Draft 2.0: 11 August 2016

**DSC SERVICE DOCUMENT**

**CREDIT POLICY**

***This draft is being circulated in the interests of getting the document out for review on 23 August and remains subject to further GT and Xoserve comment.***

Version: [ ]

Effective date: [ ]

# General

## **Introduction**

### This Document is the Credit Policy referred to in Section GTD Paragraph [3.1.4( )] and Clause [3.3[/]] of the DSC Terms and Conditions and is a DSC Service Document.

### This Document is an integral part of and is incorporated in the DSC.

### The version of this Document which is in force, and the date from which it is in force, is as stated above.

## **Interpretation - general**

### In this Document:

#### **Uniform Network Code** or **UNC** means the Uniform Network Code [/];

#### a reference to Section GTD is to Section D of the General Terms of the Uniform Network Code;

#### **DSC Terms and Conditions** means the DSC Terms and Conditions as defined in and for the time being in force pursuant to Section GTD;

#### terms defined in the DSC Terms and Conditions and not otherwise defined in this Document have the meanings given to them in the DSC Terms and Conditions;

#### terms defined in any other DSC Service Document and not otherwise defined in this Document have the meanings given to them in that DSC Service Document;

#### the further provisions of the DSC Terms and Conditions as to interpretation apply.

### In the case of any conflict between the provisions of this Document and any other part of the DSC the provisions of the DSC Terms and Conditions as to priority apply.

## **Amendment**

### This Document may be amended in accordance with the Change Management Procedures*.*

## **Interpretation - specific**

### In this Document:

#### **Approved Credit Rating** is a credit rating published by an Approved Credit Rating Agency;

#### **Approved Credit Rating Agency** means Fitch Ratings, Moody's Investment Services or Standard and Poor's Rating Group;

#### references to the **Committee** are to the Credit Committee;

#### **DSC Credit Limit** is the sum of:

##### the Customer's DSC Unsecured Credit Limit; and

##### the value of any security or surety provided by the Customer in accordance with paragraph [3.3]

#### representing the Customer's maximum DSC Indebtedness;

#### **DSC Security** means a guarantee, letter of credit, deposit deed or pre-payment agreement in the form specified in the DSC Credit Rules;

#### **DSC Unsecured Credit Limit** is the credit limit determined by the CDSP in accordance with the DSC Credit Rules, whether by reference to an Approved Credit Rating or by alternative means.

## **Scope and purpose**

### The purpose of this Document is to set out:

#### the role and functions of the Credit Committee;

#### arrangements for determining a Customer's DSC Credit Limit;

#### the basis for calculating a Customer's DSC Indebtedness; and

#### the procedures to be followed by the CDSP in connection with the management of credit risk under the DSC.

### This Document is organised as follows:

[ ]

# Credit Committee

## **Role and functions of the Credit Committee**

### The role of the Committee is to assist the CDSP in managing credit risk under the DSC.

### The functions of the Committee include:

#### [*list functions*].

### The CDSP is authorised to act on (and incur Costs based on) the decisions of the Committee as provided for in this Document (but without prejudice to the general authority of the CDSP to do whatever is necessary to perform the DSC).

### The Committee shall not perform any of the functions of the Contract Management Committee or the Change Management Committee.

## **Meetings of the Committee**

### A regular meeting of the Committee shall be held every [quarter].

### The agenda of the regular meeting shall (unless the Committee decides otherwise) include the following:

#### [*list agenda*].

### The CDSP or any Committee Representative may put any other matter on the agenda of a regular meeting by notice to the [Secretary] in accordance with GT Section D[/].

### The Committee:

#### shall, where in the CDSP's opinion the urgency of the matter prevents the matter awaiting consideration at the next following regular meeting, hold a meeting where requested to do so by the CDSP on reasonable notice;

#### may hold ad-hoc meetings in accordance with GT Section D[/].

## **CDSP Credit Representatives**

### The CDSP shall nominate (and may from time to time remove and replace) up to [three (3)] representatives (**Credit Representatives**), of suitable seniority and qualification, to represent it at meetings of the Committee, and shall ensure that at least one of its Credit Representatives attends each such meeting (but any other representatives of the CDSP may also attend any meeting of the Committee).

### The Committee is entitled to assume that each of the CDSP's Credit Representatives is authorised to take any decision (on matters within the scope of this Document) on behalf of the CDSP unless such representative gives advance notice to the contrary.

## **CDSP and the Committee**

### The CDSP may:

#### consult with the Committee in relation to any aspect of its functions under this Document, and may convene a meeting of the Committee on any reasonable period of notice;

#### [invite the Committee to provide guidance on any question which arises in the operation of or the performance of the CDSP's obligations under the Document, and the CDSP may act in accordance with any guidance provided by the Committee].

### Where the CDSP has reasonable grounds for wishing to consult with the Committee in relation to any step to be taken in accordance with this Document the CDSP may (where it has convened a meeting of the Committee) defer taking such step until it has consulted wit the Committee.

### Where the CDSP brings a matter to the Committee relating to a particular Customer, the CDSP will not disclose the identity of the Customer to the Committee unless:

#### the Customer agrees to such disclosure;

#### it is not practicable for the matter in question to be discussed by the Committee without the identity of the Customer being disclosed or becoming apparent;

#### [*other*].

### With the approval of the Committee, the CDSP is authorised, in implementing the provisions of the Credit Policy as respects Customers or any particular Customer, to delay the implementation of any such provision or to implement any such provision on a modified basis which is (as respects the interests of Customers or the Customer in question) less onerous than the provision in the absence of such modification.

### [No member of the Committee shall be liable (whether in contract, tort including negligence or otherwise) to the CDSP or any Customer for anything done when acting properly in connection with his office under the DSC, or anything done in what such member believes in good faith to be the proper exercise and discharge of the powers, duties, functions and discretions of that office in accordance with the DSC, and the CDSP and each Customer waives any such liability that any member may have and any claim in respect thereof.

## **Liability of the CDSP**

### Where the CDSP has reasonable grounds for believing that any calculation required to be made by it for the performance of its functions under this Document has been or may have been made erroneously, the CDSP may (but shall not be required to) defer the taking of any step that would otherwise be required under this Document until the CDSP has had a reasonable opportunity of verifying such calculation.

### Without prejudice to paragraph 2.2.3, nothing in this Document shall require the CDSP to take any step which the CDSP believes on reasonable grounds may result in its becoming liable to any person in damages or otherwise, whether or not the amount of any such liability would be recoverable under paragraph [/], but the possibility of a claim being made against the CDSP shall not of itself suffice for the purposes of this paragraph unless the CDSP believes on reasonable grounds that such claim would be well founded.

### Each Customer authorises the CDSP to take any step contemplated by this Document, and agrees that the CDSP shall have no liability (in contract or tort including negligence or otherwise) to such Customer for taking any such step, and waives any such liability that the CDSP may have and any claim in respect thereof.

### Nothing in this Document shall require the CDSP to take any step which conflicts with any Legal Requirement or any order of any court of competent jurisdiction.

### The CDSP will act in good faith in implementing the provisions of this Document but will not be liable (in contract or tort including negligence or otherwise) to any Customer for any failure or delay of the CDSP in doing so or in taking any particular step contemplated by this Document, and each Customer waives any such liability that the CDSP may have and any claim in respect thereof.

### Where any person makes any claim (in negligence or otherwise) against the CDSP in consequence of the CDSP taking any step contemplated by this Document:

* + - 1. the CDSP will defend such claim and will (subject to any duties of confidence) consult with and keep informed the Committee in relation to such claim and the defence thereof;
      2. the fees, costs and expenses incurred by the CDSP (including its own internal costs and expenses) in defending such claim, and any amounts which the CDSP may be found liable (or with the approval of the Committee may agree by way of settlement) to pay by way of damages or costs or otherwise in respect of such claim, shall be recovered from Customers in accordance with the Budget and Charging Methodology.

## **Contact Details**

### Each Customer shall provide to the CDSP:

#### a single telephone number, a single address, a single email address by means of which the CDSP may contact a representative of the Customer for any purpose connected with this Document;

#### the name(s) and title(s) of the Customer's representatives at such numbers and addresses.

### Each Customer shall give the CDSP notification of any amendment to the details provided under paragraph 2.6.1 no later than [ ] days following such amendment having effect.

# DSC Credit Limit, DSC Security and DSC Indebtedness

## **General**

### The CDSP shall, in accordance with the DSC Credit Rules, determine and assign to each Customer a DSC Credit Limit, and will keep each Customer informed of its DSC Credit Limit (as revised in accordance with paragraph 3.2.1) for the time being.

### The **DSC Credit Rules** are the rules from time to time established and revised by the CDSP and issued to Customer's setting out (inter alia):

#### the principles on which the CDSP will assess and from time to time review (in accordance with paragraph 3.2.1) the credit-worthiness of Customers (and persons providing security for Customers) and establish Unsecured DSC Credit Limits;

#### the specified forms and basis on which a Customer may provide DSC Security for DSC Indebtedness;

#### procedures by which a Customer may discuss its DSC Credit Limit with the CDSP.

### Subject to paragraph [3.1.5], and without prejudice to the express requirement under the Credit Policy to comply therewith, the DSC Credit Rules do not form part of and are not incorporated to the DSC.

### With the approval of the Committee the CDSP may revise the DSC Credit Rules upon notice to all Customers of not less than [two (2)] months or such shorter period as in any particular case be approved by the Committee.

### For the purposes only of enabling the CDSP or a Customer to propose a modification pursuant to the Modification Rules, the DSC Credit Rules shall deemed to be incorporated into and form part of the DSC.

## **DSC Credit Limit**

### A Customer's DSC Credit Limit may be reviewed and revised from time to time in accordance with the DSC Credit Rules, except where paragraph 3.2.2 or 3.2.3 applies, on not less than [30 (thirty)] days notice (or any lesser period agreed by the Customer) to the Customer:

#### at intervals of not less than twelve (12) months;

#### where the review is requested by the Customer;

#### where any Approved Credit Rating (or other published credit rating ) is revised downwards;

#### where (without prejudice to any requirement of the DSC Credit Rules) any instrument of DSC Security expires or is determined;

#### where at any time the CDSP has reasonable grounds to believe that the effect of the review would be to reduce the Customer's DSC Unsecured Credit Limit and such review has been approved by the Committee.

### Where the Approved Credit Rating of a Customer is revised downwards to the extent that such the said credit rating following such revision is less than the minimum prescribed Approved Credit Rating in the DSC Credit Rules the Customer's DSC Credit Rating may be immediately reviewed and revised by the CDSP in accordance with the DSC Credit Rules.

### Where any Supplier of Last Resort (as defined in TPD Section G2.1.7) is appointed by the Authority and TPD Section G2.18 applies, the DSC Credit Rating of any Customer who is a Last Resort User (as defined in TPD Section G2.1.7) may be immediately reviewed and revised by the CDSP in accordance with the DSC Credit Rules.

### The CDSP will not be required to agree to the request of a Customer under paragraph 3.2.1(b) unless the Customer agrees to reimburse the CDSP's reasonable costs and fess payable by the CDSP to any third party in connection with such request.

## **DSC Security**

### Where a Customer wishes to have a DSC Credit Limit which is in excess of its DSC Unsecured Credit Limit the Customer may provide one or more of the forms of DSC Security.

### Where a Customer proposes that any DSC Security be provided not substantially in accordance with the DSC Credit Rules, the CDSP will convene a meeting of the Credit Committee and table the Customer's proposal; and the CDSP will not be required to accept the Customer's proposal unless and until the Credit Committee have approved such proposal.

### A Customer who has provided DSC Security may request the CDSP to release such DSC Security (in whole or in part), and following such request, provided the requirements of paragraph 3.3.4 are satisfied, the CDSP will as soon as reasonably practicable and in any event within [ ] days after such request, comply with such request.

### The requirement is that at the date [ ] Business Days before the date of release or reduction the amount of the Customer's DSC Indebtedness is less than [ ]% of the Customer's Unsecured Credit Limit.

### An instrument of DSC Security shall not form part of the DSC; and no provision or modification of the DSC, nor any inconsistency between the DSC and any such instrument, and nothing done by the CDSP pursuant to the DS, shall prejudice of invalidate such instrument.

## **DSC Indebtedness**

### For the purposes of the Credit Policy [and the DSC Credit Rules] a Customer's **DSC Indebtedness** is:

#### the aggregate amount for which the Customer is liable to the CDSP pursuant to the DSC, determined on the basis of amounts accrued and irrespective of whether such amounts have been invoiced (or where invoiced) have become due for payment; less

#### any amount which has been paid to the CDSP by way of a pre-payment, on the basis that the CDSP may apply such amount without the Customer's consent in or towards payment of amounts referred to in paragraph (a), and which has not yet been applied;

### For the avoidance of doubt, the amount of a Customer's DSC Indebtedness shall be determined by the relevant provisions of the DSC Terms and Conditions, and nothing in either such document shall be construed as withdrawing from a Customer the right to dispute whether the CDSP has correctly calculated such amount in any case, or from the CDSP the right to dispute the validity of any query submitted by any Customer.

## **Credit risk management by the CDSP**

### Where a Customer's DSC Indebtedness:

#### exceeds [ ]% of the Customer's DSC Credit Limit, the CDSP shall give the Customer notice to that effect;

#### following notice under paragraph (a), exceeds [100]% of the Customer's DSC Credit Limit, the CDSP will notify:

##### the Customer to such effect and request the Customer provide additional DSC Security in such amount as required to reduce the Customer's DSC Indebtedness to below [100]% of the Customer's DSC Credit Limit

##### in the case of a [Shipper] Customer, each Transporter;

##### in the case of a [Transporter] Customer, each [Shipper Customer] and the Authority.

### Without prejudice to paragraph 3.5.3, where a Customer fails to provide additional DSC Security where requested by the CDSP by the date specified in the CDSP's notice under paragraph 3.3.1:

#### the Customer shall pay the CDSP in respect of each day up until (and including) the day on which the Customer provides the additional DSC Security the amount specified in the table below:

|  |  |
| --- | --- |
| Amount of additional DSC Security | Daily Amount |
| < £1000 | [ ] |
| £1,000 to £10,000 | [ ] |
| > £10,000 | [ ] |

#### subject to paragraph 3.5.1, where and for as long as the Customer's DSC Indebtedness exceeds [100]% of the Customer's DSC Credit Limit:

##### the CDSP shall, where requested by the relevant Transporter, reject or refuse to accept a Supply Point Nomination or Supply Point Confirmation under TPD Section G, other than a Supply Point Renomination or Supply Point Reconfirmation or [Capacity Revision Application] submitted by the Customer;

##### suspend the provision of any Individual Customer Service or Bespoke Customer Service the CDSP is providing to the Customer;

#### until such time as the Customer's DSC Indebtedness is reduced to less than [100]% of the Customer's DSC Credit Limit.

### Subject to paragraph 3.5.1, where and for as long as the Customer's DSC Indebtedness for the time being exceeds [100]% of the Customer's DSC Credit Limit, the CDSP may with the approval of the Committee, give notice substantially in the form set out in the DSC Credit Rules, to each Transporter to the effect that the Customer is in default of the DSC, and the CDSP may send a copy of such notice to the Authority.

# Payment of CDSP Invoices

## **Failure to make payment**

### If a Customer fails to pay any sum due by the due date of the invoice in respect of Service Charges, the CDSP shall submit to the Customer a notice, substantially in the form set out in the DSC Credit Rules, requesting the Customer pay the sum due in full within [ ] days of the CDSP's notice, and notifying the Customer that unless payment is received by such date the CDSP shall:

#### notify the Committee of the Customer's failure to pay Service Charges by the due date for payment;

#### take any of the steps under:

##### paragraph 4.2.2 as the CDSP may decide;

##### paragraph 4.2.3 with the Committee's approval.

### The steps for the purposes of paragraph 4.1.1(b)(i) include:

#### notifying other Customers of the Customer's failure to pay Service Charges by the due for payment;

#### rejecting or refusing to accept a Supply Point Nomination or Supply Point Confirmation under TPD Section G, other than a Supply Point Renomination or Supply Point Reconfirmation or [Capacity Revision Application] submitted by the Customer;

#### suspending the provision of any Individual Customer Service or Bespoke Customer Service the CDSP is providing to the Customer;

#### accelerating the due date of payment for future invoices submitted to the Customer (by such period as approved by the Committee).

### The steps for the purposes of paragraph 4.1.1(b)(ii) include:

#### requesting the provision of additional DSC Security by the Customer (which the Customer shall provide to the CDSP (for the required amount) within [ ] days of any such request);

#### enforcing and realising DSC Security provided to the CDSP by the Customer.

### The CDSP shall notify the Customer of the steps it proposes, or is authorised, to take under paragraph 4.2.2.

### Where and for as long as a [Shipper] Customer has not paid the CDSP any sum due in excess of £[ ], the CDSP, may with the approval of the Committee, give notice, substantially in the form set out in the DSC Credit Rules, to each Transporter to the effect the Customer is in default of the DSC, and the CDSP may send a copy of such notice to the Authority.

## **Enforcement**

### [Where the Committee approves the CDSP enforce or realise DSC Security] [Unless the Committee instructs CDSP otherwise], the CDSP may take any step to enforce and realise DSC Security provided by a Customer (or on its behalf) where and for so long as any sum due for payment remains outstanding.

### It shall not be a condition to the CDSP giving notice to the Transporters under paragraph 4.1.4 that the CDSP shall first have taken any steps to enforce or realise any DSC Security.

## **DSC Recovery Steps**

### For the purposes of this paragraph:

#### **DSC Debt** means unpaid indebtedness of a defaulting Customer in respect of any amount payable to the CDSP under the DSC;

#### **DSC Recovery** Steps are any steps (including any proceedings in any court, and including the defence of any counterclaim or other claim, proceeding or application made or brought by the Customer or a provider of security in connection with any such step taken by the CDSP) taken by the CDSP to recover any DSC Debt from a defaulting Customer, or to enforce or realise any security (including DSC Security) provided by a defaulting Customer, or to enforce any judgment against a defaulting Customer, or to make any claim in any insolvency proceedings relating to a defaulting Customer;

#### **DSC Recovered Amounts** means amounts recovered (by way of payment of debt or damages or otherwise) by the CDSP as a result of taking DSC Recovery Steps;

#### **DSC Recovery Costs** means all fees, costs and expenses (including any payments the CDSP may be required to make by way of damages or costs or otherwise by any court) incurred by the CDSP in taking DSC Recovery Steps (and including amounts in respect of the CDSP's own internal costs and expenses);

### The Committee shall direct the CDSP as to what DSC Recovery Steps (if any) (the **DSC Directed Recovery Steps)** to take to recover DSC Debt from a defaulting Customer, and to enforce and realise the DSC Security provided by a defaulting Customer; the CDSP agrees that it will, subject to the further provisions of this paragraph 4, take the DSC Directed Recovery Steps.

### The CDSP will keep the Committee reasonably informed as to the DSC Directed Recovery Steps it takes in relation to DSC Debt and will and shall be entitled to discontinue taking DSC Directed Recovery Steps (other than any steps necessary for such discontinuance) where the Committee has authorised it to do so.

### All DSC Recovery Costs and amounts of unrecovered DSC Debt the shall be recovered from Customers in accordance with the Budget and Charging Methodology.