

## Summary of Proposed Amendments to the DSB Access & Usage Agreement & Policies for 2021

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### Introduction

The purpose of this document is to highlight and provide narrative on the changes to the DSB Access and Usage Agreement and the associated Policies which will become effective 1<sup>st</sup> January 2021.

For ease of reference, the proposed draft 2021 DSB Access and Usage Agreement and the associated Policies can be found [here](#).

The changes are a result of industry feedback that has been received over the last 12 months, including the [2021 annual industry consultation process](#) and based on the experience gained from the operational service, as well as editorial corrections.

Industry feedback on the proposed legal documentation is welcome, with any feedback to be submitted by **5pm UTC on Friday, 4th September 2020**.

Responses should be emailed to [industry\\_consultation@anna-dsb.com](mailto:industry_consultation@anna-dsb.com)

Where applicable, responses should include specific alternative solution(s) that align with the DSB principles, such as cost recovery, reasonable and non-discriminatory (RAND) access and equal treatment, preserving the DSB common agreement and ensuring parity and efficiency in delivery of our service.

## 1. DSB Access and Usage Agreement v6 2021

Overview – the DSB Access and Use Agreement and Governance Policy (see below) has been updated to provide for the resolution of disputes by way of arbitration instead of mediation followed by litigation through the courts.

New 20.10 – inclusion of a reference to the arbitration provisions that have been included in the Governance Policy.

20.11 – previous 20.10, amended to remove the reference to the resolution of disputes which is covered by the new provisions in the Governance Policy.

Previous 20.11 – deleted entire clause referencing the jurisdiction of the courts for the resolution of disputes.

## 2. DSB Acceptable Use Policy v4 2021

No proposed amendments for 2021.

## 3. DSB Disaster Recovery and Business Continuity Policy v4 2021

Overview – the Disaster Recovery and Business Continuity Policy has undergone a comprehensive review to include:

- i. details of the plans for the DSB’s Management Services Partner (MSP) staff in the event of invoking site BCP at any of the DSB’s operational sites;
- ii. details of the DSB’s IT change management processes in the event the BCP being invoked;
- iii. additional details in relation to the AWS “high availability” capability and the DSB’s related disaster recovery measures; and
- iv. details regarding the BCP preparedness of the DSB’s vendors.

General – acronyms have been introduced for disaster recovery (DR) and business continuity processes (BCP).

New 2 - inclusion of an overview of site BCP with respect to MSP staff and continuity of services.

New 3 – inclusion of additional IT change governance measures, being periods of “heightened awareness” and “change freeze” which may be adopted if any aspect of BCP is invoked.

New 4 – inclusion of reference to pandemic plan which is maintained by the MSP.

New 5 – previous 2.1-2.7, restructured description of the AWS high availability capability.

5.1 – previous 2.1, deletion of last sentence as redundant due to inclusion of new BCP language.

5.2 – previous 2.2, minor amendments to clarify that it is the AWS service being referred to.

5.3 – previous 2.3 and 2.4 are covered in new section 2.5 on disaster recovery capability. This section covers information on AWS Availability Zones (“AZ”).

5.4 – previous 2.5.

5.5 – previous 2.6.

5.6 – previous 2.7.

New 6 – update to include details of the DSB’s disaster recovery capability and definitions of the Recovery Time Objective and Recovery Point Objective for the DSB Service.

New 7 - inclusion of a statement regarding BCP preparedness for third party vendors.

## 4. DSB Charges Policy v5 2021

2.2 – updated to clarify what is incorporated into the Total DSB Cost including:

2.2 (a) Excess Fee Income adjustments, defined in paragraph 6.2, which is known after the Actual DSB Cost is determined for the year following the audited financial accounts for that period.

2.2 (b) Language has been updated to confirm amortisation of all approved capital expenditure over four years after the charge has been incurred, not just the start-up costs. For clarification, the final year of amortisation of the start-up costs and associated financing will be 2021. Amortisation related to subsequent capital expenditure will continue to be accounted for in the same manner.

2.2 (c) Financing costs related to loans for the start-up costs.

2.3 – inserted clarification that publication of the Total DSB Cost forecast includes details of any adjustments related to Excess Fee Income as defined in paragraph 6.2 and inclusion of a missing reference to “paragraph”.

2.7 - inclusion of a missing reference to Power “Users”.

New 2.8 – language added to clarify that Standard Users that join during a calendar year shall be entitled to a pro-rata number of annual ISIN creations based on the number of full calendar quarters for which they have paid the relevant Fees.

New 2.9 and 2.10 – previous 2.8 and 2.9

4.1 – clarification of what is defined as a Mid-cycle Upgrade and inclusion of a reference to the form which a User must complete to request a Mid-cycle Upgrade (see section 12 below - [DSB User Type Amendment Form](#)).

New 4.3 – language added to clarify that a User that becomes a Standard User as a result of a Mid-Cycle Upgrade shall be entitled to a pro-rata number of the maximum annual ISIN creations for a Standard User based on the number of full calendar quarters for which they have paid the Fees for a Standard User.

4.4 – previous 4.3

4.5 – language updated to clarify that the notice period for a User Downgrade is aligned with the standard termination period and inclusion of a reference to the form which a User must complete to request a Downgrade (see section 12 below - [DSB User Type Amendment Form](#)).

6.1 – updated to clarify that establishment of the Actual Total DSB Cost is based on the relevant audited financial accounts for the period, not the annual management accounts.

6.2 – updated the language to clarify that the Excess Fee Income, where identified, will be offset against the Total DSB Cost, rather than the Fees, for the year following the audited financial accounts. The second sentence (now removed) has been incorporated into paragraph 2.2 as it is part of the Total DSB Cost.

## 5. DSB Connectivity Policy v4 2021

2.4 – updated name of the DSB On-boarding form to DSB Registration Form.

2.8 – updated name of the DSB On-boarding form to DSB Registration Form.

## 6. DSB Governance Policy v5 2021

Overview – following the [2021 annual industry consultation process](#), the Governance Policy has been updated to provide for the resolution of disputes by way of arbitration rather than mediation followed by litigation through the courts. Amendments have also been incorporated to include reference to the DSB provision of Classification of Financial Instruments (CFI) and Financial Instrument Short Name (FISN).

2.1 – Amended language to include CFI and FISN.

2.3(a) – Amended language to include CFI and FISN.

4.2 to 4.12 – previous 4.2 to 4.8, provisions providing for the mediation of disputes have been replaced in their entirety with provisions providing for the arbitration of disputes in accordance with the rules of the London Court of International Arbitration (LCIA Rules).

New 4.8 - note that the confidentiality provisions of Article 30.1 of the LCIA Rules has been partially dis-applied to allow for the disclosure of the existence of an arbitration and the arbitration award to End Users and regulators for transparency purposes.

New 4.9 – note that DSB intends for arbitration costs to be shared equally between the parties.

New 4.12 – note that where the total amount in dispute is EUR150,000 or lower, the small claims procedure in the new paragraph 5 (see below) applies.

4.13 – previous 4.9

New 5 – inclusion of the LCIA small claims procedure for the arbitration of disputes where the total amount in dispute is EUR150,000 or lower.

## 7. DSB Product Policy v4 2021

No proposed amendments for 2021.

## 8. DSB Security Policy v5 2021

2.1 ISO27001/2 Accreditation – A reference has been made to the ISO27001 analysis underway in 2020 which will result in a summary report being produced.

2.1 Process Governance – capitalised Information Security Risk Officer.

2.1 Process Governance – added ‘Chief’ prior to and capitalised Information Security Officer.

2.1 BCP and DR Plans – Changed heading to ‘BCP and DR’ and updated the text to refer to the separate Business Continuity Policy.

2.1 Open Source Software – removed Handle.Net Registry as this is no longer used.

## 9. DSB Service Level Policy v5 2021

2.1 – Updated to remove language that was related to the effective date of the 2020 availability change.

## 10. DSB User Policy v5 2021

Paragraph formatting correction – 2.1-2.5, included random paragraph number 1.1, after 2.1 and before 2.2, instead of sequential ordering.

5.1 – minor grammatical changes so that Intermediary is defined in the singular rather than the plural.

New 5.4(a) – inclusion of a requirement on Intermediaries to obtain confirmation from the DSB that an End User has a Power User Agreement in place before providing any Power User Data to that End User (to which the DSB will respond within 5 Working Days). This change is a direct result of End Users being identified without Power Users Agreements in place through Intermediary quarterly reporting.

5.4(b) to (g) – previous 5.4(a) to (f).

## 11. Brexit & GDPR

The UK left the European Union on 31 January 2020 and is in an 11 month transition period until the end of 2020. The DSB is keeping abreast of the publicly available information on Brexit and considering the possible implications. Aside from the data protection issues mentioned below, there are currently no foreseeable matters which require the DSB to take action in relation to the core OTC ISIN service (creation and search activities). Brexit-related service disruption planning remains, at this time, a subset of the DSBs' existing contingency plans (including any diligence on our reliance on suppliers and subcontractors).

In the spirit of equal treatment of all users, the DSB is undertaking the necessary precautions to safeguard the exchange of data from the EU to UK in the event of a no-deal Brexit or in the event that the UK is not granted an “adequacy decision” by the European Commission, the effect of an adequacy decision would mean that personal data can flow the EU to the UK without any further safeguards being required. The European Commission’s adequacy assessment of the UK is expected towards the end of 2020. Clause 13 of the DSB Access and Usage Agreement currently sets out each party (DSB and the User)’s obligations to comply with data protection laws on the basis that they are independent data controllers.

In the event of a no-deal Brexit or the absence of an adequacy decision, the DSB will publish a revised DSB Access and Usage Agreement, in accordance with clause 1.2(c), to incorporate the European Commission Controller to Controller Standard Contractual Clauses which will be required. The DSB may also consider additional, supplementary measures that may be required in order to ensure the parties’ compliance with Case C-311/18 Data Protection Commissioner v Facebook Ireland and Maximillian Schrems.

Due to the common nature of the Agreement, the DSB is unable to negotiate or execute bilateral terms on this matter.

## 12. DSB Access & Usage Agreement Amendment Forms

Due to the DSB having a common agreement in place, it is essential for any amendments to the Agreement to be approached with parity and consistency. On this basis, the DSB has several standard amendment forms which are to be used to request amendments to the DSB Access and Usage Agreement.

Where an amendment is required, users should download, complete, and return the appropriate amendment form to the DSB Client Admin Team: [Client-Admin@ANNA-DSB.com](mailto:Client-Admin@ANNA-DSB.com).

The following amendment forms are available on the DSB website:

- **User Type Amendment** – to be used if a user wishes to upgrade or downgrade their current user type to another user type

<https://www.anna-dsb.com/download/dsb-access-and-usage-agreement-user-type-amendment/>

- **Clause 18 Amendment** – to be used to update the user contact details for Notices related to general Variation Notices and technical breaches

<https://www.anna-dsb.com/download/dsb-access-and-usage-agreement-clause-18-amendment/>

- **Appendix B Amendment** – to be used to update a user’s list of Affiliates to be covered under the DSB Access and Usage Agreement

<https://www.anna-dsb.com/download/dsb-access-and-usage-agreement-appendix-b-amendment/>

- **Novation Deed** – to be used where an existing user wishes to transfer their DSB Access and Usage Agreement to another/new legal entity

<https://www.anna-dsb.com/download/dsb-access-and-usage-agreement-novation-deed/>