

## Preliminary draft

### FGO

#### Outline of new Section GTB7

*This paper is a second outline (and incomplete) draft of the new UNC provision which will govern the DSC and CDS services. The new provision is intended to be located in the General Terms (GT) document in the UNC. It will replace the existing TPD Section V6.5 which will be deleted.*

*The new provision addresses the enduring position from April 2017 (and not the transition to that).*

*The following factors have informed this outline draft:*

- *the direction and policies of the CDSP will be set by its board of directors which will comprise persons nominated by its core customers (ie shippers, GTs and iGTs);*
- *the CDSP will be 'not-for-dividend' and (taking one year with another) not-for-profit. Services to core customers are provided at cost. Losses of the CDSP are passed to the core customers;*
- *the CDSP may earn a margin on sales of services to third parties but the margin will operate to reduce the cost of service to core customers.*
- *the shareholders of the CDSP (as such) will have no financial interest in the CDSP (in terms of profits or losses) and will not control its board;*
- *as a result, the CDSP will in effect be a mutual company whose stakeholders (and economic owners) are its core customers.*

*Further work will be needed to address the IGTAD and IGT UNC in this draft.*

## 7 CDSP AND CDSP SERVICES

### 7.1 General

7.1.1 For the purposes of the Code:

- (a) the **Central Data Services Provider** or **CDSP** is the person for the time being [appointed] by [the Transporters] as Central Data Services Provider pursuant to the CDSP Licence Condition;
- (b) the **CDSP Licence Condition** is [*condition XXXX*];
- (c) the **Data Services Contract** or **DSC** is the contract between the Parties and the CDSP in the form approved by the Authority pursuant to arrangements set out [in the Transition Document] [Licence Condition] as from time to time amended in accordance with its terms and the provisions of this paragraph 7;
- (d) **CDSP Services** means all services from time to time provided (whether to Parties or to other persons) by the CDSP;

- (e) **Code Services** means the CDSP Services referred to in paragraph 7.2.1(a) and 7.3.1(b) (being CSDP Services required under or in order to give effect to the Code [or IGT UNC?]);
- (f) **Core Customer** means a Party to the Code in the capacity of a party to the DSC;
- (g) **Customer Class** means each of the following classes of Core Customer:
  - (i) Shipper Users;
  - (ii) DN Operators;
  - (iii) National Grid NTS;
  - (iv) Independent Gas Transporters;
- (h) **Customer Group** means a single Customer Class or a group of Customer Classes;
- (i) **CDSP Costs** means all costs, expenses and liabilities of the CDSP, however incurred;
- (j) **CDSP Charges** means the charges made by the CDSP to Core Customers in respect of CDSP Services;
- (k) **[DSC Committee means [/]]**;

7.1.2 CDSP Services are divided into:

- (a) services provided by the CDSP on its own account (**CDSP Direct Services**);
- (b) services which comprise the performance by the CDSP of functions as agent on behalf of one or more of the Transporters [or iGTs?] (**CDSP Agency Services**).

7.1.3 References in this paragraph 7 to Shipper Users include such persons in their capacity as IGTS Users.

## 7.2 CDSP Direct Services

7.2.1 CDSP Direct Services comprise:

- (a) the performance of functions assigned to the CDSP in the Code [or IGT UNC?]<sup>[1]</sup>;
- (b) services provided to Core Customers or Customer Classes on a uniform basis in connection with Code (but not being prescribed by the Code);
- (c) services (**Individual Customer Services**) provided to individual Core Customers at the request of the Core Customer;
- (d) services (**Third Party Services**) provided (consistent with paragraph [7.8.5]) to persons who are not Parties (or are acting not in the capacity of a Party when receiving those services).

7.2.2 CDSP Direct Services within paragraph 7.2.1(a) [comprise] [include]:

- (a) the maintenance of the Supply Point Register and the performance of the functions of the CDSP (in connection with supply point administration) in TPD Section G;
- (b) the performance of the functions of the CDSP (in connection with demand estimation) in TPD Sections H1, H2, H3 and H4;
- (c) the performance of the functions of the CDSP (in connection with *[metering, meter data and meter reading]*) in TPD Section M;
- (d) *[the provision, maintenance, operation and development of UK Link and the performance of the functions of the Central Data Services Provider (in connection with UK Link) in TPD Section U[2]]*;
- (e) *[other sections, eg GTs, MRs, Transition Document]*.

7.2.3 The CDSP acts on its own account and not as agent of any Party in the provision of CDSP Direct Services, but without prejudice to paragraph 7.5.2.

7.2.4 In relation to CDSP Direct Services which are Code Services:

- (a) the CDSP acts as the operator in its own name of the Supply Point Register *[and other specified systems / data bases?]*;
- (b) Code Communications given or received by the CDSP under the provisions of the Code referred to in paragraph [7.2.2] are given or received by it in its own name (as such operator), and not as agent of any particular Party.

7.2.5 Individual Customer Services comprise:

- (a) services which are available (on request) to all Core Customers or Core Customers within a Customer Class; and
- (b) *[[subject to paragraph [7.7.4]], services which are specified by and available only to a particular Core Customer (**Bespoke Individual Customer Services**).]*

### 7.3 CDSP Agency Services

7.3.1 CDSP Agency Services comprise:

- (a) the performance of certain functions of the Transporters *[and iGTs?]* under the Code;
- (b) the performance of certain functions of the Transporters pursuant to conditions of their respective *[GT Licences]*;
- (c) the performance of certain functions of the Transporters in connection with other gas industry codes or agreements;
- (d) *[the provision of reporting and other supporting services to Transporters in connection with the services in paragraphs (a), (b) and (c)].*

7.3.2 CDSP Agency Services within paragraph 7.3.1(a) *[comprise] [include]*:

- (a) the performance of the agency functions of the CDSP in TPD Sections [B, C, D, E, F, S, V, X];

- (b) the performance of the agency functions of the CDSP (in connection with data flows between Transporters and [IGTs] in IGTAD Sections [/]);
- (c) [the performance of the agency functions of the CDSP (in connection with data flows between Transporters) in OAD Sections [/]];
- (d) [/].

7.3.3 CDSP Agency Services within paragraph 7.2.3(b) [comprise] [include]:

- (a) [theft of gas?]
- (b) [others?]

7.3.4 The CDSP acts as agent of the relevant Transporter(s) [or iGT?] in the performance of the functions comprised in CDSP Agency Services.

7.3.5 In relation to CDSP Agency Services which are Code Services:

- (a) Code Communications are given between Users and Transporters, and in sending or receiving such Code Communications the CDSP acts as agent of the Transporter or Transporters;
- (b) any such Code Communication given by the CDSP shall be deemed to have been given by and be binding on the Transporter, and Users shall be entitled to rely on such Code Communication;
- (c) where there is a requirement in the Code under any such provision that a User give a Code Communication to a Transporter or the Transporters collectively, the User shall be treated as having complied with such requirement where the User gives the Code Communication to the CDSP;
- (d) [where the agreement between the Transporters for the purposes of this paragraph [XXX] so provides, the CDSP will act on behalf of the Transporters in respect of the exercise of any discretion or rights conferred on the Transporters, the performance of the Transporters' obligations and the giving and receiving of Code Communications in each case.]

#### **7.4 Agreement to engage the CDSP and be party to DSC**

7.4.1 The Parties acknowledge and agree that CDSP Services which are Code Services must be performed in order to implement and give effect to the Code.

7.4.2 Accordingly the Parties shall, and each Party undertakes that it will:

- (a) use [or procure the use of] the Code Services;
- (b) engage the CDSP to perform and carry out the Code Services;
- (c) for that purpose, enter into and comply with the DSC; and
- (d) without limitation of its obligation to comply with the DSC, pay the charges of the CDSP as applicable to each Party in accordance with the DSC and the CDSP Charging Statement.

7.4.3 In accordance with Section [GTXXX] no person may become a Party without acceding to the DSC.<sup>[3]</sup>

7.4.4 Each Party undertakes that it will act and exercise its rights and powers in relation to the CDSP (including its powers under the CDSP Articles of Association and its rights and powers under the DSC) so that *[to set out specific licence condition requirements]* [and otherwise so as to enable the Transporters to comply with the CDSP Licence Condition].

7.4.5 The Parties agree and acknowledge that:

- (a) the CDSP will not declare dividends or distributions (of income or capital) to its shareholders;<sup>[4]</sup>
- (b) the shareholders of the CDSP have no obligations in respect of the funding of the CDSP;
- (c) the objective of the CDSP is to operate without making a net surplus or net loss in any [Gas Year] (and while some over or under-recovery of the CDSP's costs in any one year is likely to occur, the arrangements in paragraph [ ] ensure that such over or under-recovery is corrected in the following year);
- (d) accordingly (in accordance with the further provisions of this Section 7):
  - (i) the CDSP Services are provided 'at cost' to Core Customers; and
  - (ii) all CDSP Costs (to the extent not recovered from third parties) are to be recovered from Core Customers.

## 7.5 CDSP Direct Services which are Code Services – further provisions

7.5.1 The Parties acknowledge and agree, in connection with CDSP Direct Services which are Code Services, that:

- (a) the Code sets out or describes the functions of the CDSP as obligations of the CDSP (as if the CDSP were a party to the Code);
- (b) the CDSP is not a Party, and is not bound by any Framework Agreement to comply with the Code;
- (c) accordingly the DSC operates to bind the CDSP to perform those functions assigned to it under the Code.

7.5.2 So far as any of the CDSP Direct Services comprise the functions to be fulfilled by the Supply Point Information Service (**SPIS**) pursuant to Standard Condition 31 (**SC31**) of the Transporters' [GT licences]:

- (a) the DSC shall take effect as an arrangement by which (as contemplated by SC31) the Transporters procure the establishment and subsequent operation and maintenance by the CDSP of the SPIS;
- (b) the CDSP shall perform the Central Data Services and otherwise act so as to ensure the Transporters comply with SC31;

- (c) each Party undertakes that it will not act or exercise its rights or powers in relation to the CDSP (including its powers under the CDSP Articles of Association and its rights and powers under the DSC) in a way which is inconsistent with paragraph (b);
- (d) *[anything else? Other licence obligations within Direct Services?]*

7.5.3 Where, in connection with CDSP Direct Services, a provision of the Code confers on the CDSP any discretion or choice, or requires or entitles the CDSP to make a judgement or form an opinion, in connection with any action taken or communication given by a particular Party (the **relevant** Party):

- (a) the [DSC Committee] may prescribe principles or guidance to be followed by the CDSP in doing so;
- (b) the CDSP may request the [DSC Committee] to provide such principles or guidance (in general or in particular cases);
- (c) subject to or in the absence of any such principles or guidance, the CDSP shall act with a view to meeting the following principles:
  - (i) to avoid undue discrimination between Parties or Parties of a particular class;
  - (ii) to avoid any significant cost or risk being imposed on any Party or Parties other than the relevant Party;
  - (iii) to avoid any significant cost or risk being incurred by the CDSP (including any risk to its [systems]) which may affect other Parties;
  - (iv) to allow the relevant Party to enjoy the benefit of the relevant provision where no significant cost or risk will be imposed on any other Party or Parties, but subject to paragraph (v);
  - (v) not to allow the relevant Party to avoid complying with the Code on a persistent basis;
  - (vi) *[others?]*.

7.5.4 Where a provision of the Code referred to in paragraph 7.2.2, in relation to which the CDSP performs CDSP Direct Services, contains a rule, requirement or obligation binding on a Party and not expressed to be owed to any other Party or Parties in particular:

- (a) such provision operates for the benefit of all Parties, notwithstanding that such provision may be expressed as a provision about a Code Communication to be given by or to, or a process to be followed by or with, the CDSP;
- (b) *any Party which is or would be adversely affected by a breach of such provision may seek to enforce such provision (but without prejudice to [limitations of liability provisions]).<sup>[5]</sup>*

7.5.5 The rights and obligations of the Parties under the Code shall not be affected by any failure or delay on the part of the CDSP in performing the CDSP Direct Services which are Code Services, so far as such rights and obligations are capable of being construed and determined notwithstanding such failure or delay, but without prejudice to any provision of the Code which expressly addresses any such failure or delay or the consequences thereof.

- 7.5.6 In the event of any conflict between the provisions of the Code and the provisions of the DSC:
- (a) as between the Parties, the provisions of the Code shall prevail;
  - (b) [if any Party requires] the DSC shall be amended (and each Party undertakes to exercise its rights in relation to amendment of the DSC) to remove such conflict.

7.5.7 Where any provision of the Code is expressed:

- (a) [to provide for any duty, representation, warranty, indemnity or other obligation on the part of the CDSP in favour of any Party or Parties, or any right or entitlement of a Party of Parties as against the CDSP]; or
- (b) to provide for any right or entitlement of the CDSP as against any Party or Parties, or any duty, representation, warranty, indemnity or other obligation on the part of any Party or Parties in favour of the CDSP

the DSC shall give effect to such provision by making it binding as between the Parties and the CDSP.

7.5.8 Except as expressly provided in the Code or the DSC, no provision of the Code is incorporated into the DSC and nothing in the Code shall operate to impose any obligation or confer any right on the CDSP.

## 7.6 Data Services Contract

7.6.1 The DSC comprises:

- (a) an agreement (**DSC Agreement**) in accordance with paragraph 7.6.2;
- (b) terms and conditions (**DSC Terms and Conditions**) in accordance with paragraph 7.6.3;
- (c) further documents (**CDSP Service Documents**) in accordance with paragraph 7.6.4.

7.6.2 The DSC Agreement:

- (a) is an agreement, to which the CDSP and all Parties are (or by accession become) party, by which the DSC Terms and Conditions are given effect and made binding between the CDSP and the Parties;
- (b) may be amended only by agreement of all of the parties to it.

7.6.3 The DSC Terms and Conditions:

- (a) oblige the CDSP to perform the functions assigned to it under the Code;
- (b) give effect to further provisions of the Code which are expressed to operate so as to bind or benefit the CDSP (including applicable provisions of this paragraph 7);
- (c) give effect to and make binding (as between the CDSP and each Party) each CDSP Service Document;

- (d) contain terms and conditions of the DSC which are not contained in the CDSP Service Documents;
- (e) may be amended by way of Code Modification in accordance with paragraph [7].

#### 7.6.4 The CDSP Service Documents:

- (a) comprise the following documents established and maintained [as UNC Related Documents] by the [DSC Committee]:
  - (i) a description (**CDSP Service Description**) of the CDSP Services, in accordance with paragraph [7.7];
  - (ii) a methodology (**Budget and Charging Methodology**) for budgeting CDSP Costs and setting CDSP Charges, accordance with paragraph [7.8];
  - (iii) [Customer Responsibility Document accordance with paragraph [7.9];
  - (iv) [UK Link Manual in accordance with paragraph [7.10]];
  - (v) rules and procedures (**Change Control Procedures**) for amending the CDSP Service Documents [*or other changes?*] in accordance with paragraph [7.11];
  - (vi) arrangements (**Contract Management and Reporting Arrangements**) for management and reporting in respect of the DSC in accordance with paragraph [7.12];
  - (vii) a policy (**Third Party Services Policy**) for Third Party Services in accordance with paragraph [7.13];
  - (viii) [*others?*];
- (b) may be amended in accordance with the provisions of the DSC GTCs and the Change Control Procedures.

### 7.7 CDSP Service Description

7.7.1 The CDSP Service Description shall set out a specification of each of the CDSP Services [(other than Third Party Services and Bespoke Individual Customer Services)], based on the classification of CDSP Direct Services in paragraph 7.2.1 and CDSP Agency Services in paragraph 7.3.1, including a definition of the service and (in certain cases) a service level or service levels for performance of the service.

7.7.2 Under the CDSP Service Description:

- (a) CDSP Services shall be divided into areas (**Service Areas**) of related CDSP Services;
- (b) within each Service Area each individual CDSP Service is a **Service Line**.

7.7.3 In relation to a Code Service, the CDSP Service Description shall specify the CDSP Service by reference to the relevant provision of the Code (and in the case of a CDSP Direct Service, by identifying the relevant function of the CDSP as specified in the Code).

7.7.4 The CDSP Service Description shall set out the basis and conditions on which a Core Customer may request and the CDSP may agree to provide a Bespoke Individual Customer Service, which may include:

- (a) matters equivalent to those provided in the Third Party Services Policy;
- (b) the obligations (or the absence of obligations) of the CDSP to maintain any details of such service in confidence.

## 7.8 Budget and Charging Methodology

7.8.1 The Budget and Charging Methodology shall provide for:

- (a) a basis for the allocation of CDSP Costs to each Service Area, taking account of the resources or share of resources of the CDSP used in the provision of CDSP Services in that Service Area and an allocation of CDSP central and overhead costs;
- (b) for each Service Area, the identification of a Customer Group (**Area Customer Group**) in respect of the Service Area, taking account of the Customer Class or Classes which are recipients or beneficiaries of CDSP Services within the Service Area;
- (c) for each Service Area, a basis for allocating CDSP Costs (for the Service Area) between Customer Classes in the Area Customer Group, on a proportionate basis (such that in aggregate 100% of such CDSP Costs are allocated to such Customer Classes), taking account of the extent to which each Customer Class in the Area Customer Group is a recipient or beneficiary of the CDSP Services within the Service Area;
- (d) for each Service Area, and for each Customer Class in the Area Customer Group, the basis on which CDSP Charges are to be determined by allocating CDSP Costs (for the Service Area) between Core Customers in that Customer Class, which shall include:
  - (i) the measure (such as number of Supply Points, or number of Core Customers in the Customer Class, or requests for Individual Customer Services) by which such costs are to be allocated (**Charging Measure**);
  - (ii) the period (such as a year or a month) in relation to which such measure is to be determined;
  - (iii) the basis for the assumptions (as to volumes of the relevant Charging Measures) to be made by the CDSP for the purposes of calculating CDSP Charges ex ante on a unit basis, where applicable;
- (e) establishing a CDSP Budget, and the determination of the Net Service Costs and Area Net Service Costs, for each [Gas Year], in accordance with paragraphs [7.8.2] and [7.8.3];
- (f) the preparation of a Charging Statement and the amounts of the CDSP Charges for each [Gas Year], in accordance with paragraph [7.8.4].

7.8.2 For each [Gas Year] (the **Charging Year**) a budget and plan (**CDSP Budget**) shall be established which shall set out:

- (a) the principal activities to be carried out and resources to be employed by the CDSP in the Charging Year, and the estimated CDSP Costs associated with such activities and resources, including an explanation of such CDSP Costs and the basis on which they will be incurred;
- (b) in relation to the Charging Year:
  - (i) the CDSP's estimates of:
    - (aa) the amount of the CDSP Costs to be incurred in the Charging Year;
    - (bb) the revenue to be earned from Third Party Services in the Charging Year;
  - (ii) the **Net CDSP Costs** for the Charging Year, calculated as the amount in paragraph (i)(aa) less the amount in paragraph (i)(bb);
- (c) in relation to the preceding Gas Year;
  - (i) the CDSP Costs actually incurred;
  - (ii) the amount (**Overall Y-1 Over/Under Recovery**) by which the total amount recovered by way of CDSP Charges was more or less than the CDSP Costs actually incurred (with an explanation of the extent to which this resulted from differences in estimating CDSP Costs or assumptions used in setting CDSP Charges);
- (d) the net aggregate amount to be recovered by CDSP Charges in the Charging Year (**Net Service Costs**), calculated as the Net CDSP Costs for the Charging Year adjusted by the amount of the Overall Y-1 Over/Under Recovery.

7.8.3 The CDSP Budget shall set out, for each Service Area:

- (a) the amount (**Area Net CDSP Costs**) of the Net CDSP Costs for the Charging Year allocated (on the basis in paragraph [7.8.1(a)]) to such Service Area;
- (b) the amount (**Area Y-1 Over/Under Recovery**) by which, for the preceding Gas Year, the total amount recovered by way of CDSP Charges in respect of such Service Area was more or less than the amount allocable (on the basis in paragraph [7.8.1(a)]) to such Service Area of the CDSP Costs actually incurred (the net aggregate of such amounts, for all Service Areas, being equal to the Overall Y-1 Over/Under Recovery);
- (c) the amount (**Area Net Service Costs**) of the Net Service Costs allocated to that Service Area, calculated as the Area Net CDSP Costs adjusted by the Area Y-1 Over/Under Recovery;
- (d) the assumptions (as to volumes of Charging Measures) made by the CDSP for the purposes described in paragraph [7.8.1(d)(iii)].

7.8.4 For the Charging Year the CDSP shall prepare a statement (**CDSP Charging Statement**) setting out, for each Service Area:

- (a) the Area Net Service Costs;

- (b) for each Customer Class in the Area Customer Group, the amount of the Area Net Service Costs allocated (on the basis in paragraph 7.8.1(c)) to that Customer Class;
- (c) the CDSP Charge(s) which shall apply in the Charging Year and the Charging Measure(s).

7.8.5 The Budget and Charging Methodology shall provide for:

- (a) the accounting policies to be adopted by the CDSP in determining CDSP Costs in any period;
- (b) the basis on which late payments of CDSP Charges, interest in respect of such late payments, failure to pay CDSP Charges, and recoveries from third parties in respect of CDSP Costs (other than charges for Third Party Services), are to be taken into account in establishing the CDSP Budget and calculating CDSP Charges;
- (c) the procedure and timetable for establishing of the CDSP Budget, including the CDSP publishing in draft and consulting with Core Customers on the CDSP Budget and approval by the [DSC Committee];
- (d) the basis on which the CDSP Budget shall be initially established provisionally, and finalised to take account of actual CDSP Costs incurred and CDSP Charges received in the preceding Gas Year;
- (e) the basis for an appeal to the Authority in respect of the CDSP Budget as provided in the CDSP Licence Condition and the implementation of the Authority's decision;
- (f) the procedure and timetable for the preparation of the Charging Statement;;
- (g) the circumstances in which and basis on which the CDSP Budget may be amended within the Charging Year, and the Charging Statement and CDSP Charges amended as a result.

7.8.6 If the CDSP is able to borrow in order to fund expenditure of a capital nature, and the [DSC Committee] authorises such borrowing, the CDSP Budget shall reflect both the funding of such expenditure by such borrowing (as a reduction in CDSP Costs to be recovered in relevant Gas Years), and the costs of servicing such borrowing including interest, principal repayment and fees (as additional CDSP Costs in relevant Gas Years), and the Budget and Charging Methodology shall be amended to reflect the above.

**7.9 [UK Link Manual]<sup>[7]</sup>**

**7.10 [Customer Responsibility Document]<sup>[8]</sup>**

**7.11 Change Control Procedures**

*[to follow]*

**7.12 Contract Management and Reporting Arrangements**

*[to follow]*

**7.13 Third Party Services Policy**

7.13.1 The Third Party Services Policy shall set out the basis on which the CDSP may provide and may agree to provide Third Party Services.

7.13.2 The Third Party Services Policy shall include:

- (a) limits to the scope and amount of Third Party Services with a view to limiting risk and cost to Core Customers;
- (b) requirements as to service priority in case of conflict with provision of CDSP Services to Core Customers;
- (c) principles governing the liability which the CDSP may accept in the provision of Third Party Services;
- (d) the requirement to earn a margin (above an allocation of CDSP Costs) in the charges made for Third Party Services.

**7.14 [Other CDSP Service Documents]**

**7.15 DSC Committee**

*[possible provision for a sub-committee – or alternative governance arrangement – overlap with UK Link Committee to be discussed.]*