

FGO

DSC TERMS AND CONDITIONS AND UNC - APPROACH ON LIABILITIES

1 Previous papers

- 1.1 A paper 'DSC – Liability of CDSP' (**June Paper**) was tabled and discussed at the 0565 Work Group meeting on 1 June 2016. A drafting update paper which covered liabilities was discussed at the 0565 Work Group meeting on 20 June 2016.
- 1.2 The purpose of this paper is to (i) identify the proposed approach on liabilities, (ii) identify the proposed drafting to be included in the DSC and any changes to the UNC and (iii) allow an opportunity for comments on the drafting approach to enable completion of the DSC text and changes to the UNC in this area.
- 1.3 This note does not address financial transition issues.

2 Proposed Approach

- 2.1 The proposal is to follow the approach set out in the June Paper. This was made in the context of the CDSP being a 'mutual organisation' whose charges are set to recover all of its costs, which will include liabilities and losses. It therefore follows that any liabilities will need to be recovered for core customers and that liabilities cannot (as is often the case) operate to incentivise performance. The mutual model means there would be an inherent circularity in the receipt and funding of any liabilities.
- 2.2 The June Paper identified four categories of potential CDSP liability:
 - (a) category A - liabilities in respect of the provision of services, for example by reference to service levels. The proposal is that we do not develop service-related liabilities;
 - (b) category B – liabilities for a breach of a provision of the DSC. Because liabilities would not be related to particular services they would need to be funded by all parties. This combined with the circularity issue, a wish for simplicity and the fact a no liability approach is non-discriminatory means the proposal is we exclude this type of liability;
 - (c) category C – liability in tort. Typically a commercial contract will exclude these liabilities, so the proposal is we exclude this type of liability; and
 - (d) category D – liabilities which are unconnected with the DSC, and which arise under law, for instance a statutory or regulatory liability. This type of liability could be incurred to an person, not just a core customer. There is no particular reason to treat core customers differently, so the proposal is not to exclude this type of liability.
- 2.3 Following the discussions on liabilities in the June meetings there was broad consensus on adopting the approach outlined above. Some reservations were expressed in relation to the approach to category B liabilities, however no alternative approach has been put forward.
- 2.4 The drafting has therefore been progressed on the basis of the approach outlined above.

3 Approach in DSC

- 3.1 The latest version of the DSC Terms and Conditions (Version 2.0) is on the JO website (see Supporting Business Documentation on the Modification 0565 page).
- 3.2 The drafting approach in the DSC Terms and Conditions at Clause 11 is as follows:
- (a) to include a statement of no limitation on liability for death, personal injury, fraud or misrepresentation or other liability the exclusion of which is prohibited by law;
 - (b) to exclude any CDSP or customer liability for certain types of loss, including consequential loss;
 - (c) not to exclude CDSP or a customer's liability pursuant to any specific indemnity given by the CDSP or customer, or the CDSP's right to claim for loss from a customer default causing damage to CDSP property, infringement or breach of third party IPR or confidentiality;
 - (d) to exclude CDSP liability for losses under contract, tort or wilful default in connection with the DSC;
 - (e) to exclude CDSP liability in connection with the provision of services, in connection with the performance of UK Link or the accuracy of data;
 - (f) to acknowledge that the financial consequences of a claim for liability against the CDSP is that the claim would be borne by the customer themselves, and the approach to liabilities is a fair and reasonable one.
- 3.3 In relation to the proposed approach to the revised UK Link Manual the intention is to house some of the legal rules concerning UK Link in the UK Link Manual and to provide that:
- (a) UK Link Users are to indemnify CDSP from losses arising from a breach of the terms relating to the terms of access to UK Link;
 - (b) CDSP will not be liable to any UK Link User for the consequences of any failure in the operation or performance (or non-availability) of UK Link, corruption or loss of data;
 - (c) without prejudice to CDSP's contractual obligations, CDSP will have not be liable for the accuracy of communications which are not UK Link Communications.
- 3.4 Consistent with this general exclusion of liability approach where a service is dependent on an input from a customer, in the absence of the input there will be no requirement on CDSP to provide the service.

4 Approach in UNC

- 4.1 The UNC contains a number of service related liabilities, which are categorised by reference to different compensation groups.
- 4.2 Changes will need to be made to follow the approach for category A liabilities. The proposed approach to the UNC drafting changes is set out in the table below:

Relevant Compensation Group	Liability	FGO Approach	Rationale
A	M7.2 - Provision of Valid Meter Readings (VMR)	No change	Obligation regarding provision of VMR for Class 1 Supply Point Meters with Transporter and not a CDSP function
B	C1.6 - Provision of CV information	No change	Obligation with Transporter and not a CDSP function
C and D	Previously E.8.2.1(a) - Suppressed Reconciliation Values	No change	Will be deleted by Modification 0432
E	G4.2 - Rejected Supply Point Confirmations	To be deleted	Becomes a CDSP function and retaining liability would be inconsistent with proposal CDSP is not subject to service related liabilities
F	S4.6 - GRE Invoice Query Incentive Scheme Methodology	To be deleted	Though specific to NTS charges, application of the methodology is a CDSP function, retaining liability would be inconsistent with proposal CDSP is not subject to service related liabilities.
G	G4.1 - Responding to Supply Point Nominations (SPN)	To be amended	Responding becomes a CDSP function but where CDSP is instructed by Transporter to give a referral notice Transporter must complete assessment of feasibility to make gas available and requirement will be to notify CDSP so CDSP can respond within prescribed period.
H	G4.3 - Site visits	No change	Obligation with Transporter and not a CDSP function
I	U8.6 - Notifying Class 2 and Class 3 Modifications	To be deleted	Provision to be deleted as replaced by DSC Change Control Procedures
J	J3.5 - Gas not made available for offtake	No change	Obligation with Transporter and not a CDSP function
J	J3.11 - Alternative arrangements for CSEPs	No change	Obligation with Transporter and not a CDSP function
K	U7.6 – UK Link Failure Liability	To be deleted	Provision of UK Link a CDSP function retaining

			liability would be inconsistent with proposal CDSP is not subject to service related liabilities
L	M3.2 - Supply Point Register (SPR) Amendment	To be amended	Obligation with Transporter, but requirement will be notify CDSP that Meter Installation Works have been undertaken so CDSP can update SPR with prescribed period.
L	S4.7 - Operational Queries	To be deleted	Resolution will become a CDSP function and retaining liability would be inconsistent with proposal CDSP is not subject to service related liabilities

4.3 No change is proposed in relation to the UNC liability provisions in TPD Section V8, other than to make clear liability as between CDSP and a Code party is addressed in the DSC.

5 Consequences

5.1 The approach described above means the DSC needs to address the funding of a category D liability or fine incurred by CDSP.

5.2 The proposal is that any liabilities of this type are funded by all parties. Any liability incurred would therefore need to be included in the CDSP central cost base, and the charging group, have identified the need for the Budget and Charging Methodology to recognise a CDSP category D liability as a input when determining CDSP charges for a year.

6 Actions

6.1 Work group to provide comments (if any) on drafting for the DSC and proposed drafting approach to changes to UNC.