and the Data Services Credit Policy (DSCP) requires that Customers maintain Outstanding Indebtedness at a level below 85%of the DSC Credit Limit.**

**Your recent level of Indebtedness has been above your agreed 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]** in cleared funds by 12.00 hrs on **[insert date].**

You have appealed against the Notice to Provide Further Security in accordance with paragraph 5.3 of the DSCR . The effect of this appeal was to suspend the Notice to Provide Further Security.

**In response to your appeal, we have revised the Notice to Provide Further Security.**

**This Notice represents the revised Notice to Provide Further Security such that we require the revised further security of [insert amount] in cleared funds by 12.00 hrs on [insert date]. Alternatively you may wish to satisfy this notice through the provision of a Letter of Credit, Non Registerable Deposit Deed or Parent Company Guarantee as outlined in the prevailing DSCR.**

**If this requirement is not met you will be issued with a Failure to Provide Further Security Notice. Should you not comply with that notice then the matter will be referred to the DSCC and the decision may be made to issue a Suspension Notice, with the effect that you shall cease to receive services and goods from the date stated on the Suspension Notice. . After suspension we reserve the right to pursue all outstanding monies in full, which may include, but is not limited to, seeking a winding up order.**

Xoserve Limited (The CDSP) shall withhold any amounts owed to you in respect of any outstanding DSC Invoices pursuant to paragraph 5.10.1 of the DSCR to refund any monies held or due to be paid until this notice has been satisfied.

The DSCP and DSCR do not make provision for you to appeal the Revised Further Security Amount used in a Notice of Outcome of Appeal against Notice to Provide Further Security

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Credit Risk Manager - Energy Date

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| **Appendix [TBC]: Notice of Outcome of Appeal Against Notice to Provide Further Security (Reissued) (example)** |

|  |  |  |  |
| --- | --- | --- | --- |
| **Customer Name:** | [Insert Name] | | |
| **Current Indebtedness:** | % | **Current Date:** | [Insert Date] |
| **Current Security Amount:** | £x | **Ref:** | [Insert Ref] |
| **Further Security Requested:** | £x |
| **Reissued Further Security Requested:** | **£x** |

**The Data Services Credit Rules (DSCR) and the Data Services Credit Policy (DSCP) requires that Customers maintain Outstanding Indebtedness at a level below 85%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]** in cleared funds by 12.00 hrs on **[insert date]**

You have appealed against the Notice to Provide Further Security in accordance with Section X 2.10. The effect of this was to suspend the Notice to Provide Further Security.

**In response to your appeal, we have revised the Notice to Provide Further Security.**

**This Notice represents the revised Notice to Provide Further Security and we require the reissued further security of [insert amount] in cleared funds by 12.00 hrs on [insert date]. Alternatively you may wish to satisfy this notice through the provision of a Letter of Credit or Non Registerable Deposit Deed as outlined in the prevailing Data Services Credit Rules**

**If this requirement is not met you will be issued with a Failure to Provide Further Security Notice. Should you not comply with that notice then the matter will be referred to the DSCC and the decision may be made to issue a Suspension Notice, with the effect that you shall cease to receive services and goods from the date stated on the Suspension Notice. After suspension we reserve the right to pursue all outstanding monies in full, which may include, but is not limited to, seeking a winding up order.**

Xoserve Limited (The CDSP) shall withhold any amounts owed to you in respect of any outstanding DSC Invoices pursuant to paragraph 5.10.1 of the DSCR to refund any monies held or due to be paid until this notice has been satisfied.

The DSCP and DSCR do not make provision for you to appeal the Revised Further Security Amount used in a Notice of Outcome of Appeal against Notice to Provide Further Security.

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Credit Risk Manager – Energy Date

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| **Appendix [TBC] : Notice of Outcome of Appeal Against Notice to Provide Further Security (Withdrawn) (example)** |

|  |  |  |  |
| --- | --- | --- | --- |
| **Customer Name:** | [insert name] | | |
|  | | | |
| **Current Cash Call Limit:** | £x | **Current Date:** | [Insert date] |
| **Current Security Amount** | £x | **Ref:** |  |
| **Further Security Requested** | **£x** |

**The Data Services Credit Rules (DSCR) and the Data Services Credit Policy (DSCP) requires that Customers maintain Outstanding Indebtedness at a level below 85%of the DSC Credit Limit.**

Your recent level of Indebtedness has been above your Cash Call Limit.

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

In accordance with paragraph 5.3 of the DSCR, you have appealed against the Notice to Provide Further Security. The effect of this action was to suspend the Notice to Provide Further Security.

**In response to your appeal, and in pursuance of** paragraph 5.3 of the DSCR **, we have concluded that the calculations which resulted in the Notice to Provide Further Security being issued were incorrect and the Notice to Provide Further Security has therefore been withdrawn.**

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Credit Risk Manager – Energy Date

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| **Appendix [TBC]: Notice of Failure To Provide Further Security (example)** |

|  |  |  |  |
| --- | --- | --- | --- |
| **Customer Name:** | [Insert Name] | | |
| **Current Indebtedness** | % | **Current Date:** | [Insert Date] |
| **Current Security Amount** | £x | **Ref:** | [Insert Ref] |
| **Further Security Requested** | **£x** |

**The Data Services Credit Rules (DSCR) and the Data Services Credit Policy (DSCP) requires that Customers maintain Outstanding Indebtedness at a level below 85%of the DSC Credit Limit.**

**Your recent level of Indebtedness has been above your DSC Credit Limit Limit.**

You were issued with a Notice to Provide Further Security on **[insert date]** requesting you to provide further security of **[insert amount]** in cleared funds 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 demand to provide further security of [Insert Amount] in cleared funds by 12:00 hrs on [insert date].**

**If this requirement is not met you will be issued with a Failure to Provide Further Security Notice. Should you not comply with that notice then the matter will be referred to the DSCC and the decision may be made to issue a Suspension Notice, with the effect that you shall cease to receive services and goods from the date stated on the Suspension Notice. . After suspension we reserve the right to pursue all outstanding monies in full, which may include, but is not limited to, seeking a winding up order.**

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

A copy of this notice has been sent to Ofgem and the DSCC will be informed that this notice has been issued.

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Credit Risk Manager – Energy Date

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| **Appendix [TBC]: Proforma Irrevocable Standby Letter of Credit** |

To: Xoserve Limited

1-3 Strand

London

WC2N 5EH

(Company Number )

(“**Xoserve**”)

Date: *[............]*

1 For the purposes of this letter of credit number [ ][[1]](#footnote-1) (this “**Letter of Credit**”):

1. the following terms shall (subject to paragraphs (c) and (d) below) have the meanings given to them from time to time in the DSC: “**DSC**”, “**DSC Charges**”, “**LDZ**”, “**NTS**”, “**Transporters**” and “**Transporter’s Licence**”;

(b) “**DSC**” 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;

(c) in the definitions “**DSC**” and “**Transporter’s Licence**”, “Transporter” shall mean Xoserve Gas plc:

(i) in its capacity as the owner and operator of the NTS and licensee under its Transporter’s Licence authorising the conveyance of gas through the NTS; and

(ii) in its capacity as the owner and operator of one or more LDZ(s) and licensee under its Transporter’s Licence authorising the conveyance of gas through such LDZ(s); and

(d) the term “DSC Invoices” includes not only DSC Charges as defined in and for which the Customer is liable pursuant to the DSC but also DSC Charges as defined in and for which the Customer is liable pursuant to the network DSC of Xoserve as it existed prior to 1 May 2005.

2 We, by this Letter of Credit, establish in your favour our irrevocable standby letter of credit for the account of [ ], a company incorporated in [ ] with registered number [ ] whose registered office is at [ ][[2]](#footnote-2) (the “**Customer**”). This Letter of Credit is issued in connection with the Customer’s DSC indebtedness (being all that indebtedness of the Customer to Xoserve from time to time under, pursuant to, or in respect of, DSC Charges, irrespective of whether such indebtedness arose prior to, on, or subsequent to the date hereof and/or prior to, on, or subsequent to the Effective Date) (the **“DSC Indebtedness”**).

3 We understand that the Customer may from time to time request you to agree to amendments to, or other variations or extensions of, the terms of its DSC Indebtedness and that the DSC may from time to time be modified, varied or amended. Our obligations under this Letter of Credit, as set out herein, will apply notwithstanding any such modifications, amendments, variations or extensions or the termination of the Customer as a Customer under the DSC provided that:

* + 1. our maximum liability to you under this Letter of Credit shall not exceed *[£ ............... ]*;[[3]](#footnote-3) 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.

4 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 *[..................]* [[4]](#footnote-4) accompanied by your certificate that the Customer has failed to honour, in whole or in part, its DSC Indebtedness 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 Customer pursuant to such indebtedness. For the avoidance of doubt it is acknowledged that:

(a) you may demand payment hereunder on any number of occasions but subject to clause 3(a) above; and

(b) any demand hereunder may be lawfully made by you or any person on your behalf.

5 This Letter of Credit will become effective on [ ][[5]](#footnote-5) (the “**Effective Date**”) and will expire on *[.................]*[[6]](#footnote-6) (the “**Expiry Date**”) and the demand(s) and certificate(s) referred to in paragraph 4 of this Letter of Credit must be presented 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.

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

7 This Letter of Credit 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, we hereby agree to submit to the exclusive jurisdiction of the Courts of England.

8 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 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.

Signed by *[.....................]* as a duly authorised signatory for and on behalf of *[...................][[7]](#footnote-7)*

Signed by *[.....................]* as a duly authorised signatory for and on behalf of *[...................][[8]](#footnote-8)*

|  |
| --- |
| **Appendix [TBC]: Proforma Customer Participant Letter of Credit** |

To: Xoserve Limited

1-3 Strand

London

WC2N 5EH

Company

(“**Xoserve**”)

Date: *[............]*

1 For the purposes of this letter of credit number [ ][[9]](#footnote-9) (this “**Letter of Credit**”):

(a) the following terms shall (subject to paragraphs (c) and (d) below) have the meanings given to them from time to time in the DSC: “**DSC**”, “**DSC Charges**”, “**LDZ**”, “**NTS**”, “**Transporters**” and “**Transporter’s Licence**”;

(b) “ **DSC**” 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;

(c) in the definitions “**DSC**” and “**Transporter’s Licence**”, “Transporter” shall mean Xoserve Limited:

(i) in its capacity as the owner and operator of the NTS and licensee under its Transporter’s Licence authorising the conveyance of gas through the NTS; and

(ii) in its capacity as the owner and operator of one or more LDZ(s) and licensee under its Transporter’s Licence authorising the conveyance of gas through such LDZ(s); and

(d) the term “**DSC Charges**” includes not only DSC Charges as defined in and for which a Customer is liable pursuant to the DSC but also DSC Charges as defined in and for which a Customer is liable pursuant to the network DSC of Xoserve as it existed prior to 1 May 2005.

2 We, by 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 #3***], a company incorporated in [ ] with registered number [ ] whose registered office is at [ ][[10]](#footnote-10), (each being a “**Customer**” and together the “**Customers**”). This Letter of Credit is issued in connection with the Customers’ DSC indebtedness (being all that indebtedness of the Customers to Xoserve from time to time under, pursuant to, or in respect of, DSC Charges, irrespective of whether such indebtedness arose prior to, on, or subsequent to the date hereof and/or prior to, on, or subsequent to the Effective Date) (“**DSC Indebtedness**”) .

3 We understand that any or all of the Customers may from time to time request you to agree to amendments to, or other variations or extensions of, the terms of its DSC Indebtedness and that the DSC may from time to time be modified, varied or amended. Our obligations under this Letter of Credit, as set out herein, will apply notwithstanding any such modifications, amendments, variations or extensions or the termination of any or all of the Customers as a Customer (in this context, as defined in the DSC) under the DSC, provided that:

1. our maximum liability to you under this Letter of Credit shall not exceed *[£ ............... ]*;[[11]](#footnote-11) 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.

4 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 *[..................]* [[12]](#footnote-12) accompanied by your certificate that any of the Customers has failed to honour, in whole or in part, its DSC Indebtedness and the amount of your demand under this Letter of Credit is not greater than the Aggregate amount of all sums then due and payable to you by the Customers pursuant to such indebtedness. For the avoidance of doubt it is acknowledged that:

(a) you may demand payment hereunder on any number of occasions but subject to clause 3(a) above; and

(b) any demand hereunder may be lawfully made by you or any person on your behalf.

5 This Letter of Credit will become effective on [ ][[13]](#footnote-13) (the “**Effective Date**”) and will expire on *[.................]*[[14]](#footnote-14)(the “**Expiry Date**”) and the demand(s) and certificate(s) referred to in paragraph 4 of this Letter of Credit must be presented 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.

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

7 This Letter of Credit 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, we hereby agree to submit to the exclusive jurisdiction of the Courts of England.

8 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 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.

Signed by *[.....................]* as a duly authorised signatory for and on behalf of *[...................][[15]](#footnote-15)*

Signed by *[.....................]* as a duly authorised signatory for and on behalf of *[...................][[16]](#footnote-16)*

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| --- |
| **Appendix [TBC]: Multiple Customer Letter of Credit Side Letter** |

[Multiple Customer Letter to Xoserve Limited – DSC Letter of Credit]

To: Xoserve Limited

1-3 Strand

London

WC2N 5EH

Company No:

(“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 Customers]** (each a “**Customer**” and together the “**Customers**”).

For the purposes of this letter:

1. **“ DSC”** 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”, “DSC Credit Limit”, “Customer Default”, “LDZ”, “NTS”, “Transporter” , Termination Notice”** and **“Transporter’s Licence”,** shall (subject to paragraph (c) below) have the meanings given to them from time to time in the DSC; and

(c) in the definitions “**DSC**” and “**Transporter’s Licence**”, “Transporter” shall mean Xoserve Gas plc:

(i) in its capacity as the owner and operator of the NTS and licensee under its Transporter’s Licence authorising the conveyance of gas through the NTS; and

(ii) in its capacity as the owner and operator of one or more LDZ(s) and licensee under its Transporter’s Licence authorising the conveyance of gas through such LDZ(s).

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

We acknowledge that:

(a) pursuant to the DSC, each Customer has currently been allocated a DSC Credit Limit, as set out below:

[Customer 1] DSC Credit Limit: £[ ]

[Customer 2] DSC Credit Limit: £[ ]

[Customer 3] DSC Credit Limit: £[ ]

(b) the total of the Customers’ individual DSC Credit Limits is currently £[ ]; and

(c) the DSC Credit Limit of each Customer may be altered as provided for in the DSC 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 under the Letter of Credit in relation to the liabilities of any one or more of the Customers to Xoserve, Xoserve will, where practicable, discuss with each of the other Customer(s) whether any of the DSC Credit Limits of the other Customer(s) need to be adjusted. If the amount demanded is a sum greater than the then DSC Credit Limit of the Customer(s) in relation to which the demand is made, Xoserve will (whether or not it has been able to discuss the same with such other Customer(s)) be entitled to reduce the DSC Credit Limit(s) of any one or more of the other Customer(s) as it thinks fit. Any such reduction(s):

1. shall take effect immediately on determination of such reduction by Xoserve without the need under the DSC or otherwise for any notice or specified amount of notice to the relevant Customer(s) (and the Customers hereby waive any right to any such notice);

(b) shall take effect notwithstanding that it may result in Xoserve being able to give a Termination Notice to any one or more of the Customers and/or cause a Customer Default to occur in relation to any one or more of the Customers.

2. Xoserve will notify a Customer as soon as reasonably practicable of any reduction in its DSC Credit Limit pursuant to paragraph number 1 of this letter.

3. For the avoidance of doubt:

(a) in making any reduction in any DSC Credit Limit(s) pursuant to paragraph number 1 of this letter, Xoserve owes no duty to any Customer(s) to make such reduction proportionately or equitably or on any particular basis between any Customer(s) but shall be entitled to determine the DSC Credit Limit of each particular Customer as it in its absolute discretion thinks fit; and

(b) if subsequent to any reduction in its DSC Credit Limit under paragraph number 1 of this letter any Customer wishes to increase its DSC Credit Limit it shall only be entitled to do so as provided for in the DSC.

4. Each of the Customers hereby authorises Xoserve to disclose any information it may have in relation to any Customer (including without limitation its DSC Credit Limit and/ or any actual or proposed security or other arrangements and any proposed change in its DSC Credit Limit whether under this letter or otherwise) to any of the other Customers. For the avoidance of doubt, nothing in this letter shall oblige Xoserve to disclose any such information.

5. We acknowledge and agree that the rights of and protections afforded to Xoserve pursuant to this letter may be exercised and claimed by Xoserve and by any person authorised by Xoserve.

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

[Customer 1]

for and on behalf of

[Customer 2]

for and on behalf of

[Customer 3]

-on duplicate-

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

Yours faithfully

for and on behalf of

Xoserve Limited

|  |
| --- |
| **Appendix [TBC] : Proforma Non Registrable Deposit Deed** |

**DATED [ ] 20[ ]**

**DSC Services & Goods**

**DEPOSIT DEED**

**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 [ ][[17]](#footnote-17) (the “**Customer”**); and

(2) Xoserve Limited a company registered in England and Wales (No ) having its registered office at 1-3 Strand, London, WC2N 5EH (“**Xoserve”**).

**RECITALS:**

A. This Deed is supplemental to the Xoserve Framework Agreement (pursuant to which the DSC is given contractual effect) (as modified, varied or amended from time to time) to which (inter alia) Xoserve and the Customer are parties.

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

1. In this Deed:

the following terms shall (subject to paragraphs (e) and (f) below) have the meanings given to them from time to time in the DSC: “**DSC**”, “**DSC Charges**”, “**Data Services Credit Rules**”, “**DSC Invoice**”, “**LDZ**”, “**Xoserve Framework Agreement**”, “**NTS**”, “**DSC Credit Limit**”, “**Transporter**”, **“Transporter Agency”,** and “**Transporter’s Licence**”;

“**UNC Date**” shall mean 1 May 2005;

“**DSC Indebtedness”** shall mean all that indebtedness, present or future, actual or contingent, of the Customer from time to time under, pursuant to, or in respect of, DSC Charges, irrespective of whether such indebtedness arose prior to, on, or subsequent to the date hereof and/or prior to, on, or subsequent to the UNC Date;

“ **DSC**” 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;

in the definitions “**DSC**” and “**Transporter’s Licence**”, “Transporter” shall mean Xoserve:

in its capacity as the owner and operator of the NTS and licensee under its Transporter’s Licence authorising the conveyance of gas through the NTS; and

in its capacity as the owner and operator of one or more LDZ(s) and licensee under its Transporter’s Licence authorising the conveyance of gas through such LDZ(s); and

the term “**DSC Charges**” includes not only DSC Charges as defined in and for which the Customer is liable pursuant to the DSC but also DSC Charges as defined in and for which the Customer is liable pursuant to the network DSC of Xoserve as it existed prior to the UNC Date.

2.1 In consideration of Xoserve agreeing to permit the Customer to incur (or, as the case may be, to continue to incur) DSC Indebtedness 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 [ ] pounds sterling (£[ ])[[18]](#footnote-18) to Xoserve and may from time to time hereafter pay further sums to Xoserve Limited in accordance with the terms of this Deed. All such sums, as well as any interest thereon (together the “**Deposit**”) will be returnable by Xoserve to the Customer, only 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.

3.1 The Customer hereby acknowledges and agrees that the Deposit will be held by Xoserve on the express understanding that the Customer will have no right to receive or require repayment of the Deposit (including, subject to clause 6 any accrued interest) until:

1. the Customer both ceases to be a Customer for the purposes of the DSC and has no present or future, actual or contingent liability to Xoserve in respect of DSC Indebtedness or otherwise (it being acknowledged that the termination of the Customer as a Customer under the DSC shall not prejudice Xoserve’s rights under this Deed); or
2. the Customer provides any substitute deposit or any security acceptable to Xoserve in all respects, to secure the Customer’s DSC Indebtedness; or
3. the Customer has requested a release of this Deed in accordance with the provisions of the DSC and pursuant to such request (and the satisfaction of the relevant conditions) Xoserve is required to agree to such release.

3.2 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 has any present or future or actual or contingent liability to Xoserve in respect of DSC Indebtedness or otherwise.

4 For the avoidance of doubt the parties agree that the required amount of the Deposit and the DSC Credit Limit may be changed from time to time in accordance with the provisions of the DSC and/ or the Data Services Credit Rules and to the extent that this shall occur, the Customer agrees to immediately pay such sums to Xoserve as required by the DSC and/ or the Data Services Credit Rules which amount will form part of the Deposit and be held in accordance with the terms of this Deed.

5.1 Without prejudice to any other right or remedy which Xoserve may have under this Deed, the DSC or otherwise, Xoserve shall be entitled, at its sole discretion, 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:

1. the amount of any sum which has become due for payment in respect of DSC Charges;
2. 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 under 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;
3. the amount of any Value Added Tax that Xoserve is liable to pay in consequence of the receipt of any part of the Deposit;
4. any bank charges incurred in relation to the account in which the Deposit is held.

5.2 Xoserve Limited 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 5.1.

5.3 The Customer shall immediately, following such notification referred to in Clause 5.2 above, pay to Xoserve Limited an amount equivalent to any amount applied pursuant to Clause 5.1, and any further amounts required from time to time to ensure that the total of the Deposit held by Xoserve Limited 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 as may be amended by the provisions of Clause 4.

6.1 Subject to Clause 6.2, 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 to pay to the Customer interest (subject to any deduction of tax as required by law) earned, if any, on the Deposit by Xoserve Limited.

6.2 If any sums are owing by the Customer to Xoserve Limited pursuant to this Deed and/or there are outstanding from the Customer to Xoserve Limited any sums of the kind referred to in Clause 5.1 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.

7 Xoserve Limited 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).

8 Nothing in this Deed shall require Xoserve Limited to satisfy any liability of the Customer 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 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.

9.1 The existence of the Deposit shall not:

1. prejudice Xoserve‘s ability to proceed against the Customer for any breach of any DSC Indebtedness or any other breach of any other obligation under the DSC;
2. entitle the Customer to withhold any monies or fail to satisfy any DSC Indebtedness; or
3. be regarded as an advance or deemed payment of any DSC Indebtedness.

9.2 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.

10.1 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.

10.2 Xoserve shall not be obliged to make any claim or demand on the Customer 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.

10.3 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 DSC Indebtedness.

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

10.5 For the purposes of this Clause 10, “Collateral Instrument” 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, and includes any document or instrument creating or evidencing an encumbrance, however defined and includes, without limitation, escrow agreements.

11 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 DSC Indebtedness.

12.1 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.

12.2 Xoserve’srights under this Deed may be exercised by Xoserve (or the Transporter Agency on its behalf) or by any other person authorised by Xoserve.

13 Subject always to the provisions of Clause 12.2, a person who is not a party to this Deed (including any employee, officer, agent, representative or sub-contractor of any 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.

14 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.

15 Subject to Clause 16.6, any notices to be served under this Deed shall be served in accordance with paragraph 5, Section B (headed “Notices and Communications”) of the General Terms of the DSC.

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

16.2 Subject to Clauses 16.4 and 16.5, 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**”).

16.3 Subject to Clauses 16.4 and 16.5, 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.

16.4 This Clause 16 is for the benefit of Xoserveonly. As a result and notwithstanding Clauses 16.2 and 16.3, it does not prevent Xoserve from:

16.4.1 taking proceedings relating to a Dispute in any other courts (and the Customer 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

16.4.2 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.

16.5 To the extent allowed by law, Xoserve may take concurrent proceedings in any number of jurisdictions.

16.6 [The Customer authorises and appoints ***[name]*** of ***[legal representatives or related company in England and Wales]*** (or such other person in England as it may from time to time substitute by notice to Xoserve) to accept service of all legal process arising out of or connected with this Deed. Service on such person (or substitute) shall be deemed to be service on the Customer. Except upon a substitution, the Customer 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 Customer shall forthwith appoint another agent and advise Xoserve accordingly.][[19]](#footnote-19)

16.7 [The Customer 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 by Xoserve against the Customer under or in connection with this Deed.][[20]](#footnote-20)

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

**EXECUTED** as a **DEED** by

[ ]

Director ………………………….

Director/Secretary ………………………….

The Common Seal of

Xoserve Limited

was hereto affixed

in the presence of: ………………………….

Authorised Signatory

Member of the Board Sealing Committee

1. Insert number. [↑](#footnote-ref-1)
2. *Insert full name, company number, country of incorporation and registered address of Customer*  [↑](#footnote-ref-2)
3. *Insert maximum amount payable under this Letter of Credit* [↑](#footnote-ref-3)
4. *Insert address of U.K. bank to which demands under this Letter of Credit are to be sent* [↑](#footnote-ref-4)
5. Insert effective date [↑](#footnote-ref-5)
6. *Insert date when this Letter of Credit expires (N.B. You must have alternative security in place before such expiry).* [↑](#footnote-ref-6)
7. Insert name of U.K. Bank providing this Letter of Credit [↑](#footnote-ref-7)
8. Insert name of U.K. Bank providing this Letter of Credit [↑](#footnote-ref-8)
9. Insert number. [↑](#footnote-ref-9)
10. *Insert full name, company number, country of incorporation and registered address of each Customer*  [↑](#footnote-ref-10)
11. *Insert maximum amount payable under this Letter of Credit* [↑](#footnote-ref-11)
12. *Insert address of U.K. bank to which demands under this Letter of Credit are to be sent* [↑](#footnote-ref-12)
13. Insert effective date [↑](#footnote-ref-13)
14. *Insert date when this Letter of Credit expires (N.B. You must have alternative security in place before such expiry).* [↑](#footnote-ref-14)
15. Insert name of U.K. Bank providing this Letter of Credit [↑](#footnote-ref-15)
16. Insert name of U.K. Bank providing this Letter of Credit [↑](#footnote-ref-16)
17. Insert full details of Customer [↑](#footnote-ref-17)
18. Insert amount of Initial Deposit [↑](#footnote-ref-18)
19. This clause 16.6 is only necessary if the Customer is a foreign company. The process agent should be an independent law firm. [↑](#footnote-ref-19)
20. This clause 16.7 is only necessary if the Customer is a governmental authority (whether foreign or in England and Wales). [↑](#footnote-ref-20)