

User Pays Contract Expert Group

Terms of Reference

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1. Definitions

- 1.1 In these User Pays Contract Expert Group (UPCEG) Terms of Reference the following words have the following meanings:

“Alternate” means a person appointed in writing by a User Pays Customer’s Contract Manager, from the same User Pays Customer organisation, to attend UPCEG meetings and/or to vote on behalf of that Contract Manager;

“CCP” and “CCR” have the meanings given to them in section 6 below;

“Chairman” means a person or organisation, proposed by xoserve, and agreed by the other Voting Members in accordance with these Terms of Reference, to act as chairman of the UPCEG meetings;

“Secretary” means a person appointed by the Chairman to act as secretary of the UPCEG meetings;

“Terms of Reference” means these Terms of Reference as amended from time to time in accordance with section 7; and

“Voting Members” means xoserve and each User Pays Customer.

- 1.2 All other capitalised terms have the meaning given to them in the Framework Contract for the Provision of Non-Code User Pays Services (“the Framework Contract”)

2. Objectives

The UPCEG is a forum established in accordance with the Framework Contract. The UPCEG discharges the functions ascribed to it in the Framework Contract and enables xoserve and User Pays Customers to discuss the operation and development of the Conditions, and in particular to support:

administration of the Contract Change Procedures as set out in these Terms of Reference; and

reviewing operation of the Conditions.

3. Membership

Members of UPCEG may comprise:

User Pays Customers;

xoserve;

A Chairman for the meeting;

A Secretary for the meeting;

A representative from each Transporter that is a party to the Agency Services Agreement For the avoidance of doubt Transporter representatives are not Voting Members solely by virtue of being a Transporter attendee;

An Ofgem representative;

Consultants or other representatives appointed by a Customer. For the avoidance of doubt consultants or other representatives are not Voting Members; and

Others subject to agreement by the Chairman that they may participate.

For the purposes of administering the Contract Change Procedures set out in section 6 and for maintaining these Terms of Reference, only the User Pays Customers and xoserve shall be Voting Members.

Any participants who are not Voting Members shall be excluded from all or part of any UPCEG meeting if a simple majority of Voting Members present at that UPCEG meeting so determines.

Each User Pays Customer's Contract Manager may, by written notice to the Chairman, and upon verification by xoserve, appoint an Alternate.

The Chairman of the UPCEG (and any changes thereto) will be proposed by xoserve from time to time, and shall be subject to agreement by xoserve and a simple majority of other Voting Members present at the UPCEG meeting at which the proposal is made. The Chairman shall appoint the Secretary.

4. Quorum

A UPCEG meeting shall be considered quorate where, following the correct notification of a meeting, there are present five or more Voting Members, one of which must be xoserve. In the absence of the Chairman or Secretary at any properly convened meeting, a substitute Chairman and/ or Secretary (as applicable)

shall be appointed for that meeting, the identity of such person to be approved by xoserve and a majority of those other Voting Members present.

5. Meetings

The Secretary will ensure agendas and minutes of meetings and any other information is made available in a timely fashion to all Voting Members.

For a meeting to be correctly convened, normally a minimum of 5 Business Days notice of a UPCEG meeting must be provided to all Voting Members. Meetings at shorter notice shall be correctly convened provided at least five Voting Members (one of which must be xoserve) agree to the convening of a meeting at short notice. A meeting may only be convened by the Chairman or the Secretary.

Agendas, minutes and other information provided to Voting Members will be available and published on an appropriate website as specified by xoserve.

The UPCEG shall meet as deemed necessary to conduct the business of the UPCEG, and the Secretary shall, as a minimum, convene one meeting per year.

Attendance at a meeting may be in person or via tele/ video conferencing facilities.

6. Contract Change Procedure

Any User Pays Customer Contract Manager (or Alternate) or xoserve may submit a proposed change to the Conditions ("Contract Change Proposal" or "CCP"). Any such proposed change must include draft legal text and must be submitted to xoserve in the form prescribed by xoserve and notified to User Pays Customers from time to time.

xoserve will validate the CCP for completeness and (where applicable) submit an acknowledgement to the User Pays Customer. Within three (3) Business Days of receipt of the CCP, xoserve will update the Contract Change Register ("CCR") with the details of the new CCP, publish the updated CCR and notify all User Pays Customer Contract Managers of the CCP via email.

The CCP will be subject to a twenty (20) Business Day consultation and voting period to commence on the day following the day on which xoserve sends the email notification of the CCP to Contract Managers in accordance with section 6.2 above.

If requested by the CCP proposer at the time of submitting its CCP, a UPCEG meeting may be convened within the period.

In the event that a UPCEG meeting is convened, the proposer shall present the proposal at the meeting. If the proposal is supported by all present at that meeting then Voting Members shall have the remainder of the consultation and voting period to submit their vote to xoserve. If the proposal is not acceptable to UPCEG

attendees, the proposer shall decide whether to proceed or not with the CCP. Unless withdrawn in writing by the proposer upon notice to xoserve prior to the end of the consultation and voting period, the CCP process shall continue unaffected by such meeting. Nothing said or done at any UPCEG meeting shall constitute a vote and all attendees at such meeting shall still be required to vote on the CCP.

All User Pays Customers shall submit their vote from their Contract Manager (or approved Alternate) to xoserve in accordance with Clause 12.7 of the Conditions. The xoserve Customer Manager or his/her alternate shall submit the xoserve vote. A vote must either be to accept or reject a CCP and may not be qualified in any way. In the event that a vote is qualified or is unclear in any way, it will be deemed to be a vote to reject the CCP. For the avoidance of any doubt, xoserve shall have one vote as shall each User Pays Customer.

All votes must be received by xoserve by 5pm on the last Business Day of the consultation and voting period. Any vote not received by such time shall be deemed to be a vote to approve the CCP.

xoserve shall acknowledge and record each User Pays Customer's vote. Each User Pays Customer's vote and xoserve's vote (whether approving or rejecting the CCP) will be published on the Website as soon as reasonably practicable after the voting period has closed. xoserve shall notify all User Pays Customers of the outcome of the vote.

In the event the CCP is rejected by one or more User Pays Customers or xoserve, the CCP will be rejected and the CCR updated accordingly.

Where all User Pays Customers and xoserve approve or are deemed to approve the CCP, the CCR will be updated and published on the Website and this will constitute approval of the Contract Change by UPCEG for the purposes of Clause 3.1 of the Conditions. xoserve will notify all User Pays Customer Contract Managers that the CCP has been approved. A formal written agreement will then be circulated to all User Pays Customers and shall be signed by xoserve and all User Pays Customers (whether or not they voted on the CCP) within 10 Business Days of receipt, in accordance with the provisions of Clause 3.1 of the Conditions and the Conditions shall then be amended accordingly and will be published on the Website.

In the event of a conflict between the provisions of these Terms of Reference and any term of the Framework Contract (including the Conditions), the Framework Contract shall prevail.

7. Maintenance of the Terms of Reference

These Terms of Reference will be maintained by the Voting Members.

Any User Pays Customer Contract Manager (or Alternate) or xoserve may submit a proposed change to these Terms of Reference. Any such proposed change must include a full draft copy of a revised terms of reference in "draft status".

xoserve will validate the proposal for completeness and (where applicable) submit an acknowledgement to the User Pays Customer. xoserve shall then publish the proposal and draft revised terms of reference on the Website.

The proposal and draft revised terms shall then be discussed at the next UPCEG meeting.

If, following that meeting the proposer (which may include xoserve) wishes to pursue its proposal it shall re-submit to xoserve its proposal together with its proposed terms of reference in "proposed status". Such terms may include any revisions made by the proposer subsequent to its initial submission.

xoserve shall then publish such proposal and proposed terms of reference on the Website and shall notify User Pays Customers of such publication on that day.

Voting Members (including xoserve) shall have ten (10) Business Days from the day after the date of publication of the proposal on the Website by xoserve to submit their vote to xoserve.

All User Pays Customers shall submit their vote from their Contract Manager (or approved Alternate) to xoserve in accordance with Clause 12.7 of the Conditions. The xoserve Customer Manager or his/her alternate shall submit the xoserve vote. A vote must either be to accept or reject the revised terms of reference and may not be qualified in any way. In the event that a vote is qualified or is unclear in any way, it will be deemed to be a vote to reject the revised terms of reference. For the avoidance of any doubt, xoserve shall have one vote as shall each User Pays Customer.

All votes must be received by xoserve by 5pm on the last Business Day of the voting period. Any vote not received by such time shall be deemed to be a vote to approve the revised terms.

xoserve shall acknowledge and record each User Pays Customer's vote. Each User Pays Customer's vote and xoserve's vote (whether accepting or rejecting the revised terms) will be published on the Website as soon as reasonably practicable after the voting period has closed. xoserve shall notify all User Pays Customers of the outcome of the vote.

In relation to changes to the Terms of Reference which alter or affect the quorum for meetings of UPCEG, or the voting rights of xoserve and User Pays Customers on the UPCEG, or the number of votes needed to approve a CCP, then if any Voting Member (including xoserve) votes or is deemed to vote to reject the change, the

proposed revised terms of reference will be rejected. Where all Voting Members (including xoserve) approve or are deemed to approve the change, the revised terms of reference shall immediately be adopted as the UPCEG terms of reference in substitution for the then existing terms and will be published on the Website.

In all other cases, the following shall apply:

In the event the revised terms of reference are rejected by xoserve or by more than 20% of User Pays Customers, the proposed revised terms of reference will be rejected.

Where both xoserve and at least 80% of User Pays Customers approve or are deemed to approve the revised terms of reference they shall immediately be adopted as the UPCEG terms of reference in substitution for the then existing terms and will be published on the Website.

8. Version History

Version Number	Date approved
1.0	11.05.09