

User Pays background and explanation of contract refinements

In accordance with the proposed Standard Special Condition A15 of the Transporter's Licence, the Transporters have prepared the joint Agency Charging Statement (ACS) setting out the scope of core services and user pays services. The obligations on the Transporters to maintain the ACS and provide user pays services will be discharged for the Transporters by xoserve as Transporter Agency through the Agency Services Agreement.

Modification Proposal 188 (Introduction into the UNC of the Agency Charging Statement ("User Pays")) seeks to give effect to and identify the purpose of the ACS in the UNC. The proposal also defines the services as "code ACS Services" (those provided under the terms of the UNC), and "non-code ACS Services" (those provided under commercial arrangements between xoserve and the user).

In accordance with the draft ACS, xoserve has prepared the 'Framework Contract for the Provision of Non-Code User Pays Services' in respect of the non-code ACS Services. A draft of this Contract (together with the draft Conditions which formed part of it) was published on the Joint Office website on 31 January for comment.

The proposed Standard Special Condition requires that the charges for the services should, so far as reasonably practicable, reflect the costs of providing the service, and that in setting the charges there should be no undue discrimination between, or undue preference given to, any person or class of persons. These requirements have driven the contracting arrangements, particularly preparing and publishing a common contract visible to all.

xoserve received a number of comments/ enquiries on the draft Conditions published on 31 January. Of particular note were:

Liability

A number of comments were raised during the consultation process in respect of the level of risk and liability which xoserve was prepared to accept under the Conditions. In particular, these concerns related to xoserve's obligation to use reasonable endeavours to perform the services; the caps on xoserve's financial liability and the operation of the rebate/liquidated damages provisions where there was a breach of service standards by xoserve.

As you will see from the revised Conditions we have, as a result of comments provided, amended the Conditions to state that xoserve has an obligation to perform the services in accordance with the Conditions, rather than simply an obligation to use reasonable endeavours to do so. We hope this assures you as to xoserve's commitment to the performance of these services.

Aside from the above, from a commercial perspective we cannot accept any increase in the levels of liability to be borne by xoserve under these Conditions. The services are required to be provided on a cost reflective basis, and the levels of liability set out in the Conditions are reflective of this fact. If we were to accept any higher risk exposure, such additional risk would have to be reflected within the ACS.

We have, however, significantly altered the risk profile for you as customers by making the exclusions and limitations of liability as set out in clause 9 mutual and by refining some of the other obligations.

Amendments to the Conditions

Whilst we appreciate and understand your concerns relating to our ability to amend the Conditions without input from you as customers, please bear in mind that these Conditions will be used with a large number of individuals and organisations and, as such, it is not practicable for us to discuss and agree alterations to the Conditions on a case by case basis. From an administrative perspective we also need to ensure that in providing the user pays services we are operating to a consistent and uniform standard.

However, you will see that we have amended the Conditions to allow for any amended Conditions to be displayed on our website prior to such amendments coming into effect. This will allow you the opportunity to comment on the amendments. Whilst we cannot guarantee that we will take into account your concerns, we will give due consideration to your concerns (much as we have with the first draft of the Conditions).

Contract Manager position

A number of organisations expressed concern that xserve would accept Service Requests for each of the service lines from anyone within the user organisation. To address this through formal arrangements, each organisation is required to nominate a Contract Manager who will be responsible for submitting details of persons authorised to submit Service Requests to xserve. The Contract Manager will also be responsible for the ongoing maintenance of these details. Service Requests should only be submitted by these nominated persons. The detailed provisions on this are set out in clause 2.3 of Part A of the Framework Contract.