

UK LINK USER AGREEMENT (IX)

THIS AGREEMENT is made on

BETWEEN:

- (1) **Xoserve Limited** (Registered in England No. 05046877) whose registered office is at Lansdowne Gate, 65 New Road, Solihull, B91 3DL (the "**CDSP**"); and
- (2) **[NAME OF CUSTOMER]** (registered number: **[INSERT NO.]**) whose registered office is at **[INSERT ADDRESS]** (the "**Customer**").

RECITALS:

- A. The Customer is (or wishes to become) a Trader User as defined in the Uniform Network Code and is required, pursuant to the Uniform Network Code, to enter into a UK Link User Agreement.
- B. Accordingly, the Customer and the CDSP have agreed to enter into this Agreement pursuant to which the CDSP has agreed to provide the UK Link User Services to the Customer subject to and upon the terms and conditions of this Agreement.

THE PARTIES AGREE as follows:

1 Interpretation and Definitions

1.1 Any capitalised term used in this Agreement shall have the meaning given to it in this Agreement. Any capitalised term used in this Agreement that is not defined in this Agreement shall have any meaning given to it in, and be interpreted in accordance with, the Uniform Network Code.

1.2 In this Agreement, the following terms shall have the following meanings:

Annual Charging Statement means the "Annual Charging Statement" determined pursuant to the DSC, and published by the CDSP in accordance with the DSC, from time to time;

Applicable Network Code means the Uniform Network Code;

Business Day means, subject to Clause 1.4, a day (other than a Saturday or a Sunday) on which banks are open in London, England for the transaction of general business;

CDSP Service Description means the document of that title identified pursuant to the Code DSC Provisions, as such document may be amended from time to time in accordance with the DSC;

Charges has the meaning given to it in the Schedule;

Code DSC Provisions means the provisions of the Uniform Network Code for the establishment and governance of the DSC;

Conditions Precedent has the meaning given to it in the Schedule;

Contract Data means data (that are not Party Data) concerning the contract management, reporting and governance of this Agreement, including performance data, billing data in connection with CDSP's charges and any description or specification of any UK Link User Service;

Contract Manager has the meaning given to it in the Schedule;

Controller Data means all personal data that are:

- (a) supplied or in respect of which access is granted to the data processor (or any Sub-processor) by the data controller; or
- (b) produced or generated by or on behalf of the data processor (or any Sub-processor) in connection with the UK Link User Services under this Agreement;

Credit Default means any Default which is (or may be) the subject of measures provided for in the relevant CP terms, and **Credit Defaults** shall be construed accordingly;

Credit Policy means the document of that title identified pursuant to the Code DSC Provisions, as such document may be amended from time to time in accordance with the DSC;

Data Breach means any breach of security leading to the accidental or unlawful destruction, loss, alteration or unauthorised disclosure of, or access to, Controller Data, or unlawful processing, disclosure of, or access to, Controller Data;

Data Protection Law means any applicable national or international data privacy and data protection laws and regulations in any territory in which the UK Link User Services are provided or used, including the GDPR;

Default means any breach of the obligations of the Customer (including, but not limited to, fundamental breach or breach of a fundamental term or breach of warranty) or any default, wrongful act or omission, negligence or mis-statement of the Customer, its employees, officers, contractors, staff, agents or sub-contractors in connection with or in relation to the subject matter of this Agreement;

Default Event has the meaning given to it in Clause 14.2;

Disclosing Party has the meaning given to it in Clause 7.1;

DSC means the contract which the CDSP has entered into with certain UNC Parties (excluding the Customer) pursuant to the Code DSC Provisions, as may be acceded to by UNC Parties, or from which a UNC Party may withdraw, from time to time;

Effective Date means:

- (a) if the Customer becomes a Trader User on or before 1 April 2017, 1 April 2017; or
- (b) if the Customer becomes a Trader User after 1 April 2017, the date on which the last of the Parties signs this Agreement or such other date as the Parties may agree in writing;

Expert means a person appointed pursuant to Clause 27.1;

Force Majeure Event means any cause or circumstance beyond the reasonable control of a Party which results in or causes that Party to fail to perform or delay in the performance of any one or more of its obligations under this Agreement, if that failure or delay could not have been prevented or overcome by that Party acting reasonably and prudently;

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;

GDPR means Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, as and when it becomes applicable;

Insolvency Event means the occurrence of any one or more of the following events or circumstances in respect of the Customer:

- (a) it becomes unable or is deemed to be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986;
- (b) it proposes or makes any arrangement or composition with or assignment or moratorium for the benefit of its creditors generally or any class of creditors;
- (c) it passes a resolution or takes or is subject to any other step (including any court application or order) with a view to its winding up or dissolution (otherwise than for the purpose of solvent reconstruction or amalgamation or pursuant to a frivolous or vexatious winding up petition provided the same is dismissed within seven (7) days), or the appointment in respect of it or any of its assets of a trustee, supervisor, administrative or other receiver, administrator, provisional liquidator or liquidator;
- (d) it suffers a third party taking possession over all or (with the exception, in the reasonable opinion of the CDSP, of any such action having a "de minimis" effect) a part of its assets; or
- (e) if any event analogous to those referred to in paragraphs (a) to (d) occurs in any other jurisdiction;

IPR means any right, title or interest in patents, utility models, inventions, copyright, moral rights, trade marks, business names and domain names, get-up, goodwill, designs, computer software or circuit layouts, database rights and all other intellectual property, and the right to sue for passing off, in each case whether registered or unregistered and including all applications and rights to apply for and be granted renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world, whether legal or beneficial;

Late Payment Act means the Late Payment of Commercial Debts (Interest) Act 1998;

Law means any and all:

- (a) laws, statutes, orders or rules of any court, regulations, directives and codes; and
- (b) licences, decisions, orders, directives, guidance or mandates issued by any regulator,

in each case which have legal effect and which apply in respect of a Party or its activities and / or the rights or obligations of a Party under this Agreement, and **Laws** shall be construed accordingly;

Other IPR means any IPR that is not governed by the provisions of Clauses 5.1 to 5.7;

Parties means the parties to this Agreement, and **Party** means each of them;

Party Data means, in relation to a Party, data about that Party, that are provided by or on behalf of that Party or otherwise obtained by the other Party, such as a Party's corporate data, back office and similar data, and personal data relating to its staff;

Pre-existing IPR means any IPR existing prior to the Effective Date;

Receiving Party has the meaning given to it in Clause 7.1;

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;

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

relevant CP terms has the meaning given to it in the Schedule;

Schedule means the schedule to this Agreement;

Services means CDSP Services (whether such services are provided by the CDSP under the this Agreement, the DSC or otherwise and whether provided to the Customer, other UNC Parties or third parties); **Services Data** means any data (that are not Contract Data or Party Data) that are sent by the Customer to the CDSP or by the CDSP to the Customer or otherwise processed by the CDSP, each in the course of, or for the purposes of, UK Link User Services provision;

Sub-contracting 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 this Agreement (including the sub-contracting of any such rights and / or obligations), and **Sub-contracting Arrangements** shall be construed accordingly;

Supervisory Authority means any competent data protection or privacy authority in any jurisdiction in which the data controller is established, the data processor provides the UK Link User Services and / or in which the data processor processes personal data;

Termination Date means the date on which this Agreement terminates;

Termination Requirements has the meaning given to it in Clause 15.5;

Transporter means National Grid NTS;

UK Link Enhancements has the meaning given to it in Clause 5.7(a);

UK Link Manual means the document of that title identified pursuant to the Code DSC Provisions, as such document may be amended from time to time in accordance with the DSC;

UK Link User Services has the meaning given to it in the Schedule, and **UK Link User Service** shall be construed accordingly;

UK Link User Equipment means the equipment and associated software provided to the Customer by the CDSP in connection with the UK Link User Services from time to time;

UNC Party means a "Party" to and as defined in the Uniform Network Code;

Uniform Network Code and **UNC** mean the uniform network code prepared pursuant to Standard Special Condition A11(6) of the Gas Transporter's Licence, as from time to time modified, and as made contractually binding (as incorporated into the Transporter's individual network code) by the relevant framework agreement; and

Use means to use, copy, store, modify, adapt, translate, make available, exploit and otherwise deal with.

1.3 In this Agreement:

- (a) headings are for reference only and shall not affect the construction of this Agreement;
- (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 this Agreement, and to a paragraph is to a paragraph of the Schedule;
- (e) except to the extent expressly stated otherwise in this Agreement, in the event of any conflict or inconsistency between any documents or provisions contained or referred to in this Agreement, such conflict or inconsistency shall be resolved for the purposes of this Agreement by applying the documents or provisions in the following order:
 - (i) this Agreement (excluding the Schedule);
 - (ii) the Schedule;
 - (iii) the CDSP Service Description, the relevant CP terms and the UK Link Manual; and
 - (iv) GT Section D5;
- (f) any reference to a **GT Section** means a reference to a section respectively of the General Terms part of the Uniform Network Code and a reference to a **TPD Section** means a reference to a section respectively of the Transportation Principal Document 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;
- (h) **personal data, sensitive personal data, data controller, data processor, processing** and **data subject** shall bear the meaning ascribed under the Data Protection Act 1998 or the GDPR (as applicable), and the term **process** shall be construed accordingly; and
- (i) a reference to the **CDSP Service Description** includes any document produced by the CDSP pursuant to or in connection with the CDSP Service Description which contains a description or specification of any UK Link User Service.

1.4 In the CDSP Service Description and the UK Link Terms and Conditions (as defined in the UK Link Manual), **Day** and **Business Day** shall have the meaning given to them in the Uniform Network Code, and **Days** and **Business Days** shall be construed accordingly.

2 Key Provisions

2.1 This Agreement shall:

- (a) subject to Clauses 2.4 and 2.5, commence on the Effective Date; and
- (b) continue in full force and effect until terminated in accordance with its terms.

- 2.2 The CDSP shall provide the UK Link User Services to the Customer in accordance with this Agreement.
- 2.3 The Customer shall pay the Charges to the CDSP in accordance with this Agreement.
- 2.4 Clauses 2.2 and 4.2 of this Agreement are conditional upon the satisfaction of the Conditions Precedent. The CDSP may in its sole discretion at any time agree to waive compliance with any of the Conditions Precedent by giving the Customer notice in writing.
- 2.5 To the extent that the Conditions Precedent have not been satisfied as at the Effective Date:
- (a) the Customer shall satisfy, or procure the satisfaction of, the Conditions Precedent as soon as is reasonably practicable; and
 - (b) if all of the Conditions Precedent are not satisfied within six (6) months after the Effective Date, the CDSP may give notice to the Customer to terminate this Agreement and this Agreement shall automatically terminate upon such notice.

3 Invoicing and Payment

- 3.1 In accordance with and by the date(s) specified in the Schedule, the CDSP shall submit one or more invoices to the Customer for the Charges payable by the Customer in respect of each month or period of months as specified in the Schedule.
- 3.2 Each invoice submitted by the CDSP pursuant to this Agreement shall be in the format provided for in the Schedule.
- 3.3 Subject to the relevant CP terms, the Customer shall, within twenty (20) Business Days following the date of the invoice, pay each invoice submitted by the CDSP in full and in cleared funds to a bank account nominated in writing by the CDSP. No sum payable due from the Customer under this Agreement shall be subject to any deduction, set-off or withholding of any nature except to the extent expressly permitted pursuant to this Agreement.
- 3.4 The Customer shall notify the CDSP after receipt of an invoice if it disputes the invoice or if it considers that any part of the invoice is incorrect (such notification to be given no later than eighteen (18) months after the date of the invoice). Notwithstanding that it disputes the invoice, the Customer shall (except in the case of manifest error or fraud) in any event pay the amount of such invoice in accordance with this Clause 3 and the disputed portion of the invoice shall be referred for resolution in accordance with the applicable provisions of this Agreement. Where, upon the resolution of the dispute, it is agreed or determined that any amount or part of any disputed portion of an invoice should not have been paid, the CDSP shall include adjustments (together with interest at a rate of one per cent (1%) above the base rate of Barclays Bank PLC as accrued on a daily basis on such adjustments from the date on which payment was made) necessary to reflect the disputed amount agreed or determined to be due to the Customer in the next invoice submitted by the CDSP following resolution of that dispute, or as otherwise agreed between the CDSP and the Customer.
- 3.5 If a Customer fails to pay any sum by the due date for payment in accordance with this Agreement:
- (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 Payments Act) 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 3.5(a) shall be treated as a contractual remedy and not as statutory interest;

- (b) the Customer shall in addition pay the CDSP in respect of the sum in question an amount equal to the compensation that would be payable to the CDSP were that sum a qualifying debt under the Late Payments Act; and
- (c) the CDSP may exercise its rights pursuant to, and the Customer shall comply with, the relevant CP terms in connection with a Customer failure to pay a sum due to the CDSP by the due date for payment.

4 **UK Link**

- 4.1 The CDSP shall (or shall procure that third parties shall) establish and operate such parts of UK Link as are necessary for the CDSP to provide, and for the Customer to receive, the UK Link User Services.
- 4.2 The CDSP shall permit the Customer to access and use such parts of UK Link as are necessary for the Customer to (as appropriate) use, access and receive the UK Link User Services in accordance with Clause 5.7(b).
- 4.3 Each Party shall, at all times, comply with the applicable provisions of the UK Link Manual. In the event that the Customer fails to do so, the CDSP shall be entitled to exercise its rights pursuant to the UK Link Manual in connection with the Customer failure to comply with the provisions of the UK Link Manual.
- 4.4 Except to the extent expressly set out in this Agreement or the Parties may agree otherwise in writing:
 - (a) as between the Parties, the UK Link User Equipment shall remain the property of the CDSP and the Customer shall not have or obtain any right, title or interest in or to any UK Link User Equipment; and
 - (b) from the date of delivery of the UK Link User Equipment to the Customer or its nominee until such time as the UK Link User Equipment is returned to the CDSP pursuant to this Agreement, the Customer shall:
 - (i) be responsible for the safe custody of the UK Link User Equipment; and
 - (ii) keep the UK Link User Equipment in good condition, free from damage and insured for the total value of the UK Link User Equipment (as notified to the Customer by the CDSP from time to time) against all usually insured risks (including third party liability).

5 **Intellectual Property Rights**

- 5.1 Save as expressly set out in this Agreement:
 - (a) this Agreement does not assign any Pre-existing IPR; and
 - (b) neither Party shall assert ownership of any Pre-existing IPR of the other Party.
- 5.2 **Services Data**
 - (a) Subject to Clauses 5.2(b) and 5.5, the CDSP shall not acquire any IPR or other rights in any Services Data, including any Services Data provided by or on behalf of the Customer that are adapted, modified or enhanced by or on behalf of the CDSP.
 - (b) As between the CDSP and the Customer, all IPR in any Services Data created by or on behalf of the CDSP or its sub-contractors, suppliers or agents (including any data adaptations, modifications and enhancements) shall be owned by the CDSP.

- (c) If the CDSP provides to the Customer any data (that are not Contract Data or Party Data) relating to the gas industry or persons engaged in or connected with the gas industry, other than pursuant to a UK Link User Service provided to a Customer, such data shall be treated as Services Data falling within Clause 5.2(b) for the purposes of this Agreement.

5.3 **Contract Data**

As between the CDSP and the Customer, all IPR in Contract Data created by or on behalf of the CDSP or its sub-contractors, suppliers or agents shall be owned by the CDSP.

5.4 **Party Data**

Subject to Clauses 5.5(a) and 5.6(a), neither Party shall acquire any IPR or other rights in any Party Data of the other Party.

5.5 **Grant of Licence to CDSP**

The Customer hereby grants to the CDSP:

- (a) a royalty-free, non-exclusive, irrevocable licence to Use all Services Data (excluding those referred to in Clause 5.2(b)) and Party Data provided to the CDSP by or on behalf of the Customer or otherwise; and
- (b) the full power to sub-license or assign the rights granted under Clause 5.5(a) to:
 - (i) any sub-contractor, supplier and other third party; and
 - (ii) any other person to which the CDSP provides Services,

for the purposes only of the CDSP providing Services or performing its obligations and exercising its rights under or in connection with this Agreement, the DSC or any other agreement with any third party.

5.6 **Grant of Licence to the Customer**

The CDSP hereby grants to the Customer:

- (a) a royalty-free, non-exclusive licence to Use all Services Data referred to in Clause 5.2(b), Contract Data and Party Data provided to the Customer by or on behalf of the CDSP; and
- (b) the full power to sub-license or assign the rights granted under Clause 5.6(a) to any sub-contractor, supplier and other third party for the purposes only of the Customer performing its obligations and exercising its rights under or in connection with this Agreement.

5.7 **UK Link**

- (a) As between the CDSP and the Customer, all IPR in UK Link, including any additions, developments and enhancements to UK Link created by or on behalf of the CDSP (the **UK Link Enhancements**) shall be owned by (or, in the case of UK Link Gemini, licensed to) the CDSP, excluding, for the avoidance of doubt, the IPR in any data, which is governed by the other provisions of this Clause 5. The CDSP shall procure that it owns, or is licensed to use in the provision of the UK Link User Services, such parts of UK Link and such UK Link Enhancements as are necessary for the CDSP to provide, and for the Customer to (as appropriate) use, access and receive, the UK Link User Services.

- (b) The CDSP hereby grants to the Customer a non-exclusive licence to access and use such parts of UK Link as are necessary for the Customer to (as appropriate) use, access and receive the UK Link User Services on, and subject to, the terms specified in the UK Link Manual, GT Section D5 and this Agreement.

5.8 Other IPR

- (a) As between the CDSP and the Customer, Other IPR created or used by or on behalf of the CDSP or its sub-contractors, suppliers or agents shall be owned by the CDSP.
- (b) The CDSP hereby grants to the Customer:
 - (i) a royalty-free, non-exclusive licence to Use all Other IPR provided to that Customer by or on behalf of the CDSP; and
 - (ii) the full power to sub-license or assign the rights granted under Clause 5.8(a) to any sub-contractor, supplier and other third party,

for the purposes only of the Customer performing its obligations and exercising its rights under or in connection with this Agreement.

6 Data Security and Protection

6.1 Each Party will process data (whether Contract Data, Party Data or Services Data), which may include personal data (such as the personal data of end users or a Party's staff), for the purposes of performing its obligations and exercising its rights under or in connection with this Agreement.

6.2 When acting as a data processor, the relevant Party shall:

- (a) process Controller Data:
 - (i) only on the documented instructions of the data controller. For the purposes of this Agreement, those instructions are as set out in this Clause 6, the parts of the CDSP Service Description applicable to the UK Link User Services, or as otherwise notified in writing by the data controller to the data processor. The data processor reserves the right to charge the data controller for any material change or addition to the instructions set out in this Agreement; and
 - (ii) as required by European Union or English law applicable to the data processor, in which case the data processor shall first inform the data controller of the legal requirement, unless that law prohibits such prior notification;
- (b) not engage any sub-processor if such engagement will have a material adverse effect on the data controller (and the relevant data controller hereby authorises the data processor to engage a sub-processor, provided such engagement will not have a material adverse effect on the data controller);
- (c) not transfer any Controller Data to any country or territory outside the European Economic Area without obtaining the prior written consent of the data controller and provided that such transfer also complies with Data Protection Law;
- (d) implement appropriate technical and organisational measures to ensure the security of the Controller Data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage; and
- (e) permit the data controller, or a third party auditor acting on the data controller's behalf and bound by a confidentiality agreement that is acceptable to the data processor, to conduct, at the data controller's cost, annual audits concerning the data processor's

compliance with this Agreement. The data controller is entitled to more frequent audits if this is required by Data Protection Law. The data processor may provide sufficient evidence of its compliance with these procedures in lieu of conducting any such audits. The CDSP's information security arrangements for the purposes of the DSC from time to time shall operate as sufficient evidence of compliance for the purposes of this Clause 6.2(e).

- 6.3 In addition to Clause 6.1, when acting as a data processor, the relevant Party shall:
- (a) where this is technically possible, implement appropriate technical and organisational measures and provide the data controller with assistance in promptly complying with any data subject right requests (including access requests) received by the data controller in respect of the Controller Data. Such assistance shall involve following the data controller's detailed written instructions to release, modify or delete, or restrict access to, the Controller Data. The data processor reserves the right to charge the data controller for its compliance with this Clause 6.3(a);
 - (b) notify the data controller without undue delay if it becomes aware of any Data Breach that, in its reasonable opinion, is likely to result in a risk to the rights and freedoms of natural persons. Such notification shall include the following information, to the extent it is available:
 - (i) the nature of the Data Breach;
 - (ii) the nature of the personal data affected;
 - (iii) the categories and number of data subjects concerned;
 - (iv) the approximate number of personal data records concerned; and
 - (v) measures taken or proposed to be taken by the data processor to address the Data Breach;
 - (c) on request of the data controller, provide a summary of the technical and organisational security measures it has implemented under Clause 6.2(d) in respect of the Controller Data;
 - (d) notify the data controller prior to adopting any new type of processing in respect of Controller Data that, in the data processor's reasonable opinion, is likely to result in a risk to the rights and freedoms of natural persons;
 - (e) assist the data controller in preparing a data protection impact assessment in respect of any new type of processing proposed to be performed under this Agreement. The data processor reserves the right to charge the data controller for its compliance with this Clause 6.3(e); and
 - (f) provide reasonable assistance to the data controller where the data controller is required by law to consult a Supervisory Authority regarding any new type of processing proposed under Clause 6.3(d). The data processor reserves the right to charge the data controller for its compliance with this Clause 6.3(f).
- 6.4 When acting as a data controller, the relevant Party shall provide the data processor with such assistance and co-operation as the data processor may reasonably request to enable the data processor to comply with its obligations under Data Protection Law and this Agreement, including the following:
- (a) on request of the data processor, promptly providing all information necessary for the data processor to comply with any obligations imposed on it by Data Protection Law or this Agreement in relation to the Controller Data; and

- (b) informing the data processor immediately in writing of any enquiry, complaint, notice or other communication it receives from any Supervisory Authority (including the Information Commissioner's Office) or any data subject relating to the performance of the UK Link User Services by the data processor.

6.5 The data controller warrants that:

- (a) it shall at all times collect, transfer to the data processor and otherwise process all Controller Data in accordance with Data Protection Law and this Agreement;
- (b) without limiting Clause 6.5(a), it has provided all required notices and obtained all required consents from affected data subjects; and
- (c) in light of the nature of the Controller Data, the technical and organisational security measures that the data controller has adopted and the data processor has implemented under Clause 6.2(d) ensure a level of security appropriate to the risk.

7 Confidentiality

7.1 Subject to Clauses 7.5 and 7.6, each Party (the **Receiving Party**) shall treat as confidential all information (including Party Data) obtained from any other Party (the **Disclosing Party**) pursuant to this Agreement.

7.2 A Receiving Party shall not, without the prior written consent of the Disclosing Party, use or divulge such information to any person, except:

- (a) for the purposes of performing its obligations and exercising its rights under or in connection with this Agreement and / or the Applicable Network Code;
- (b) to the Receiving Party's Staff, the Receiving Party sub-contractors' staff and the Receiving Party agents' staff, and then only to any such staff who need to know the information;
- (c) to the Receiving Party's auditors, professional advisers, the Authority, HM Inspector of Taxes, HM Customs and Excise, and any other person or body having a statutory or regulatory right to receive that information and then only in pursuance of such right; or
- (d) where it concerns financial information, to any shareholder or provider of finance of the Receiving Party who needs to have that information for the purposes of monitoring the activities of the Receiving Party in its capacity as a shareholder or provider of finance of the Receiving Party,

provided that this Clause 7 shall not extend to information that:

- (i) was rightfully in the possession of the Receiving Party prior to the commencement of its dealings with the Disclosing Party (provided that such information was not originally given to it by the Disclosing Party);
- (ii) is already public knowledge or which becomes so at a future date (otherwise than as a result of breach of this Clause 7);
- (iii) is trivial or obvious; or
- (iv) is required by law to be disclosed.

7.3 Each Receiving Party undertakes to ensure that the persons and bodies mentioned in Clause 7.2:

- (a) are made aware, prior to the disclosure of any information, that the information is confidential; and

- (b) except in the case of the Authority, HM Inspector of Taxes, HM Customs and Excise, and any other statutory or regulatory person or body, agree to keep it confidential.

7.4 The foregoing obligations as to confidentiality shall remain in full force and effect notwithstanding any expiry or termination of this Agreement.

7.5 Clause 7.2 shall not apply in respect of Services Data received by the Customer from the CDSP, except for any data comprised (pursuant to the specification of the Service) in the Services Data that are confidential to a person who is not a UNC Party.

7.6 The Parties acknowledge that, as between UNC Parties, the confidentiality provisions under the Applicable Network Code apply.

7.7 Without prejudice to the Parties' other rights and remedies pursuant to this Agreement, each Party agrees that damages alone may not be an adequate remedy for any breach of this Clause 7 by the other Party. Accordingly, each Party shall be entitled to seek any legal and / or equitable relief, including an injunction, in the event of any breach of this Clause 7.

8 Warranties

8.1 The CDSP warrants and undertakes to the Customer that:

- (a) it will perform its obligations under this Agreement in compliance with all Laws and maintain all consents required by Law;
- (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 UK Link User Services;
- (c) it has the authority, and all rights necessary, to grant to the Customer all rights to be granted to the Customer pursuant to Clause 5.6; and
- (d) it will perform its obligations under this Agreement using reasonable skill, care and diligence.

8.2 The Customer warrants and undertakes to the CDSP that:

- (a) it will perform its obligations under this Agreement in compliance with all Laws and maintain all consents and licences required by Law;
- (b) it has the authority, and all rights necessary, to grant to the CDSP all rights to be granted to the CDSP pursuant to Clause 5.5; and
- (c) it will perform its obligations under this Agreement using reasonable skill, care and diligence.

8.3 Save as expressly set out in this Agreement, all representations, warranties, conditions and other terms, whether express or implied, are excluded to the fullest extent permitted by law.

9 Data Services

9.1 Each of the Parties acknowledges and agrees that:

- (a) the CDSP shall only assess and / or verify the condition of data processed by the CDSP pursuant to or in connection with the UK Link User Services to the extent expressly specified in the CDSP Services Description; and
- (b) the condition of any data provided by the CDSP pursuant to or in connection with the UK Link User Services is dependent on the condition of the data provided to the CDSP in connection with the provision of the UK Link User Services.

9.2 For the purposes of Clause 9.1, the condition of any data means the accuracy, completeness, quality, fitness for purpose or any other aspect of those data.

10 Liability

10.1 No Limitation

Notwithstanding any other provision of this Agreement, neither the CDSP nor the Customer excludes or limits liability to the other for:

- (a) death or personal injury caused by its own negligence;
- (b) liability for fraud or fraudulent misrepresentation; or
- (c) any other liability the exclusion and / or limitation of which is expressly prohibited by statute or at law.

10.2 General Limitation on Liability

- (a) Except as expressly stated in this Agreement, neither the CDSP nor the Customer shall be liable to the other under this Agreement for any:
 - (i) loss of profits;
 - (ii) loss of business;
 - (iii) loss of revenue;
 - (iv) loss of goodwill;
 - (v) loss of anticipated savings; and / or
 - (vi) indirect, special or consequential loss or damage.
- (b) Clause 10.2(a) shall not exclude or limit the CDSP's or the Customer's right under this Agreement to claim for any of the following under an indemnity expressly given by the Customer or the CDSP (as appropriate) or, in the case of the CDSP, which results from a Default or other act or omission by the Customer:
 - (i) any loss or damage to tangible property;
 - (ii) any loss or damage caused by infringement of any third party IPR or breach of any obligations of confidence; or
 - (iii) any loss or damage to software, applications or data.

10.3 CDSP Liability to the Customer

- (a) Subject to Clauses 10.1 and 10.2(b), the CDSP shall have no liability to the Customer for any loss, damage, cost or harm whatsoever and whether in contract, tort, negligence, for wilful default or otherwise arising under or in connection with this Agreement, the performance of this Agreement or the UK Link User Services, UK Link or the performance of UK Link.
- (b) Without limitation but subject to Clauses 10.1 and 10.2(b), pursuant to Clause 10.3(a), the CDSP shall have no liability to the Customer:
 - (i) for any loss, damage, cost or harm sustained or incurred by the Customer as a result of any failure of the CDSP to provide the UK Link User Services or to do

so to any applicable service standards or in accordance with any performance indicators;

- (ii) for any financial liabilities arising in respect of any failure to comply with any obligation or meet any performance standard under the Applicable Network Code; and
- (iii) for the accuracy of any data.

10.4 **Appropriateness of Liability Provisions**

- (a) It is acknowledged that the UK Link User Services are being provided to the Customer at the same price and on substantially the same terms as they are provided to other UNC Parties under the DSC.
- (b) Accordingly, the Parties agree that the limitations and exclusions set out in this Clause 10 are fair and reasonable in the circumstances.

10.5 **Customer Indemnity**

- (a) The Customer 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 otherwise in connection with:
 - (i) any claim made against the CDSP by any person connected with the Customer (other than pursuant to a contract entered into by the CDSP with the relevant person) in connection with this Agreement or any UK Link User Service; and
 - (ii) any loss or destruction of, or damage to, UK Link and / or any data processed by the CDSP (or any part(s) of them) arising as a result of Default or other act or omission of the Customer.
- (b) For the purposes of Clause 10.5(a)(i) a person connected with a Customer is any employee, officer, contractor or agent of the Customer, but does not include a UNC Party.

11 **Insurance**

The CDSP shall at its own expense effect and maintain for the duration of this Agreement such insurances as are required by Law and as appropriate in respect of its obligations under this Agreement.

12 **Change**

12.1 It is acknowledged that the CDSP Service Description and UK Link Manual may be amended from time to time as provided for in the DSC.

12.2 The Parties agree that:

- (a) where the DSC is amended from time to time, the CDSP may amend this Agreement from time to time to ensure the terms of this Agreement are consistent with the terms of the DSC; and
- (b) where a modification of the Uniform Network Code requires an amendment to this Agreement, the CDSP may amend this Agreement from time to time to make such amendment to this Agreement,

in which case the CDSP shall provide written notice to the Customer giving details, and the effective date, of any such amendment(s).

13 **Force Majeure**

13.1 Neither Party shall be liable for any failure or delay in performing its obligations under this Agreement 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; and
- (b) the Party seeking to exempt itself from liability by virtue of this Clause 13.1 shall:
 - (i) give written notice to the other Party's Contract Manager 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 or delay, the reasons for the failure or delay 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 13.1(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 or delay as may have been requested; and
 - (iii) take all necessary steps to remedy the failure or delay.

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

- (a) any dispute between a Party and its staff or any sub-contractor of that Party and its staff; or
- (b) shortage of labour or inability to pay any sum due.

13.3 The Party seeking to exempt itself from liability by virtue of this Clause 13 shall give written notice to the other Party's Contract Manager as soon as reasonably practicable once the Force Majeure Event ceases or has been remedied.

14 **Customer Default**

14.1 Without prejudice to the CDSP's other rights and remedies pursuant to this Agreement, the CDSP may:

- (a) suspend the provision of any UK Link User Services to a Customer pursuant to this Agreement immediately by giving written notice to the Customer; and / or
- (b) give notice to the Transporter to the effect that the Customer is in default of this Agreement and send a copy of such notice to the Authority,

in the event of a Default Event of that Customer.

14.2 A **Default Event** is:

- (a) a material Default (that is not a Credit Default) by the Customer that is either:
 - (i) incapable of remedy; or

- (ii) not remedied by the Customer within ten (10) Business Days of being notified of the Default by the Customer;
 - (b) the Customer persistently committing Defaults (which are not Credit Defaults) which, when taken together, constitute a material Default;
 - (c) an Insolvency Event affecting the Customer; or
 - (d) an event or circumstance referred to in the relevant CP terms as a Default Event, and is a "default" for the purposes of TPD Section V, paragraph 4.3.1(i).
- 14.3 Notwithstanding any other provision of the DSC, where the Customer is in Default in respect of any obligation or requirement under the UK Link Manual in relation to UK Link, the CDSP may take the measures provided for in the UK Link Manual.
- 14.4 Where the effect of a Default of the Customer is to prevent, obstruct or delay the provision of any UK Link User Service by the CDSP to the Customer, the CDSP's obligation to provide the UK Link User Service shall be suspended or reduced accordingly.
- 14.5 Where a material Default of the Customer (other than a Credit Default or a Default addressed by measures provided for in the UK Link Manual) causes or is likely to cause material risk or prejudice to any other customer of the CDSP (including the CDSP's performance of its obligations to such other customer under the DSC), the CDSP may take any reasonable measure available to it to reduce or mitigate such risk or prejudice, and shall not be in breach of its obligations under this Agreement to the Customer as a result of taking any such measure.
- 14.6 Any suspension of the provision of any UK Link User Services pursuant to Clause 14.1(a) shall be effective until such time as:
- (a) the Default Event in respect of the Customer has been, and the CDSP notifies the Customer in writing that the Default Event has been, remedied to the CDSP's reasonable satisfaction; or
 - (b) if the Default Event is incapable of remedy, the Customer has satisfied such requirements in connection with such Default Event and / or the prevention of any future Default Event(s), as the CDSP may notify to the Customer.
- 15 Termination**
- 15.1 Subject to Clause 15.3, this Agreement shall not terminate unless and until the Customer ceases to be a UNC Party or becomes a Shipper User.
- 15.2 If, and on the date that, the Customer ceases to be a UNC Party (for whatever reason) or becomes a Shipper User, this Agreement shall automatically terminate.
- 15.3 Either Party may terminate this Agreement by written notice to the other Party if a modification of the Uniform Network Code requires this Agreement to be terminated. Such termination shall take effect from the date of termination specified in such modification or, if no date of termination is specified, from such date as the CDSP reasonably specifies.
- 15.4 In the event of termination of this Agreement, the Customer shall comply with the Termination Requirements. If the Customer wishes to cease to be a UNC Party for whatever reason, the Customer must comply with the Termination Requirements before it ceases to be a UNC Party. If the Customer becomes (or wishes to become) a Shipper User, the CDSP may waive such of the Termination Requirements for such period and on such terms as the CDSP (acting

reasonably) determines appropriate from time to time, without prejudice to the remainder of the Termination Requirements. Any waiver of the Termination Requirements shall only be effective if it is in writing and signed by the CDSP's Contract Manager.

- 15.5 The **Termination Requirements** are that the Customer:
- (a) pays in cleared funds all outstanding sums payable to the CDSP pursuant to this Agreement and any applicable Charge in connection with the removal and / or decommissioning of any items referred to in Clause 15.7;
 - (b) complies with the provisions of the UK Link Manual which apply where a person ceases or wishes to cease to be a UK Link User;
 - (c) remedies any breach of this Agreement that is capable of remedy and that the CDSP has notified to the Customer in writing;
 - (d) immediately ceases to use any Services Data referred to at Clause 5.2(b), Contract Data and Party Data of the CDSP in the possession, control or custody of the Customer;
 - (e) subject to Clause 15.4 and notwithstanding Clause 5.6, no later than seven (7) days after the Termination Date, returns all materials containing Services Data referred to at Clause 5.2(b), Contract Data and Party Data of the CDSP in the possession, control or custody of the Customer or, at the request of the CDSP, destroys all such materials, and supplies a certificate to the CDSP signed by an authorised officer of the Customer confirming that the Customer has complied with this Clause 15.5(e); and
 - (f) subject to Clause 15.4 and notwithstanding Clause 5.6, no later than seven (7) days after the Termination Date, returns all UK Link User Equipment in the possession, control or custody of the Customer to the CDSP.
- 15.6 To the extent that the Termination Requirements have not been waived in accordance with Clause 15.4, the CDSP shall inform the Transporter when the Termination Requirements are satisfied in relation to the Customer. It is acknowledged that the CDSP will manage on behalf of the Transporter the process pursuant to which a person ceases to be a UNC Party, and the CDSP shall operate a single coordinated process for a person terminating this Agreement and ceasing to be a UNC Party.
- 15.7 In the event that the Customer fails to return any item(s) to the CDSP which are required to be returned to the CDSP by the Customer pursuant to this Agreement in accordance with Clause 15.5(e), Clause 15.5(f) and/or the UK Link Manual (as appropriate), at the Customer's cost:
- (a) the CDSP may enter the Customer's property to decommission and retrieve such item(s) (as appropriate) and the Customer hereby grants to the CDSP (or its nominee) such access, rights and co-operation to the Customer's (and any relevant third party's) premises, infrastructure, equipment, systems, information technology, staff and resources as the CDSP may require to do so; or
 - (b) at the CDSP's sole option, where such item(s) are required to be returned to the CDSP pursuant to the UK Link Manual, the Customer shall reimburse the CDSP for the cost of such item(s) as notified by the CDSP to the Customer.
- 15.8 The Customer shall be and remain liable for, and shall pay to the CDSP, all Charges payable in respect of the period prior to the Termination Date.
- 15.9 The termination of this Agreement shall not affect any rights or remedies of the CDSP accruing in respect of the period before the Termination Date.
- 15.10 Notwithstanding the fact that this Agreement terminates, the following provisions of this Agreement 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 the termination of this Agreement (which shall include Clauses 3, 5, 6, 7, 8.3, 9, 15, 17, 22, 23, 24, 25, 26 and 28, and any provisions of the UK Link Manual that are expressed or intended to survive or operate in the event of a Customer ceasing to be a UK Link User); or
- (b) any provision that, in consequence of the continuation of any specific terms under this Agreement, is needed for the proper efficacy, operation or interpretation of this Agreement in the event of the termination of this Agreement.

16 Service Provision

Subject to the other provisions of this Agreement, 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 UK Link User Services.

17 Cumulative Remedies

The rights and remedies of the Parties pursuant to this Agreement may be exercised successively in respect of any one or more failures by the other and are in addition and without prejudice to any other right they may have against each other.

18 Assignment and Sub-contracting

- 18.1 Neither Party shall assign or otherwise transfer this Agreement or any of its rights and obligations under it whether in whole or in part, save as set out in Clause 18.2.
- 18.2 A Party shall, if it assigns its rights pursuant to the Uniform Network Code, similarly assign its rights pursuant to this Agreement and shall not assign its rights pursuant to the Uniform Network Code unless it also similarly assigns its rights pursuant to this Agreement.
- 18.3 The CDSP shall be entitled to enter into Sub-contracting Arrangements. Neither Party shall be relieved from any of its obligations under this Agreement by entering into any sub-contract for the performance of all or any part of its obligations under this Agreement.
- 18.4 Without prejudice to TPD Section V6.1 of the Uniform Network Code, nothing in this Agreement shall prevent or restrict the Customer from appointing another person to be the agent or similar of the Customer for the purposes of this Agreement and where the Customer wishes to appoint an agent or similar it shall give notice to the CDSP's Contract Manager 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.

19 Notices

- 19.1 Any notice given under this Agreement shall be sent by email and a confirmatory copy of the notice shall be signed and delivered personally or by courier to the relevant Party or posted by recorded delivery to:
 - (a) in the case of the CDSP, the address set out below; and
 - (b) in the case of the Customer, the address set out on the first page of this Agreement,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: Customerlifecycle.spa@xoserve.com

Address: Xoserve Limited, Landsdowne Gate, 65 New Road, Solihull, B91 3DL

F.A.O: CDSP's Contract Manager

19.2 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 09.00 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.

19.3 For the avoidance of doubt, this Clause 19 shall not apply in respect of any Code Communication.

20 Severance

If any provision of this Agreement shall be declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability or legality of the remaining provisions of this Agreement.

21 Further Assurance

The Customer shall execute all further documents and do all such acts and things necessary, or reasonably required by the CDSP, to give full effect to this Agreement and, in particular, to vest to the CDSP the applicable rights in respect of the applicable IPR in accordance with Clause 5.

22 Entire Agreement

This Agreement supersedes all prior agreements, arrangements and understandings between the Parties and constitutes the entire agreement between the Parties relating to the subject matter of this Agreement. Each Party affirms that it has not been induced to enter into this Agreement by any prior representations whether oral or in writing, except as specifically contained in this Agreement, and hereby waives any claim for breach of any such representations which are not so specifically incorporated.

23 Waiver

No forbearance, delay or indulgence by either Party in enforcing the provisions of this Agreement 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 this Agreement conferred upon or reserved for either Party is exclusive of any other right, power or remedy available to that Party and each such right, power or remedy shall be cumulative.

24 No Partnership

The CDSP shall at all times be an independent contractor and nothing in this Agreement shall be deemed to constitute a partnership between the Parties.

25 Rights of Third Parties

The Parties do not intend that any term of this Agreement shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a Party.

26 Dispute Resolution

26.1 Where a dispute arises between the Parties:

- (a) the Parties shall attempt in good faith to resolve the dispute promptly;
- (b) unless another dispute or escalation procedure is specified in this Agreement for such a dispute, the dispute shall be referred first to each Party's Contract Manager, who shall attempt to resolve the dispute in a manner satisfactory to the Parties;
- (c) if the dispute cannot be resolved by the Contract Managers within a maximum of ten (10) Business Days (or such longer period agreed between them) from the date on which it is referred under Clause 26.1(b), the dispute shall be referred for resolution to the Director, Customer Engagement of the CDSP and an officer of an equivalent level of authority of the Customer;
- (d) if the dispute cannot be resolved by the officers referred to in Clause 26.1(c) within a maximum of ten (10) Business Days (or such longer period agreed between them) from the date on which it is referred under Clause 26.1(c), it may be referred with the agreement of the Parties for determination by an Expert in accordance with Clause 27; and
- (e) if the Parties do not agree to the dispute being referred for determination in accordance with Clause 27, either Party may commence proceedings in respect of the dispute in accordance with Clause 28.

26.2 The Parties shall fulfil their respective obligations under this Agreement insofar as is possible regardless of any outstanding dispute regarding the UK Link User Services (without prejudice to the rights and obligations of the Parties).

26.3 Each Party shall bear its own legal costs in connection with any dispute (subject to any award of costs made in proceedings under Clause 28 and to Clause 27.4).

27 Expert Determination

27.1 Where the Customer and the CDSP each agree in writing to determine a matter or dispute in accordance with this Clause 27, a matter or dispute shall be referred for determination:

- (a) to a person suitably qualified to determine such matter or dispute, who shall be nominated jointly by the Customer and the CDSP; or
- (b) failing agreement as to such nomination within seven (7) days, to such person as may be appointed, on the application of either the Customer or the CDSP, by the President of the Law Society of England and Wales.

27.2 The Customer and the CDSP shall on request promptly supply to the Expert, for the time being, such assistance, documents and information as may be required for the purpose of the determination and the Customer and the CDSP shall use all reasonable endeavours to procure the prompt determination of that reference.

27.3 The Expert shall be deemed to act as an expert and not as an arbitrator and his determination shall be conclusive and binding on the Parties.

27.4 The costs of the Expert shall be divided equally between the CDSP and the Customer, save as may be otherwise directed by the Expert.

28 Governing Law and Jurisdiction

This Agreement shall be governed by and construed in all respects in accordance with English law and it is irrevocably agreed that the courts of England are to have exclusive jurisdiction to settle any claim or matter arising in relation to this Agreement.

29 **Anti-Bribery**

- 29.1 Each Party warrants that it has at all times in connection with obtaining this Agreement complied with all Laws relating to anti-bribery and corruption. Each Party undertakes that it:
- (a) shall at all times in connection with this Agreement comply with all Laws relating to anti-bribery and corruption ("**Relevant Requirements**");
 - (b) shall not engage in any activity, practice or conduct which constitute an offence under the Bribery Act 2010 if such activity, practice or conduct has been carried out in the United Kingdom; and
 - (c) has and maintains in place at all times (in order to ensure compliance with the Relevant Requirements) its own anti-bribery and corruption policies and procedures, and shall comply with and shall procure that its personnel shall comply with such policies where appropriate.
- 29.2 Each Party shall immediately upon becoming aware of, or suspecting, any failure to comply with the provisions of this Clause 29 (including any request or demand by any third party for any inducement in connection with the performance of this Agreement) give written notice to the other Party's Contract Manager.

SCHEDULE

PART 1 – INTERPRETATION

1 Interpretation

In this Schedule:

- (a) **Conditions Precedent** has the meaning given in paragraph 2;
- (b) **Contract Manager** has the meaning given to it in paragraph 7;
- (c) **Charging Measure** means the unit or other measure (as specified in the CDSP Service Description) by reference to which the UK Link User Service is ordered or (as the case may be) use of the UK Link User Service is measured;
- (d) **Charging Period** means the period (as specified in the CDSP Service Description) in respect of which Charges for the UK Link User Service are to be invoiced;
- (e) **DSC Credit Rules** has the meaning given in the Credit Policy;
- (f) **Optional Services** has the meaning given in paragraph 4.1, and **Optional Service** shall be construed accordingly;
- (g) **Optional Services Acknowledgment** has the meaning given in paragraph 4.3(a);
- (h) **Optional Services Request** has the meaning given in paragraph 4.2(a);
- (i) **Optional Services Request Form** means, in respect of a Optional Service, the form from time to time specified as such by the CDSP;
- (j) **relevant CP terms** has the meaning given in paragraph 12(a);
- (k) **Service Description Table** has the meaning given to it in the CDSP Service Description;
- (l) **Service Area** has the meaning given to it in the CDSP Service Description;
- (m) **Service Lines** has the meaning given to it in the CDSP Service Description; and
- (n) **UK Link User Services** has the meaning given in paragraph 3.

PART 2 – CONDITIONS PRECEDENT

2 The **Conditions Precedent** are that the Customer:

- (a) complies with the credit requirements and limit as determined pursuant to the relevant CP terms; and
- (b) is a UNC Party (that is, a party to a Network Code). The requirement in this paragraph 2(b) is satisfied if the Customer will become a UNC Party subject only to the condition that it shall have signed a UK Link User Agreement.

PART 2 – UK LINK USER SERVICES

3 UK Link User Services

The **UK Link User Services** are:

- (a) One of the following Service Lines listed below as described in the Service Description Table set out in the CDSP Service Description. For the avoidance of doubt CDSP shall confirm in writing which Service Line will be provided to the Customer as soon as reasonably practicable.

reference	Service requirement description
SS SA22 18	Provision installation and maintenance of an Option 1 IX connection. Single Cisco 2900 router Primary link presented via BGADSL.16 Backup link presented via BGADSL.16 Server running the File Transfer Software
SS SA22 19	Provision installation and maintenance of an Option 2 IX connection. Single Cisco 2900 Router Primary link presented via 2Mb EFM or PPC Backup link presented via BGADSL.16 Server running the File Transfer Software
SS SA22 20	Provision installation and maintenance of an Option 3 IX connection. Single Cisco 2900 Router Primary link presented via 2Mb EFM or PPC Backup link presented via 2Mb EFM or PPC Server running the File Transfer Software.
SS SA22 75	Provision, installation and maintenance of an Option 4 IX connection. Single Cisco 2900 Router. Primary link presented via 10/100M Ethernet connection Backup link presented via ADSL Server running the File Transfer Software.

- (b) any Optional Services to be provided pursuant to this Agreement from time to time.

4 **Optional Services**

4.1 The **Optional Services** are the following Service Lines as described in the Service Description Table set out in the CDSP Service Description:

reference	Service requirement description
SS SA22 21	IX additional service – external relocation
SS SA22 22	IX additional service – internal relocation
SS SA22 23	IX additional service – remote configuration
SS SA22 24	IX additional service – services outside of business day
SS SA22 25	IX decommission
SS SA22 76	IX service via a user agent
SS SA22 77	Gemini XP1 Token for remote access to User's Gemini account
SS SA22 78	Gemini XP1 Token for remote access to User's Gemini account, additional tokens (chargeable)
SS SA22 79	Gemini access via the cloud

4.2 **Optional Services Request**

- (a) The Customer may request the provision of a Optional Service by submitting a Optional Service Request Form to the CDSP (a **Optional Services Request**).
- (b) The CDSP shall not be obliged to accept any Optional Services Request, where
 - (i) the Customer does not submit a Optional Services Request Form for the relevant Optional Service;
 - (ii) the Customer does not complete any or all the fields of the Optional Services Request Form for the relevant Optional Service; or
 - (iii) the Optional Services Request Form is not signed by the Customer's Contract Manager.
- (c) A single Optional Services Request Form may be submitted in respect of more than one Optional Service.
- (d) In submitting a Optional Services Request Form, the Customer warrants to the CDSP that it is entitled to receive the Optional Service, and if at anytime during the performance of the Service the Customer ceases to be so entitled, the Customer shall promptly notify the CDSP and the CDSP may suspend the provision of the Optional Service immediately by notice to the Customer.

4.3 **Optional Services Acknowledgement**

- (a) Following receipt of a Optional Service Request Form the CDSP shall issue a written acknowledgement to the Customer to confirm the CDSP accepts the Optional Services Request (**Optional Services Acknowledgement**).
- (b) A Optional Services Request shall not be deemed accepted by the CDSP, and the CDSP shall not be obliged to perform the Optional Service, until the CDSP issues a Optional Services Acknowledgement.
- (c) Subject to paragraph 4.3(a), the CDSP shall perform the Optional Services identified in a Optional Services Acknowledgement:
 - (i) subject to paragraph 4.3(c)(ii), in accordance with the applicable timeframe specified in the CDSP Service Description; and
 - (ii) after the Customer has satisfied any "Corresponding Customer Responsibilities" set out in the Service Description Table in respect of the Optional Service.

4.4 **Explanation of the Service Description Table**

- (a) Paragraphs 3.3.1 and 3.3.2 of the CDSP Service Description shall apply, except that the terms "Charging Measure" and "Charging Period" shall have the meanings given to them in this Agreement.
- (b) For the purposes of paragraph 4.4(a), references in paragraphs 3.3.1 and 3.3.2 of the CDSP Service Description to:
 - (i) a "Service" or a "Specific Service" shall be to the relevant UK Link User Service; and
 - (ii) the "DSC" shall be to this Agreement,and otherwise capitalised terms used in paragraphs 3.3.1 and 3.3.2 of the CDSP Service Description shall have the meaning given to them in this Agreement or, if the term is not given a meaning in this Agreement, the meaning given to them in the DSC.
- (c) The Parties acknowledge that a Service Line reference may be updated from time to time in accordance with the DSC.

PART 3 – CHARGES AND INVOICING

5 **Charges**

The **Charges** mean the charge(s) payable for the UK Link User Services being, for each UK Link User Service for each Charging Period, the amount for the relevant Service Line as set out in the Annual Charging Statement.

6 **Invoicing**

- 6.1 The CDSP shall submit its invoice(s) to the Customer on or around such date(s) and for such month or period of months, as the CDSP determines from time to time. For the avoidance of doubt, this means that the CDSP may (at its discretion) invoice the Charges annually in advance.

6.2 The format of the CDSP's invoices shall be as determined by the CDSP from time to time.

PART 4 – CONTRACT MANAGER

- 7 Each Party shall nominate a representative (**Contract Manager**), of suitable seniority and qualification, who shall be its point of contact in respect of all matters arising in relation to this Agreement.
- 8 Each Party is entitled to assume that the Contract Manager nominated by the other Party is authorised to take any decision on behalf of such Party unless such Contract Manager gives advance notice to the contrary.
- 9 From the Effective Date but subject to paragraph 10, the Parties' Contract Managers shall be:
- (a) **CDSP:** such individual as is notified to the Customer by the CDSP in writing; and
 - (b) **Customer:** such individual notified to the CDSP by the Customer in writing.
- 10 Either Party may at any time alter the identity and contact details of the Contract Manager by giving notice in writing of the new details in accordance with the provisions of Clause 19. Any such notification must be signed by a duly authorised signatory of the Party giving notice.

PART 5 – CREDIT

- 11 For the purposes of this Agreement:
- (a) the basis on which the CDSP shall assess the creditworthiness of, and set an unsecured credit limit for the Customer;
 - (b) any requirement for the Customer to provide credit cover for indebtedness under this Agreement in excess of the unsecured credit limit;
 - (c) the determination of the outstanding indebtedness of the Customer under this Agreement;
 - (d) the steps to be taken where the Customer fails to comply with its credit obligations; and
 - (e) the steps to be taken where the Customer fails to pay an amount due under this Agreement,
- shall, subject to paragraphs 12 and 13, be in accordance with the Credit Policy and the DSC Credit Rules.
- 12 For the purposes of paragraph 11, the CDSP and the Customer agree:
- (a) subject to paragraph 13, paragraphs 1, 2 (excluding paragraph 2.5.6), 3 and 4 of the Credit Policy (**relevant CP terms**) shall form part of and shall be incorporated into this Agreement; and
 - (b) any reference to the Customer (or to each, or such, or any or a defaulting Customer, or to all Customers) in the relevant CP terms and the DSC Credit Rules shall be construed as a reference to the "Customer" for the purposes of this Agreement.

- 13 For the purposes of this Agreement, the CDSP and the Customer agree the relevant CP terms shall be varied as follows (with references to "paragraphs" in paragraphs (a) to (d) (inclusive below) being to paragraphs of the Credit Policy) :
- (a) the DSC Credit Rules shall not form part of, and are not incorporated into, this Agreement;
 - (b) paragraphs 3.1.6, 3.2.2(c) and 4.3.3 shall not apply;
 - (c) for the purposes of:
 - (i) paragraph 3.4.1, the Customer's DSC Indebtedness is the aggregate amount for which the Customer is liable to the CDSP under this Agreement;
 - (ii) paragraph 3.4.2, the amount of the Customer's DSC Indebtedness shall be determined by the relevant provisions of this Agreement;
 - (iii) paragraphs 3.5.2(a) and 3.5.3(a), the Customer shall be treated as if it is a Shipper User;
 - (iv) paragraph 3.5.2(b), where the relevant circumstances apply, the CDSP may suspend UK Link User Services;
 - (v) paragraph 4.1.1, the reference to Service Charges shall be treated as a reference to "Charges" under this Agreement;
 - (vi) paragraph 4.1.2(d), the reference to Specific Service and Additional Service shall be treated as a reference to UK Link User Services; and
 - (vii) paragraph 4.1.3, the accelerated date shall apply for the purposes of Clause 3.3 of this Agreement; and
 - (d) the giving of a Credit Default Notice under paragraphs 3.5.3 or 4.1.4 shall be treated as a Credit Default for the purposes of this Agreement (and therefore a default for the purposes of TPD Section V4.3.1(i) of the Uniform Network Code).

IN WITNESS OF THE ABOVE the parties have signed this Agreement on the date written at the head of this Agreement.

<p>SIGNED by:</p> <hr/> <p>Name: Title: Authorised Signatory for on behalf of Xoserve Limited</p>	<p>SIGNED by:</p> <hr/> <p>Name: Title: Authorised Signatory for on behalf of [Name of Customer]</p>
--	---