

FGO

DSC TERMS & CONDITIONS - DRAFTING UPDATE FOLLOWING WORKGROUP MEETING ON 1 JUNE 2016

1 Introduction

- 1.1 This paper identifies proposed next steps in respect of progressing the drafting for the DSC Term & Conditions following the discussion of the liabilities, customer default and data flow papers at the 0565 Workgroup meeting on 1 June.

2 Liabilities

- 2.1 Two issues required clarification:

- (a) it was explained the scope of the paper was limited to CDSP liabilities in relation to the DSC. The paper was not intended to cover the treatment of historic liabilities, i.e. liabilities connected with the actions of the Transporters and/or Xoserve in the period prior 1 April 2017 (or the consequences of action taken before that date). It was acknowledged historic liabilities required a separate discussion – specifically when developing the transitional rules and the budget and charging methodology service document;
- (b) in the context of the paragraph 1.1.2(e), it was re-emphasised the CDSP's core customers were both the CDSP's 'economic owners' and stakeholders, so the CDSP was in effect a mutual company.

- 2.2 In paragraph 2.6.5, the proposal was the DSC should not exclude liability of a core customer from a breach of the DSC; there is no rationale for the core customer community socialising the consequences for the CDSP of the behaviour of a single customer. By way of example, if the CDSP incurred a liability as a result of a breach by a customer of the terms of a licence to use CDSP data (or due to a customer being in breach of a restriction on making a public announcement), it does not seem appropriate that the costs incurred by the CDSP should be shared by all customers. Individual customers should be incentivised to manage risks of this type. Therefore the proposal remains that the DSC should not exclude liability of customers in breach for losses suffered by the CDSP.

- 2.3 In terms of the proposals on liabilities, there was:

- (a) broad acceptance of the proposed approach to the treatment of category A, C and D liabilities;
- (b) a wish to consider further the proposed approach to the treatment of category B liabilities.

- 2.4 It was noted that where liabilities would need to be funded as part of the CDSP central cost-base, specifically category B and D liabilities, clarity would be needed on the basis on which liabilities would be recovered through the charging and cost allocation methodology. It was agreed the issue would be passed to the charging methodology work group for consideration.

3 Customer default

- 3.1 No particular issues of concern were raised on the customer default paper.
- 3.2 In terms of the proposals put forward:
- (a) there was broad acceptance of the types of remedies which should be available to the CDSP in the event of payment default by a core customer, including suspending DSC services
 - (b) it was felt that before the CDSP suspended DSC services the CDSP should be required to consult with a 'credit committee', whether to ask the committee to direct the CDSP to suspend services or (alternatively) for the committee's non-objection to the CDSP doing so;
 - (c) there was broad acceptance of the proposed approach on termination, and the need for co-ordination such that should a party cease to be party to the UNC it should cease to party to the DSC.

4 Data flows

- 4.1 No particular issues of concern were raised on the data flows paper.
- 4.2 In terms of developing the drafting on data flows there was broad acceptance of the suggested approach on rights of data use, confidentiality and privacy and security.

5 Next steps

- 5.1 A first full draft of the DSC Terms & Conditions is scheduled for circulation 5 days ahead of the next DSC work group meeting on 13 July.
- 5.2 It would be appreciated if any further comments on the three papers could be submitted as soon as possible, and due to the subject matter of the papers, work group participants are encouraged to pass the papers (and this update note) to their legal team. Such further comments should be submitted by the time of the next work group meeting, on 20 June, to facilitate early circulation of the DSC Terms & Conditions ahead of the July meeting.
- 5.3 In the meantime Dentons will begin to develop legal drafting:
- (a) for category A, C and D liabilities as proposed in the liabilities paper;
 - (b) to address DSC default and termination as suggested in the customer default paper, recognising the role of a 'credit committee' in the process leading to a suspension of DSC services; and
 - (c) on data use, confidentiality and privacy and security on the terms included in the data flows paper.