



**“Credit Requirements”** shall have the meaning given in Schedule 3;

**“Code DSC Provisions”** means the provisions of the Uniform Network Code for the establishment and governance of the DSC, including GT Section D and Section 3 of Part 1 of the Transition Document;

**“DSC”** means the contract which is constituted by and comprises the DSC Agreement, the DSC Terms and Conditions and each CDSP Service Document, as may be acceded to by any New Party;

**“DSC Customer”** means a customer as defined under the DSC and **Customers** shall be construed accordingly;

**“Effective Date”** means the date of this Agreement;

**“Location”** shall mean the location in mainland Great Britain identified in Schedule 1;

**“Network Code(s)”** shall mean the network code(s) of the Transporter(s) to which the Applicant User is proposing to accede;

**“New Party”** means a person admitted as an additional party to the DSC;

**“Nominated Contractors”** means any Supplier, who have a contractual arrangement in place with the CDSP for the supply, installation and removal of the UK Link User Equipment at the relevant Location on behalf of CDSP;

**“UK Link User Equipment”** shall mean the equipment and associated software provided to the Customer by the CDSP described or otherwise referred to in Schedule 2;

**“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.

**“Uniform Network Code”** shall mean that document referred to as such and prepared by the Transporters pursuant to Standard Special Condition A11(6) of their Transporter’s Licences, as the same may be modified from time to time.

**“Year”** means a period of twelve months commencing on the Effective Date.

- 1.2 Capitalised terms used in this Agreement and in the Recitals and not otherwise defined shall have the meanings given to them in the Uniform Network Code.
- 1.3 References to Sections shall be to sections of the Transportation Principal Document within the Uniform Network Code.
- 1.4 Headings are for convenience only and shall not affect construction or interpretation.
- 1.5 References to persons shall include an individual, company, corporation, firm or partnership.
- 1.6 The words and phrases “including” and “in particular” shall not limit the generality of any preceding words or be construed as being limited to the same class as any preceding words where a wider construction is possible.
- 1.7 References to Clauses and Schedules are to the clauses of and schedules to this Agreement.

## **2 The UK Link User Equipment**

- 2.1 The Applicant User wishes to have the UK Link User Equipment delivered and installed at the Location and CDSP agrees to procure the installation of the UK Link User Equipment at the Location subject to the Customer satisfying the Condition Precedent and in accordance with the provisions of this Agreement.
- 2.2 The Applicant User shall pay the Charges to the CDSP in accordance with this Agreement including without limitation Schedule 4.
- 2.3 Where the Location is not owned or controlled by the Applicant User, then the Applicant User shall procure that all person(s) who own and /or control the Location shall in addition to (and not in substitution for) the Applicant User, comply with clause 2.4, 2.7, 2.8, 2.9, 2.10, 2.12, 2.15 and 2.16 of this Agreement as if they were the Applicant User. Any non-compliance by any of such person(s) shall be deemed to be a breach by the Applicant User and the Applicant User shall be accordingly liable in accordance with the provisions of this Agreement in respect of any such breach.
- 2.4 Prior to installation of the UK Link User Equipment, the Applicant User shall, if required by CDSP, obtain the acknowledgement of any landlord or mortgagee of the Location that the UK Link User Equipment shall remain the property of CDSP and/or its suppliers to the exclusion of their interest, and the Applicant User shall procure that the UK Link User Equipment shall not become affixed or attached to real property.
- 2.5 CDSP and/or its contractors may carry out a site survey of the Location and any other relevant premises in advance of the installation of the UK Link User Equipment and shall deliver the UK Link User Equipment to the Location and use its reasonable endeavours to install such UK Link User Equipment as soon as reasonably practicable thereafter.
- 2.6 CDSP shall use its reasonable endeavours to give to the Applicant User not less than 3 Business Days' notice of the dates for any site survey and for the delivery and installation of the UK Link User Equipment.
- 2.7 The Applicant User will prepare the Location in accordance with all reasonable instructions issued by CDSP and shall make available to CDSP or its Nominated Contractor all necessary access to any other facilities at the Location and any other relevant premises for the purpose of the site survey, delivery and installation of the UK Link User Equipment.
- 2.8 Title to and all intellectual property rights in the UK Link User Equipment vests in CDSP and/or its Nominated Contractors and nothing in this Agreement shall grant any right interest licence or title in the same save as expressly provided herein. The Applicant User shall return the UK Link User Equipment to CDSP upon demand in the same condition and have the same functionality as when originally delivered to the Applicant User.
- 2.9 CDSP may attach an identification mark or plaque and any serial numbers or other marks to the UK Link User Equipment and these marks shall not be removed or obscured by the Applicant User.
- 2.10 On delivery of the UK Link User Equipment, an authorised representative of the Applicant User shall sign a delivery certificate confirming receipt of the Equipment and Software. The authorised representative of the Applicant User shall sign an acceptance certificate immediately following successful installation of the UK Link

User Equipment. Following installation CDSP or, as the case may be, its Nominated Contractor shall leave the Location clean and tidy.

- 2.11 Whilst at the Location, CDSP shall, and shall request its Nominated Contractors to, comply with all reasonable safety and security procedures of which CDSP and its Nominated Contractors have been made aware.
- 2.12 From the date of delivery of the UK Link User Equipment to the Location, the Applicant User shall be responsible for the safe custody of the UK Link User Equipment and shall keep it insured for the total value of the UK Link User Equipment (as notified to the Applicant User by CDSP) against all usually insured risks including third party liability. The Applicant User will provide to CDSP on demand confirmation that it has complied with this obligation and will provide to CDSP a copy of the Applicant User's relevant certificate of insurance.
- 2.13 In the event of any damage, loss or destruction of any item of the UK Link User Equipment the Applicant User shall make all appropriate claims under the relevant insurance policies and shall apply all insurance proceeds at the option of CDSP:
- (a) in making good any damage to that item;
  - (b) in replacing that item by an item of equivalent specification and condition; or
  - (c) in compensating CDSP and/ or its Nominated Contractors for such loss, damage or destruction up to the total value of the UK Link User Equipment, any surplus being paid to, and any deficit being made up by, the Applicant User.
- 2.14 Save as expressly permitted by CDSP in writing, the Applicant User may not use, copy, licence or in any other way deal with the UK Link User Equipment for any reason whatsoever until it becomes a User in respect of a System in which event the use of the UK Link User Equipment shall then be governed by the terms of the Uniform Network Code and the UK Link Manual (including without limitation Appendix 3 thereto) and the DSC and/or such other terms as may be agreed by the Applicant User and the CDSP.
- 2.15 The Applicant User shall:
- (a) keep the UK Link User Equipment in accordance with all and any manuals for it provided by CDSP;
  - (b) keep the UK Link User Equipment in accordance with all laws, regulations and orders for the time being in force;
  - (c) (save as expressly permitted in writing by CDSP) not make any physical, mechanical, electrical or electronic modification, alteration or attachment to the UK Link User Equipment;
  - (d) not assign, mortgage, charge or lease the UK Link User Equipment;
  - (e) at all times keep the UK Link User Equipment in its possession and control at the Location and not remove it from the Location;
  - (f) not mistreat or misuse the UK Link User Equipment and keep it adequately protected against damage and security risks;
  - (g) grant to CDSP and its Nominated Contractors such access to the Location and the UK Link User Equipment and such other facilities as are necessary, including, without limitation, adequate power supplies, communication links,

work space and storage in order to enable them to carry out their rights and obligations under this Agreement;

- (h) take all reasonable precautions to protect the health and safety of CDSP and its Nominated Contractors, employees, agents and sub-contractors whilst at the Location; and
- (i) notify CDSP of, or of any changes to, any restrictions regarding access to the Location and of the contact name(s) to be given on visiting the Location.

2.16 On giving the Applicant User at least 36 hours' notice, CDSP and/ or its Nominated Contractors shall be entitled to inspect the UK Link User Equipment at the Location during standard working hours to satisfy itself that the Applicant User is complying with its obligations under this Agreement.

2.17 The Applicant User shall promptly notify CDSP in writing of any damage, loss or destruction to the UK Link User Equipment and, to the extent that the Applicant User has failed to keep the UK Link User Equipment insured in accordance with Clause 2.12 or the insurance proceeds to be applied for the purposes of Clause 2.12 are insufficient, the Applicant User shall indemnify CDSP and/ or CDSP's Nominated Contractors as appropriate for all loss suffered by any of them provided that the total liability of the Applicant User under this indemnity shall not exceed the value of the UK Link User Equipment notified to the Applicant User in accordance with Clause 2.12.

### **3. Limitation of Liability/ No Warranty**

3.1 Each party agrees and acknowledges that, except as may be otherwise provided in this Agreement:

- (a) neither party shall be liable for loss arising from any breach of this Agreement other than for loss directly resulting from such breach which at the date hereof was reasonably foreseeable as not unlikely to occur in the ordinary course of events from such breach in respect of:
  - (i) loss or physical damage of or to the property of the other party (including for the avoidance of doubt, the UK Link User Equipment);
  - (ii) the liability at law of the other party to any other person for loss in respect of loss or physical damage of or to the property of such person; and/ or
  - (iii) the failure or refusal of the Applicant User to return or allow the collection of the UK Link User Equipment in accordance with the terms of this Agreement;
- (b) neither party shall in any circumstances be liable in respect of any breach of this Agreement for:
  - (i) any loss of profit, loss of revenue, loss of use, loss of contract, loss of goodwill, or increased cost of working; or
  - (ii) any indirect or consequential loss; or
  - (iii) except as provided in this Agreement, loss resulting from the liability of the other party to any other person howsoever and whensoever arising.

- 3.2 The amount or amounts for which either party may be liable pursuant to Clause 3.1(a) shall not exceed in aggregate in respect of all claims the total value of the UK Link User Equipment as notified pursuant to the provisions of Clause 2.11.
- 3.3 Nothing in this Agreement shall exclude or limit the liability of either party:
- (a) for death or personal injury resulting from the negligence of such party; or
  - (b) in respect of fraudulent misrepresentation.
- 3.4 Save as expressly provided in this Agreement, no warranty or representation is given in respect of the condition, suitability or otherwise of the UK Link User Equipment or in respect of the installation thereof. All implied terms, conditions and warranties, statutory or otherwise, as to the quality, condition or performance of the UK Link User Equipment are excluded except where such exclusion is prohibited by statute. Neither CDSP nor its Nominated Contractors shall in any event be liable for any statements or representations by any manufacturer or supplier of the UK Link User Equipment in any specification, manual or otherwise.
- 3.5 In the event that the Location is under the control or possession of a person or persons other than the Applicant User and such person or persons suffer any loss, damage, cost, expense or liability as a consequence (direct or indirect) of the UK Link User Equipment being delivered to, installed at, or removed from such Location, then the Applicant User shall indemnify CDSP and/or its Nominated Contractors in respect of any loss, damage, cost, expense or liability suffered by Xoserve and/ or the Transporters as a consequence of any action brought by any such person.

#### **4. Admission of the Applicant User as a User**

- 4.1 If the Applicant User becomes a User pursuant to the provisions of Section V2.2.1 in relation to any System within a period of six months from the date of this Agreement, then (save for the provisions of Clauses 1, 3, 5 and 6 which shall survive) this Agreement shall be superseded by the terms of the relevant Network Code(s), the Uniform Network Code and the UK Link Manual (including without limitation the provisions of Appendix 3 thereof) on the User Accession Date.
- 4.2 If the Applicant User:
- (a) does not become such a User in relation to a System within the period referred to in Clause 4.1; or
  - (b) withdraws all its applications to become such a User in relation to a System; or
  - (c) is declared or becomes insolvent or bankrupt, enters into any composition or arrangement (whether formal or informal) with its creditors, is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, has a receiver, manager administrator or administrative receiver appointed of its undertaking, assets or income or any part thereof, has passed a resolution for its winding up, or has a petition presented by or in respect of it to any Court for its winding-up or for an administration order; or
  - (d) undergoes or suffers any action or proceedings analogous to those referred to in (c) above in any jurisdiction;

then, unless otherwise agreed in writing by the parties hereto, the Applicant User shall permit CDSP through its Nominated Contractor to recover the UK Link User Equipment and all documentation related thereto and the Applicant User undertakes to pay to CDSP all Charges and other costs reasonably incurred by CDSP (whether

directly or indirectly) in relation to the installation and removal of the UK Link User Equipment.

The Applicant User undertakes that the UK Link User Equipment when returned to CDSP will be in the same condition and have the same functionality as when originally delivered to it.

## **5. General**

- 5.1 Nothing in this Agreement shall make the Applicant User a party to, or give it any rights under, any of the Network Code(s), the Uniform Network Code, UK Link Manual or the DSC
- 5.2 Neither party may assign its rights under this Agreement without the prior written approval of the other, such approval not to be unreasonably withheld.
- 5.3 No failure or delay by a party in exercising any right, power or privilege under this Agreement shall operate as a waiver of that right, power or privilege.
- 5.4 Without prejudice to Clause 3.1, the provisions relating to Force Majeure set out in paragraph 3 of the General Terms Section B of the Uniform Network Code shall be deemed repeated herein in relation to the parties, mutatis mutandis.
- 5.5 If at any time any part of this Agreement is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, the same shall be deemed omitted from this Agreement and the validity and/ or enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired as a result of that omission.
- 5.6 This Agreement contains the entire agreement between the parties in relation to its subject matter and supersedes all and any prior correspondence between the parties in relation thereto.
- 5.7 CDSP may sub-contract the performance of its obligations hereunder (or any part thereof) to any person provided that CDSP shall remain responsible to the Applicant User for the performance of such obligations in accordance with the terms of this Agreement.

## **6. Law and Jurisdiction**

- 6.1 This Agreement shall be governed by, and construed in accordance with, the laws of England and Wales.
- 6.2 The parties submit to the exclusive jurisdiction of the courts of England and Wales.



Schedule 1

Location

**[INSERT LOCATION]**

**Schedule 2**

**UK Link User Equipment**

The following UK Link User Equipment is to be installed at the Location:

**[INSERT DETAILS OF EQUIPMENT TO BE INSTALLED]**

or as may otherwise be agreed by both parties in writing from time to time.

### Schedule 3

#### Credit Requirements

For the purposes of this Agreement the Applicant User must:

- (a) possess an approved credit rating as determined by an approved credit rating agency in accordance with the prevailing DSC Credit Policy;
  - (b) ensure there is no adverse change in their credit rating; and
  - (c) ensure that the Applicant User's Credit Exposure is below the Applicant User's credit limit determined by CDSP and notified to the Applicant User. For the purposes of this Agreement, "**Credit Exposure**" shall mean all sums payable to the CDSP by the Applicant User in respect of services which have been provided under this Agreement or any other agreement between the parties including but not limited to all amounts invoiced but not yet due and all amounts not yet invoiced for services which have been provided.
14. If the Applicant User fails to comply with the relevant credit requirements as set out above the CDSP may:
- (a) refuse or cease to provide the Applicant User with the UK Link User Equipment and unless and until the Applicant User provides satisfactory security; and or
  - (b) Notwithstanding schedule 4, require the Customer to pay all or part of the Charges for the UK Link User Equipment in advance of the UK Link User Equipment being installed by the CDSP.

## Schedule 4

### The Charges

- 1.1 The amount of the Charges as at the Effective Date are set out in the Table below. All of such rates are subject to VAT and increase in accordance with the provisions of this Agreement.

	Installation	
UK Link User Equipment type	Option 1	£14,393.00
	Option 2	£16,736.00
	Option 3	£16,736.00
	Ongoing costs (Note 1)	
Service Line	Option 1	£5,922.00
	Option 2	£8,751.00
	Option 3	£13,125.00
	Decommission	
	All sites	£4,405.00
	Remote Configuration	
	All sites	£1,292.00

Note 1: The ongoing costs are stated as a Yearly charge. The ongoing costs will be invoiced in accordance with paragraph 1.4 of Schedule 4 (the Charges).

- 1.2 The above Charges apply to services provided during normal business hours being Monday to Friday (9am – 5pm) on Business Days. The Charges for all Services provided outside of normal business hours may be subject to an uplift of 10% (ten per cent) which shall be payable by the Applicant User.
- 1.3 The CDSP shall be entitled to increase the Charges for the provision of the UK Link User Equipment at the end of each Year or more frequently if the CDSP in its sole discretion considers the same to be justified by any material increase in the costs it incurs in providing the UK Link User Equipment. In such circumstances the CDSP shall promptly notify the Applicant User of any such increase (such notice to include the effective date of the increase in Charges).

### **Invoicing and Payment**

- 1.4 The CDSP shall submit its invoice(s) to the Applicant User on or around such date(s) and for such month or period of months, as the CDSP determines from time to time. The Parties have agreed that CDSP shall invoice the Applicant User for the installation Charges as soon as practical after the installation has been carried out by CDSP's Nominated Contractor and CDSP shall invoice the Applicant User for the ongoing costs in advance.
- 1.5 The Applicant User shall within (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.
- 1.6 The Applicant User 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 Applicant User shall (except in the case of manifest error or fraud) in any event pay the amount of such invoice in accordance with this paragraph 1.6 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 Applicant User in the next invoice submitted by the CDSP following resolution of that dispute, or as otherwise agreed between the CDSP and the Applicant User.

- 1.7 If an Applicant User fails to pay any sum by the due date for payment in accordance with this Agreement:
- (a) the Applicant User 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 paragraph 1.7 (a) shall be treated as a contractual remedy and not as statutory interest;
  - (b) the Applicant User 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 Applicant User shall comply with, the provisions of the Credit Policy in connection with a customer failure to pay a sum due to the CDSP by the due date for payment.