

DSC Terms and Conditions v 1 ([date])

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, and be interpreted in accordance with, the Uniform Network Code.
- 2.2 In the DSC (including each DSC 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 pursuant to the DSC Terms and Conditions before the Applicant may accede to the DSC Agreement, as set out in Clause 4.3;

Applicant means a person (other than a Party) who wishes to be admitted as a New Party and to accede to the DSC Agreement;

Authorised Person means the person specified as such in the DSC Terms and Conditions;

Bespoke Services Policy means the document of that title dated [date] and designated pursuant to the Code DSC Provisions, as such document may be amended from time to time in accordance with the DSC;

Budget and Charging Methodology [1] means the document of that title dated [date] and designated pursuant to the Code DSC Provisions, as such document may be amended from time to time in accordance with the DSC;

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 [Standard Special Condition [/] of the Gas Transporter's Licences];

[CDSP Services means all services provided by the CDSP, both Services provided to Customers pursuant to the DSC and services provided other than pursuant to the DSC, from time to time;]

Change Control Procedures means the document of that title dated [date] and designated pursuant to the Code DSC Provisions, as such document may be amended from time to time in accordance with the DSC;

Contract Management and Reporting Arrangements means the document of that title dated [date] and designated pursuant to the Code DSC Provisions, as such document may be amended from time to time in accordance with the DSC;

Code DSC Provisions means the provisions of the Uniform Network Code for the establishment and governance of the DSC, including TPD Section GTB7 and Section [/] of the Transition Document;

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;

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

Customer Dispute Process means the process set out in Contract Management and Reporting Arrangements for addressing certain disputes arising between the CDSP and a Customer;

Directive means any present or future directive, request, requirement, instruction, code of practice, direction or rule of any Competent Authority (but only, if not having the force of law, if it is reasonable in all the circumstances for it to be treated as though it had legal force), and any modification, extension or replacement thereof;

Disclosing Party has the meaning given to it in Clause [9];

DSC or Data Services Contract means the contract which is constituted by and comprises the DSC Agreement, the DSC Terms and Conditions and each DSC 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 on or around the [insert date] and pursuant to which the parties to it agreed to give effect to and be bound by the DSC Terms and Conditions;

DSC Service Document means each of the Budget and Charging Methodology, Service Description, UK Link Manual, Change Control Procedures, Contract Management and Reporting Arrangements, Bespoke Services Policy, Third Party Services Policy, DSC Transition Document and [other DSC Service Documents], and the **DSC Service Documents** means all of them;

DSC Terms and Conditions means this document [and the terms comprising it];

DSC Transition Document means the document of that title dated [date] and designated pursuant to the Code DSC Provisions, as such document may be amended from time to time in accordance with the DSC^[2];

DSC Voluntary Exit Requirements has the meaning given to it in Clause 17.2

DSC Year means a year commencing on 1 April;

Force Majeure Event means any cause or circumstance beyond the reasonable control of a Party which results in or causes the failure by that Party to perform any one or more of its obligations under the DSC, if that failure could not have been prevented or overcome by that

Party acting reasonably and prudently, including complying with all business continuity obligations under this 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;

IPR means [*to be completed*];

Invoice means [*to be completed*];

Invoiced Service Charges means Services Charges for which the CDSP has issued an invoice to a Customer pursuant to the DSC;

Legal Requirement [3] means any Act of Parliament, regulation, licence, or Directive of a Competent Authority, and **Legal Requirements** shall be construed accordingly;

Materials means [*to be completed*];

New Party means a person admitted as an additional party to the DSC Agreement after [1 April 2017];

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

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

Receiving Party has the meaning given to it in Clause [9];

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

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;

Relevant Provision of the Uniform Network Code means [a provision of the Uniform Network Code which:

- (a) expressly refers to the CDSP, and
- (b) is expressed to impose or confer a right, benefit, [obligation, discretion, judgement, opinion or choice] on the CDSP, or on a Customer or Customers in relation to the CDSP.

Relevant Provisions of the Uniform Network Code include [*to include examples from GTB7*][4][];

Service Description means the document of that title dated [*date*] and designated pursuant to the Code DSC Provisions, as such document may be amended from time to time in accordance with the DSC;

Service Charges means the charges payable by Customers for Services from time to time;

Services means services provided by the CDSP to Customers pursuant to the DSC;

Statement of DSC Service Charges means the prevailing statement of Service Charges established for a DSC Year pursuant to the Budget and Charging Methodology;

Supply 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 **Supply Arrangements** shall be construed accordingly;

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

UK Link means [*to be confirmed*];

UK Link Manual means the document of that title dated [*date*] and designated 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;

Uniform Network Code [5] or **UNC** means the Uniform Network Code prepared pursuant to Standard Special Condition A11(6) of the Gas Transporter's Licences, as from time to time modified;

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

Withdrawing Party means a Customer that ceases to be a Party;

Withdrawal Requirements has the meaning given to it in Clause 18.2.

2.3 In the DSC (including each DSC 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 an Annex is to an annex to the DSC Agreement; to a Paragraph is to a paragraph of the relevant DSC Service Document; and to an Appendix is to an appendix to a DSC 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 by applying the documents or provisions in the following order:

- (i) [the DSC Agreement;
 - (ii) the DSC Terms and Conditions;
 - (iii) the Service Documents];
- (f) Any reference to a **TPD Section** or **GT Section** means a reference to a section respectively of the Transportation Principal Document part or 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.

3 Key Provisions

- 3.1 The CDSP shall provide Services to Customers in accordance with the DSC.
- 3.2 Each Customer shall pay Service Charges to the CDSP in accordance with the DSC.
- 3.3 Each of the DSC Service Documents is hereby given effect and forms an integral part of the DSC; and the Parties shall be bound by, and each Party agrees to comply with, each of the DSC Service Documents.
- 3.4 Each Relevant Provision of the Uniform Network Code is given effect and made binding as between the CDSP and each Customer to whom such Relevant Provision applies as if the Relevant Provision were incorporated into the DSC.
- 3.5 The CDSP shall not be, or be appointed as, agent of any Customer except to the extent that the Uniform Network Code or a DSC Service Document expressly provides that the CDSP shall be, and be appointed as, agent of such Customer.
- 3.6 To the extent that the Uniform Network Code or a DSC 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.

4 **Accession**^[6]

- 4.1 From time to time, an Applicant may be admitted as a New Party, and accede to the DSC Agreement, by entering into an Accession Agreement.
- 4.2 An Applicant may not be admitted as a New Party unless the Accession Requirements are satisfied in relation to that Applicant.
- 4.3 The Accession Requirements are that the Applicant:
- (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 to admission as a New Party;
- (c) has provided to the CDSP the information required in Clause [4.5];
- (d) complies with the requirements of Clause [6] and the UK Link Manual which are stated to be conditions to admission as a New Party *[to cross refer to the Clause 6 provisions embodying the current Section U requirements to be complied with before a user may send and receive UK Link communications]*;
- (e) has paid the applicable accession charge as stated in the prevailing Statement of DSC Service Charges;
- (f) *[other]*^[7].

4.4 The requirement in Clause 4.3(a) is satisfied if the Applicant 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 [to be completed].*

4.6 *The procedure by which an Applicant may be admitted as a New Party is as follows: [to be completed]*^[8].

4.7 *A New Party shall become a Customer with effect from the date specified in the notice to be given to the New Party by [National Grid] pursuant to TPD Section [/].*^[9]

4.8 For the purposes of the DSC, the Authorised Person is the CDSP.

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 Service Charges payable in respect of CDSP Services provided or to be provided to the Customer during a month; and
- (b) each Invoice submitted by the CDSP shall be in the format specified in *[to cross refer to the location of the form of invoice]*.

5.2 Each Customer shall pay each invoice submitted by the CDSP in full and in cleared funds to a bank account nominated in writing by the CDSP within 10 [Business Days] following the date of the invoice. *[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 within seven (7) [Business Days] after receipt of an invoice that it disputes the invoice if it considers that any part of the invoice is incorrect. *Notwithstanding that it disputes the invoice, the Customer concerned shall in any event pay the undisputed amount of such invoice in accordance with this Clause and the disputed portion of the invoice shall be referred for resolution in accordance with the Customer Dispute Process.* ^[10]*The CDSP shall include adjustments or incremental amounts (together with interest as accrued on a daily basis on such adjustments or incremental amounts as calculated in accordance with Clause 5.4(a)) necessary to reflect the disputed amount agreed or determined*

to be due to the CDSP in the next invoice submitted by the CDSP following determination of that dispute, or as otherwise agreed between 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 Payment of Commercial Debts (Interest) Act 1998) 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 (a) shall be treated as a contractual remedy and not as statutory interest]; and
- (b) the Customer shall in addition pay the CDSP in respect of the sum in question an administration charge of five hundred pounds sterling (£500).

[May be updated once the principles on credit and Customer Default are confirmed]

5.5 *[To be completed.]*^[11]

6 UK Link

[To be completed.]^[12]

7 Intellectual Property Rights

[To be completed, and the other provisions of the DSC Terms and Conditions updated, once the applicable principles are confirmed.]^[13]

8 Data Security and Protection

[To be completed, and the other provisions of the DSC Terms and Conditions updated, once the applicable principles are confirmed.]^[14]

9 Confidentiality

[To be completed, and the other provisions of the DSC Terms and Conditions updated, once the applicable principles are confirmed.]

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 Legal Requirements and maintain all consents required by any Legal Requirement;
- (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 Services; and
- (c) it will perform its obligations under the DSC using reasonable skill, care and diligence.

10.2 Each Customer warrants and undertakes that:

- (a) it will perform its obligations under the DSC in compliance with all Legal Requirements and maintain all consents and licences required by any Legal Requirement;
- (b) *[To be completed. Accuracy of information to be considered]*; and
- (c) it will perform its obligations 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 Liability

[To be completed, and the other provisions of the DSC Terms and Conditions updated, once the applicable principles are confirmed.]^[15]

12 Insurance

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

13 Change

[This Clause may be updated depending on the final position on the Change Control Procedures]

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

13.2 Each DSC Service Document may be amended in accordance with the Change Control Procedures, unless the relevant DSC Service Document expressly provides otherwise (in which case the DSC Service Document may be amended as provided for in the DSC Service Document).

14 Force Majeure

14.1 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;
- (b) the Party seeking to exempt itself from liability by virtue of this Clause 14.1 shall:
 - (i) give written notice to the CDSP (in the case of a Customer) or *[to be completed]* (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, the

reasons for the failure 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 14.1(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 as may have been requested; and
- (iii) takes all necessary steps to remedy the failure.

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

- (a) any dispute between the CDSP and its staff or any sub-contractor of the CDSP and its staff; or
- (b) shortage of labour, materials or other resources.

15 Customer Default

[To be updated, and the other provisions of the DSC Terms and Conditions updated, once the applicable principles are confirmed.]^[16]

16 Consequences of Customer Default

[To be updated, and the other provisions of the DSC Terms and Conditions updated, once the applicable principles are confirmed.]^[17]

17 Voluntary Exit

17.1 Pursuant to the Uniform Network Code, if a Customer wishes to cease to be a UNC Party, the Customer must comply with the DSC Voluntary Exit Requirements before it may do so.

17.2 The **DSC Voluntary Exit Requirements** are that the Customer:

- (a) pays in cleared funds all outstanding sums payable to the CDSP pursuant to the DSC; and
- (b) complies with the Withdrawal Requirements.

17.3 *[To be completed.]* ^[18]

18 Ceasing to be a Party

18.1 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.

18.2 A Withdrawing Party shall comply with the Withdrawal Requirements. The **Withdrawal Requirements** are that the Withdrawing Party:

- (a) *[To be completed.]*^[19];

- (b) remedies any breach of the DSC that is capable of remedy and that the CDSP has notified to the Customer in writing;
- (c) [*Other requirements*]^[20].

18.3 In the event that a Withdrawing Party fails to return any item(s) to the CDSP within [7] days of becoming a Withdrawing Party, the CDSP may enter the Withdrawing Party's property to retrieve such item(s) 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.

18.4 Notwithstanding the DSC Agreement:

- (a) a Withdrawing Party shall be and remain liable for, and shall pay to the CDSP, all Service Charges payable in respect of Services provided, and any other sums 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.

18.5 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 [*to be confirmed*]); 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.

19 Service Provision

Subject to the other provisions of the DSC Terms and Conditions and the DSC 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 Services.

20 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. ^[21]

21 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.

22 Assignment and Sub-contracting

- 22.1 No Party shall assign or otherwise transfer the DSC or any of its rights and obligations under it whether in whole or in part without the prior written consent of all the other Parties, *save [to be completed]* [22].
- 22.2 The CDSP shall be entitled to enter into Supply Arrangements, provided that the CDSP shall not 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.
- 22.3 Nothing in the DSC shall prevent or restrict a Party from appointing another person to be the *agent* [23] or similar of the Party for the purposes of the DSC and where a Party wishes to appoint an agent or similar it shall give notice to the CDSP (in the case of the Customer) or *[to be completed]* (in the case of the CDSP) 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.
- 22.4 Where a Party terminates the appointment of an agent or similar it shall give notice to each other Party specifying the date from which the termination is to take effect.

23 Notices

- 23.1 Any notice given under the DSC shall be sent by e-mail 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 or number set out below;
 - (b) in the case of a Customer, the address or number 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]*

F.A.O: *[to be confirmed]*

- 23.2 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 9.00 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.
- 23.3 For the avoidance of doubt, this Clause 23 shall not apply in respect of any Code Communication.

24 Publicity

[To be completed.][24]

25 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.

26 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.

27 No partnership or agency

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 nor, save as expressly set out in the DSC, constitute any Party the agent of any other Party for any purpose.

28 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.

29 Governing law and Jurisdiction

The DSC shall be governed by and construed in all respects in accordance with English law and [subject to the Contract Management and Reporting Arrangements,] [25] 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.