

FRAMEWORK CONTRACT FOR THE PROVISION OF NON-CODE USER PAYS SERVICES

PART A

This Framework Contract is made the day of 2009

BETWEEN:

- (1) **XOSERVE LIMITED** (company number: 05046877) whose registered office is at 1/3 Strand, London, WC2N 5EH ("xoserve"); and
- (2) **THE CUSTOMER** (as detailed in Annex 1 Part 1 to this Framework Contract).

BACKGROUND

- a. xoserve provides various services to companies for the provision of data held on its systems, including those services referred to as "User Pays" services in respect of which a customer pays for those services which they use from time to time.
- b. The Customer wishes to purchase the Services (as defined below) from xoserve from time to time and agrees to do so subject to the terms of this Framework Contract.

IT IS AGREED as follows:

1. DEFINITIONS

- 1.1 In this Framework Contract (which term includes Annex 1 hereto, the Conditions (and Schedules thereto) and the Services Schedule (as defined in the Conditions)), the following words have the following meanings:

"Conditions"	means xoserve's standard conditions for the provision of the Services in force from time to time, the current version of which is attached at Annex 2 to this Framework Contract;
"Contract Manager"	means the person appointed by the Customer in accordance with clause 2.4 below as its point of contact in respect of all matters relating to this Framework Contract and the performance of the Services;
"Effective Date"	means 1 April 2009;
"Service Request"	has the meaning given to it in the Conditions; and
"Services"	means the services to be provided by xoserve from time to time as part of its "User Pays" scheme, as set out in the Services Schedule (as defined in clause 1.1 of the Conditions).

2. THE SERVICES

- 2.1 The parties agree that this Framework Contract shall have effect as from the Effective Date.
- 2.2 If the Customer requires xoserve to provide any Services, it will issue a Service Request to xoserve in accordance with the Conditions.

- 2.3 The Customer agrees that:
- 2.3.1 those of its employees and representatives listed in Part 2 of Annex 1 to this Framework Contract are authorised to issue Service Requests on behalf of the Customer and any such Service Requests shall be binding on the Customer. Such list of authorised employees and representatives may be amended from time to time by the Contract Manager giving to xoserve notice in writing of the revised details by submitting an amended version of Annex 1 to xoserve in accordance with the notice provisions set out in clause 12.7 of the Conditions;
 - 2.3.2 subject to clause 2.3.3 below, provided that a Service Request is on the face of it being made by an authorised person, xoserve may treat that Service Request as duly authorised by and binding upon the Customer and is not obliged to carry out any further enquiries as to the identity and authority of the person issuing that request;
 - 2.3.3 xoserve cannot, and shall not be required to, check whether any Service Requests for the provision of the AQ Enquiry Service (as set out in Part 1 of the Services Schedule) are being issued by authorised individuals due to the fact that all such Service Requests will be submitted electronically directly to the UK Link System (as such term is defined in the Conditions); and
 - 2.3.4 any telephone requests made as part of the Services by employees or representatives of the Customer need not be made by the authorised persons listed in Part 2 of Annex 1, including but not limited to any requests for the provision of information by telephone as part of the User Telephone Enquiry Service (as set out in Part 6 of the Services Schedule) and requests to the telephone helpline as part of the IAD Service (as set out in Part 3 of the Services Schedule).
- 2.4 The Customer shall appoint a Contract Manager who shall be the Customer's point of contact (as per clause 3.1 below) in respect of all matters arising in relation to this Framework Contract and the provision of the Services. The identity and contact details of the initial Contract Manager are set out in Annex 1 to this Framework Contract. The Customer may at any time alter the identity and contact details of the Contract Manager by giving notice in writing of the new details by submitting an amended version of Annex 1 to xoserve in accordance with the notice provisions set out in clause 12.7 of the Conditions.
- 2.5 Where xoserve agrees to provide the Services to the Customer, all Services will be performed in accordance with and governed by the Conditions.
- 2.6 The parties agree that there is no obligation on the Customer to issue any requests for the provision of the Services, nor any obligation on the part of xoserve to accept such requests (save that xoserve will not unreasonably delay the issue of any such acceptance or refusal, nor will it unreasonably refuse a Service Request properly submitted for a reasonable level of Services).
- 3. NOTICES AND INVOICING**
- 3.1 The Customer agrees that its point of contact for any matters relating to the performance of the Services (including but not limited to the service of any notice) shall be its Contract Manager.
- 3.2 All invoices to be issued by xoserve in respect of the Services shall be sent to the address for invoicing specified in Annex 1 to this Framework Contract.

4. EXISTING AGREEMENTS

4.1 Without prejudice to any accrued rights or obligations of the parties:

- 4.1.1 in respect of the period prior to 1 April 2008, any contract or other terms between xoserve and the Customer for the provision of any of the Services prior to 1 April 2008 are terminated on and with effect from 31 March 2008; and
- 4.1.2 in relation to the period on and from the Effective Date, the terms of this Agreement shall supersede in their entirety any other prior agreements between the parties for services similar to the Services and any existing outstanding Service Requests under those agreements shall become Service Requests under this Agreement.

IN WITNESS OF THE ABOVE the parties enter into this Framework Contract on the date written above.

.....

Signed for and on behalf of

XOSERVE LIMITED

Name:

Position:

.....

Signed for and on behalf of

Name:

Position:

PART B
THE ANNEXURES

Annex 1

Part 1 Details

The Customer	
Notice details	Contract Manager Name and Title: Address: Fax Number: Email Address:
Invoicing Details	

Part 2- Authorised Persons for the Issue of Service Requests

[illegible]

Annex 2
Conditions

XOSERVE LIMITED

CONDITIONS FOR THE PROVISION OF NON- CODE USER PAYS SERVICES

(REFERENCE NUMBER XNCUP(Cond)01)

1. DEFINITIONS

1.1 In these conditions for the provision of services ("Conditions", which term includes the Schedules hereto), the following words have the following meanings:

"Agency Charging Statement"	means the statement of Charges published on the Website on behalf of the Transporters in accordance with Standard Special Condition A15 of the Transporter's Licence, as the same may be modified from time to time in accordance with the provisions of such Licence Condition;
"Agency Services Agreement"	means the 'Agreement for the Provision of Information, Data Processing, Invoicing and Supply Point Administration Services in relation to the Transmission and Distribution of Gas in Great Britain' dated 1 May 2005 and made between xoserve and each of the Transporters, as the same may be amended from time to time;
"Business Day"	means 9am to 5pm on a day (other than Saturday or Sunday) on which the clearing banks are open in London for the transaction of general business;
"Change Budget"	means a fund held by xoserve for the purpose of the development and implementation of Change Orders, as more particularly described in schedule 2, the funding for which shall be made by User Pays Customers by means of payment of the Charges (with xoserve including an appropriate sum therefor in its cost base when calculating the level of the Charges for the purposes of the Agency Charging Statement);
"Change in Law"	means the coming into effect, after the Effective Date, of a change in any applicable: (a) Legislation; (b) common law and law of equity to the parties; (c) binding court order, judgement or decree; (d) guidance, industry code, policy or standard enforceable by law (including without limitation

the Transporter's Licence or the Uniform Network Code); or

(e) direction, policy, rule or order that is binding on a party and that is made or given by any regulator or relevant authority having jurisdiction over a party or any of that party's assets, resources or business, affecting the provision of the Services;

"Charges" means the charges payable by the Customer for the Services determined pursuant to the provisions of the Agency Charging Statement;

"Confidential Information" means any and all confidential and commercially sensitive information acquired by either party about the other pursuant to the negotiation or operation of the Contract (including but not limited to commercial, financial, marketing, technical and other information about that other or its business) and information generated by either party from the other party's Confidential Information;

"Contract" means the contract between the Customer and xoserve incorporating the Framework Contract, any and all Service Requests submitted by the Customer and accepted by xoserve under the terms of the Framework Contract from time to time and any and all Service Request Acceptances;

"Contract Change" has the meaning given to it in clause 3.1 of these Conditions;

"Customer" means the person named as such in Annex 1 to the Framework Contract;

"DPA" means the Data Protection Act 1998;

"Force Majeure Event" means an event beyond the reasonable control of a party which has a material effect on its ability to perform its obligations (other than as to payment) under the Contract, including without limitation war, riot, invasion, act of foreign enemies, hostilities, acts of terrorism or sabotage, civil war, rebellion, revolution, earthquake, fire, flood, explosion, epidemic, other natural physical disaster or severe weather, strikes, lockouts, blockades, embargos, industrial disputes, any Change in Law or the cancellation of any consent, approval or licence;

"Framework Contract" means the framework contract between the Customer and xoserve incorporating: (i) Part A thereto; Part B thereto (being Annex 1 and Annex 2 (these Conditions and the Schedules hereto); and (iii) the Services Schedule, (as each may be varied from time to time in

	accordance with the provisions hereof) pursuant to which framework contract the Customer may submit Service Requests for the provision of the Services;
"Group"	means any company which at the relevant time is a subsidiary or holding company of the Customer or any subsidiary of any such holding company and "subsidiary" and "holding company" shall have the meaning given to them in the Companies Act 2006 section 1159;
"Intellectual Property Rights"	means patents, trade marks, service marks, trade names, copyright (including rights in computer software and in websites), rights in databases, rights in designs, know-how, and all and any other intellectual property whether registered or unregistered and including all applications (and rights to apply) for, and renewals, extensions or revivals of such rights and all similar or equivalent rights or forms of protection which subsist now or in the future anywhere in the world;
"Legislation"	means any Act of Parliament or subordinate legislation within the meaning of section 21(1) of the 'Interpretation Act 1978', any exercise of the 'Royal Prerogative', and any enforceable community right within the meaning of section 2 of the 'European Communities Act 1972' and/or any directive, regulation or decision affecting the provision of the Services which is issued or brought into effect by any competent authority, in each case in the United Kingdom, or any applicable legislation relating to a jurisdiction other than the United Kingdom;
"planned UK Link downtime"	has the meaning given to it in the Uniform Network Code;
"Registered User"	has the meaning given to it in the Uniform Network Code;
"Service Change"	has the meaning given to it in schedule 2 of these Conditions;
"Service Request"	means an order for Services placed by the Customer with xoserve under the terms of the Framework Contract;
"Service Request Acceptance"	means an acceptance by xoserve to the provision of those Services requested by the Customer in a Service Request;
"Services"	means the services which may be provided by xoserve to the Customer as further detailed in the Services Schedule;

"Services Schedule"	means the separate document entitled "Services Schedule For The Provision Of Non-Code User Pays Services (reference number XNCUP(SS)01)" signed by the parties (and forming part of the Framework Contract), as such document may be amended from time to time pursuant to clause 3 of these Conditions and schedule 2 of these Conditions;
"Services Schedule Change Procedure"	means the procedure to make changes to the Services Schedule, as set out in schedule 2 of these Conditions;
"Transporter"	has the meaning given to it in the Uniform Network Code;
"Transporter Agency"	has the meaning given to it in the Uniform Network Code;
"Transporter's Licence"	has the meaning given to it in the Uniform Network Code;
"UK Link Committee"	has the meaning given to it in the Uniform Network Code;
"UK Link System"	has the meaning given to it in the Uniform Network Code;
"Uniform Network Code"	means the document so titled and prepared by the Transporters pursuant to Standard Special Condition A11(6) of their Transporter's Licences and as modified from time to time;
"User caused UK Link downtime"	means any downtime of the UK Link System caused or contributed to by any act or omission of one or more Users (as the term "User" is defined in the Uniform Network Code);
"User Pays Customers"	means the Customer, together with all other customers who, at the relevant date, have entered into framework contracts with xoserve on or substantially on the same terms as the Framework Contract to purchase services the same as the Services;
"User Pays Contract Expert Group" or "UPCEG"	means a committee made up of representatives of xoserve, the Customer and the other User Pays Customers to facilitate the process of raising, considering and agreeing (or rejecting) proposed changes to these Conditions;
"User Pays User Committee" or "UPUC"	means a committee made up of representatives of xoserve, the Customer and the other User Pays Customers to facilitate the process of raising, considering and agreeing (or rejecting) proposed changes to the Services Schedule in accordance with the

Services Schedule Change Procedure;

"User Pays User Committee Sub Group" or "UPUCSG"

means a sub committee of UPUC made up of representatives of xoserve and those User Pays Customers nominated pursuant to the provisions of schedule 2, to facilitate the process of raising, considering and agreeing (or rejecting) proposed changes to the Services Schedule in accordance with the Services Schedule Change Procedure;

"Website"

means xoserve's website at www.xoserve.com or at such other address as xoserve may notify the Customer from time to time pursuant to the provisions of these Conditions;

"xoserve"

means xoserve Limited (company number: 5046877) whose registered office is at 1-3 Strand, London, WC2N 5EH; and

"Year"

means each period from 1 April to 31 March.

1.2 In these Conditions:

- 1.2.1 words denoting a gender shall include all genders;
- 1.2.2 words denoting the singular shall include the plural;
- 1.2.3 references to persons and undertakings shall include individuals, bodies corporate (wherever incorporated), unincorporated associations, partnerships and other unincorporated bodies;
- 1.2.4 references to any statutes or statutory provision shall be deemed to include references to any statute or statutory provision which amends, extends, consolidates or replaces the same; and
- 1.2.5 references to clauses and schedules are to clauses of and schedules to these Conditions and references to Parts are to parts of the Services Schedule.

1.3 To the extent that any of the provisions within the main body of these Conditions conflict with any provisions in Part A of the Framework Contract, the schedules to these Conditions, the Services Schedule and/or in an accepted Service Request then (save as otherwise provided in these Conditions) the various parts to the Contract shall prevail and take priority in the following order:

- 1.3.1 any provisions within Part A of the Framework Contract;
- 1.3.2 the provisions within Annex 1 of the Framework Contract and these Conditions except for the schedules hereto;
- 1.3.3 the provisions contained within the schedules to these Conditions;
- 1.3.4 the Services Schedule; and
- 1.3.5 the provisions contained within any accepted Service Request.

2. ORDERING THE SERVICES

- 2.1 If the Customer requires any of the Services, it will submit a Service Request to xoserve in accordance with the provisions of the relevant Part of the Services Schedule setting out details of the Services which it requires.
- 2.2 No Service Request submitted by the Customer is binding upon xoserve until xoserve issues to the Customer an acceptance of the Service Request by means of a Service Request Acceptance.
- 2.3 Except as otherwise provided in these Conditions, all other terms, conditions and/or warranties are excluded from the Contract unless expressly accepted in writing by xoserve.
- 2.4 In submitting a Service Request, the Customer warrants that it is entitled to request and receive the provision of the relevant Services by xoserve. If at any time during the performance of the Services the Customer ceases to be so entitled, the Customer shall promptly inform xoserve in writing and xoserve may then:
- 2.4.1 terminate the relevant Service Request; and/or
 - 2.4.2 (where the Customer is no longer entitled to request any of the Services from xoserve) terminate the Contract

with immediate effect and the consequences of termination as set out in Clause 10 shall apply.

3. AMENDMENTS TO THESE CONDITIONS AND THE SERVICES SCHEDULE

- 3.1 xoserve, the Customer or any other User Pays Customer may propose a change to these Conditions at any time (a "Contract Change"). Contract Changes must be considered by xoserve and the User Pays Customers acting together through the User Pays Contract Expert Group. These Conditions (including the Schedules hereto) may only be amended by a written agreement signed by authorised representatives of all of:
- 3.1.1 xoserve; and
 - 3.1.2 every undertaking which constitutes a User Pays Customer at the date when such written agreement is signed by an authorised representative of the first User Pays Customer to sign it, and the Customer undertakes to sign any such written agreement upon request from xoserve following the approval of the Contract Change by the User Pays Contract Expert Group in accordance with its then prevailing terms of reference.
- 3.2 Subject to Clause 3.4, the Services Schedule may only be amended in accordance with the Services Schedule Change Procedure. If a change to the Services Schedule is effected in accordance with the Services Schedule Change Procedure then such change shall be automatically made to the Services Schedule and shall be binding on the Customer (whether or not it was in favour of such change and whether or not it was (if applicable) part of the relevant UPUCSG (as referred to in the Services Schedule Change Procedure)).
- 3.3 Any changes to the Conditions and/or the Services Schedule will apply to both existing Service Requests and any placed by the Customer with xoserve after the date the changes come into effect. However, the amendments to the Conditions and/or Services Schedule will not affect any rights and/or liabilities of either party which may have accrued up to and including the date on which the amended Conditions and/or Services Schedule take effect.
- 3.4 In relation to any particular Part of the Services Schedule, in the event that at any time no Services have been performed under the relevant Part in the immediately preceding 3 months and there is no Service Request Acceptance outstanding for which there are Services still to be performed, then xoserve may at any time give not less than 3 months'

written notice in accordance with the provisions of Clause 12.7 to remove the relevant Part from the Services Schedule and (provided that in the period between giving notice and the expiry of such notice, there have been no valid Service Requests submitted under that Part for which a Service Request Acceptance was issued) the relevant Part shall be removed automatically from the Services Schedule at the end of such notice period, without any requirement to give further notice and no further Services shall be requested or performed under that Part.

4. PERFORMANCE OF THE SERVICES

4.1 xoserve shall perform the Services by the times and in accordance with the provisions of the Services Schedule.

4.2 The Customer agrees to provide xoserve with any and all information, data and/or other materials which xoserve may reasonably request from the Customer from time to time in order to enable xoserve to perform the Services. The Customer shall use all reasonable endeavours to ensure that any and all information, data and/or other materials which it provides to xoserve will be complete, accurate and up to date as at the date of its submission to xoserve.

4.3 If at any time the Customer becomes aware that any information, data and/or other materials which it has provided to xoserve is inaccurate, incomplete and/or is updated, the Customer shall promptly provide xoserve with a copy of the revised and updated information, data and/or materials.

4.4 xoserve shall publish on the Website as soon as reasonably practicable following the end of each calendar month, information about its performance against the performance measures identified in the Services Schedule and, in the case of Speculative Calculations (as defined in Part 1 of the Services Schedule) and Email Reports (as defined in Part 2 of the Services Schedule), monthly usage volumes.

5. CHARGES AND OTHER SUMS DUE AND PAYMENT

5.1 In consideration for xoserve performing the Services, the Customer agrees to pay xoserve the Charges applicable to those Services together with all other sums due under the Contract.

5.2 The Charges payable by the Customer shall be those charges determined pursuant to the provisions of the Agency Charging Statement which are (subject to any contrary provision within the Services Schedule), in force at the date on which the Customer submitted its Service Request or (if later) the date on which the Services specified in the relevant Service Request are due to commence. All Charges (and other sums due under the Contract) are exclusive of value added tax which will be charged for in addition. xoserve shall publish any changes to the levels of the Charges not less than 35 days prior to their anticipated date of implementation. Such publication shall be by means of the Website.

5.3 xoserve shall issue an invoice for all sums due under the Contract monthly in arrears unless otherwise provided in these Conditions or the Services Schedule. An invoice may be issued in respect of the Services provided pursuant to more than one Service Request.

5.4 If the amount of the monies due from the Customer to xoserve in accordance with this clause 5 is, in aggregate, less than £250, xoserve will not issue an invoice to the Customer at that stage but will wait until:

5.4.1 the total aggregate sums payable by the Customer equal or exceed £250; or

5.4.2 three months from the date of the last invoice issued by xoserve to the Customer for the provision of any of the Services or (if no invoice has previously been issued) three months from the date of the earliest Service Request;

whichever is the first to occur after which point for the avoidance of doubt an invoice will then be issued for all sums then owing by the Customer.

- 5.5 Where the Services are performed in instalments, xoserve may invoice each instalment separately and the Customer shall pay such invoice in accordance with these Conditions.
- 5.6 All invoices issued shall be due for payment by the Customer 28 days after the date of the invoice unless otherwise agreed in writing between the parties.
- 5.7 The Customer must pay all invoices in full and shall not be entitled to any right of set off (other than where there is a bona fide dispute between the parties as to whether any sums are due and, in such cases, the Customer may only withhold the sum in dispute). As and when the parties reach agreement or the matter is otherwise determined in respect of any disputed sums, any monies due to xoserve must be paid in full in cleared funds within 15 Business Days of the date of resolution of the dispute.
- 5.8 All sums to be paid by the Customer under this Agreement shall be in pounds sterling by electronic transfer to xoserve's bank account at Barclays Bank plc, Stratford Road, Shirley, Solihull (Sort Code 20-77-62, Account Number 10322369) or such other bank account as xoserve may from time to time require upon notice to the Customer, with any applicable charges on such payments (including, by way of illustration but without limitation, overseas bank transfer charges) not being due to any default of xoserve, being at the Customer's expense.
- 5.9 No payment shall be deemed to have been received by xoserve until it has received payment in full in pounds sterling and in cleared funds, including but not limited to any bank charges payable by the Customer in accordance with clause 5.8 above.
- 5.10 Failure by the Customer to make payment of monies due in full, in pounds sterling and in cleared funds on or by the due date for payment shall (save for amounts withheld pursuant to the provisions of clause 5.7) entitle xoserve (without prejudice to any other rights and/or remedies it may have) to:
 - 5.10.1 (provided that not less than 10 Business Days' notice of such suspension has first been sent to the Customer) suspend the performance of the Services under that Part of the Services Schedule to which the unpaid monies relate; and
 - 5.10.2 charge the Customer interest on any unpaid amounts (both before and after any judgment) at the rate applicable from time to time under the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.11 If in accordance with clause 5.7 above the Customer has withheld any monies due to xoserve and it is subsequently found that the Customer's dispute was incorrect and the monies were indeed due to xoserve:
 - 5.11.1 subject to clause 5.11.2 below, interest shall be payable on the withheld monies at the base rate from time to time of Barclays Bank Plc plus 1% per annum from the date on which the withheld monies should have been paid to xoserve until the date on which such monies are paid in full in cleared funds; and
 - 5.11.2 if the sums due to xoserve are not paid within the 15 Business Day payment period referred to in clause 5.7 above, interest shall be payable on the unpaid sum at the rate specified in clause 5.10.2 as from the end of that 15 Business Day period and the provisions of clause 5.10.1 may also apply.
- 5.12 xoserve reserves the right to carry out credit checks on the Customer prior to accepting a Service Request. xoserve may:
 - 5.12.1 refuse to accept a Service Request from a Customer if that Customer fails to pass the credit checks; and/or

- 5.12.2 require the Customer to either provide security for any payments due under the Contract in an amount and form and from a person approved by xoserve and/or to pay all or part of the Charges for the Services in advance of the Services being performed by xoserve.
- 5.13 Any challenges to an invoice issued by xoserve must be notified by the Customer to xoserve in writing within 18 months of the date of the relevant invoice. If the Customer does not raise any challenge within this time period, it will be deemed to have accepted and confirmed that the terms of the invoice are correct.
- 5.14 xoserve may only make adjustments to an invoice which it has issued to the Customer in respect of the Services for a period of up to 18 months following the issue date of the invoice in question.
- 5.15 Any interest payable by the Customer in accordance with this clause 5 shall be invoiced by xoserve as part of a subsequent invoice xoserve issues in respect of the provision of the Services.

6. WARRANTIES

- 6.1 Subject to clause 6.2, xoserve warrants that it will perform the Services with all reasonable skill and care. All other warranties (whether express or implied) are excluded from the Contract to the fullest extent permitted by law, including but not limited to any relating to fitness for purpose, quality and/or adequacy.
- 6.2 In performing the Services, xoserve will be using data, information and/or other materials which have been provided to xoserve by the Customer and/or one or more third parties. xoserve will not verify their accuracy and/or completeness. As such, xoserve makes no warranty and accepts no liability in respect of the accuracy or completeness of any of such data, information and/or materials which are subsequently included in reports provided to the Customer as part of the Services or in any reports which are based upon such data, information and/or materials.
- 6.3 If under the terms of the Services Schedule the Customer considers that it is entitled to a rebate of Charges, to claim such rebate the Customer must (unless previously advised by xoserve of its right to the same) inform xoserve in writing that it wishes to seek a rebate promptly after the Customer becomes aware of the circumstances giving rise to the potential claim and in any event within 180 days of the date on which the Customer did become aware of any such potential claim arising. Any such written notice must include:
- 6.3.1 full details of the grounds for the claim for a rebate; and
- 6.3.2 copies of any supporting evidence.

xoserve shall consider the Customer's request and inform it as soon as possible whether xoserve accepts the claim. In the event of a dispute about the existence or amount of a claim, the provisions of clause 13 of these Conditions shall apply. The value of any agreed or determined rebate shall be offset against xoserve's invoice for the affected Services and/or any future Services (save where there are no monies to offset and no outstanding Service Requests in force, in which event any monies due shall be paid by xoserve to the Customer within 28 days of xoserve's acceptance or the determination of the amount of the claim).

7. INTELLECTUAL PROPERTY RIGHTS AND DATA PROTECTION

- 7.1 The Customer grants to xoserve a non-exclusive, royalty free licence to use all information, data and/or materials supplied by it to xoserve in connection with the Contract (including but not limited to any Intellectual Property Rights which may exist in the same) for the purposes of performing the Services.

- 7.2 Any and all Intellectual Property Rights created during the performance of the Services shall be owned by xoserve. The Customer shall have a non-exclusive, royalty free licence for both it and members of its Group to use for their own internal business purposes only, any written material provided by xoserve as part of the relevant Services. The Customer may not (other than to members of its own Group) distribute such material in any form without the prior written consent of xoserve or unless required to do so in order to comply with any statutory and/or regulatory obligations.
- 7.3 Each party acknowledges that, in respect of any Personal Data used in the performance of the Services, the Customer is acting as a Data Controller and xoserve as a Data Processor in respect of such Personal Data (as such terms are defined in the DPA).
- 7.4 In performing the Services, to the extent that xoserve is processing any Personal Data provided to it by the Customer xoserve agrees to:
- 7.4.1 only process Personal Data for the purposes necessary for the fulfilment of the Services and not process the data for any other purpose save to the extent that xoserve is properly processing it in its role as Transporter Agency or otherwise to the extent that it is properly authorised to do so;
 - 7.4.2 use reasonable measures to ensure that appropriate technical and organisational safeguards are taken to protect against unauthorised disclosure or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data;
 - 7.4.3 take all reasonable steps to ensure the reliability of any of its staff who have access to Personal Data processed in connection with this Agreement;
 - 7.4.4 provide reasonable assistance to the Customer in complying with any subject access request and/or responding to any enquiry made, or investigation or assessment of processing initiated by the Information Commissioner in respect of the Personal Data as soon as is reasonably possible. xoserve will be entitled to recover from the Customer its reasonable costs of providing such assistance; and
 - 7.4.5 inform the Customer of any request for disclosure of Personal Data from a data subject or any other third party which it receives directly and provide a copy of such request without disclosing or releasing any Personal Data to such third party without first consulting with the Customer.
- 7.5 xoserve has appointed third party contractors who are located outside the European Economic Area ("EEA") to provide it with technical support and assistance with regard to the use and operation of its computer systems. Such third party contractors will have access to information and data held by xoserve on its computer systems and xoserve shall ensure that any Personal Data is handled in compliance with its obligations under clause 7.4 above.
- 7.6 If any data held by xoserve relating to and/or provided by the Customer is lost, damaged or otherwise destroyed due to xoserve's own negligence and/or breach of the Contract, xoserve shall use all reasonable endeavours (at its own cost and expense) to reconstitute such data from any back up copies it may have. The Customer shall provide xoserve with all such assistance as xoserve may reasonably request to assist in the re-instatement of the data and xoserve shall reimburse the Customer for all costs reasonably incurred by it as a consequence of complying with any such request.
- 7.7 In providing information, data and other materials to xoserve pursuant to the provisions of this Framework Contract (including but not limited to any Personal Data), the Customer warrants and represents that it either holds all Intellectual Property Rights in the same or that it has obtained from the relevant third parties all necessary consents, licences and authorisations to enable xoserve to use such information, data and materials in accordance with these Conditions and/or in order to perform its obligations under the Contract.

- 7.8 In providing information, data and other materials to the Customer pursuant to the provisions of this Framework Contract (including but not limited to any Personal Data but excluding any information, data and materials provided by the Customer to xoserve), xoserve warrants and represents that it either holds all Intellectual Property Rights in the same or that it has obtained from the relevant third parties all necessary consents, licences and authorisations to enable the Customer to use such information, data and materials in accordance with these Conditions.

8. CONFIDENTIALITY

- 8.1 Neither party shall use and/or disclose the other party's Confidential Information except in the proper performance of the Contract and in the performance of the Services.
- 8.2 Each party may disclose the other party's Confidential Information to its employees, representatives, members of its Group and/or its professional advisors solely in order to ensure the proper performance of this Agreement provided that the disclosing party:
- 8.2.1 makes the recipient aware of the confidential nature of the information; and
 - 8.2.2 remains responsible for the acts and/or omissions of the recipient in respect of such Confidential Information as if they were its own acts and/or omissions.
- 8.3 The obligations of confidentiality shall continue indefinitely except they shall not apply to information:
- 8.3.1 which the receiving party can prove was already in its possession and at its free disposal;
 - 8.3.2 which the receiving party proves was developed by it without reference to any of the disclosing party's Confidential Information;
 - 8.3.3 which becomes generally available to the public through no fault or omission of the receiving party;
 - 8.3.4 which (in the case of xoserve) was provided to it otherwise than pursuant to the provisions of the Contract or which it holds or uses otherwise than pursuant to the provisions of the Contract (including without limitation in its capacity as Transporter Agency); or
 - 8.3.5 to the extent that it is required to be disclosed as part of any court proceedings, by law and/or the rules of any recognised stock exchange and/or regulatory authority and/or required to be disclosed in order to fulfil any statutory or regulatory obligations.

9. LIABILITY

- 9.1 Neither party shall have any liability to the other party for any:
- 9.1.1 loss of profits and/or damage to goodwill;
 - 9.1.2 pure economic and/or other similar losses;
 - 9.1.3 special damages;
 - 9.1.4 aggravated, punitive and/or exemplary damages;
 - 9.1.5 consequential losses and/or indirect losses;
 - 9.1.6 loss of and/or corruption of data; and/or

- 9.1.7 business interruption, loss of business, loss of contracts and/or loss of opportunity.
- 9.2 Nothing in these Conditions shall exclude or limit:
- 9.2.1 a party's liability for death or personal injury caused by its negligence and/or for its fraud; or
- 9.2.2 in the case of the Customer, any obligation to pay sums properly due under this Agreement.
- 9.3 Subject to clauses 9.1, 9.2 and 9.4, each party's total aggregate liability to the other party for liability arising in each Year of this Agreement (including but not limited to in the case of xoserve, the financial value of any reductions/ rebates payable by xoserve to the Customer in accordance with the provisions of the Services Schedule) shall not exceed 120% of the Charges paid by the Customer to xoserve in the Year in which the liability arose.
- 9.4 xoserve's total aggregate liability to the Customer and the Customer's sole and exclusive remedy in respect of a breach of the warranties set out in clause 6, a breach of the provisions of the Services Schedule or a breach of any other provisions that relate to the quality or timeliness of the Services shall be the mechanisms for the reduction/ rebate of Charges payable by the Customer set out in the Services Schedule.
- 9.5 Each of the limitations and exclusions of liability set out in these Conditions shall apply as a separate provision for each of the following:
- 9.5.1 liability in contract (including but not limited to fundamental breach);
- 9.5.2 liability in tort (including but not limited to negligence);
- 9.5.3 liability for breach of statutory duty; and
- 9.5.4 liability for breach of common law and/or under any other legal basis
- except that the aggregate financial cap on each party's liability set out in clauses 9.3 and 9.4 shall include all types of liability including those set out in this clause 9.5.
- 9.6 The Charges and other sums due under this Agreement have been determined on the basis that xoserve's liability is limited as set out in these Conditions. The Customer should consider insuring against any loss and/or liability it may suffer as a result of any breach.
- 9.7 Where any provision of the Services Schedule provides for an amount to be paid by xoserve to the Customer upon or in respect of any breach of its contractual obligations, each party agrees and acknowledges that the amount payable is a genuine pre-estimate of the loss of the Customer in such circumstances.
- 10. TERMINATION**
- 10.1 If the Customer wishes to terminate a specific Service Request or the Contract it may do so on not less than 28 days' written notice in accordance with the provisions of clause 12.7 on condition that (subject to any specific provisions in the Services Schedule) the Customer pays any and all sums then accrued for Services performed under any Service Request up to and including the date of termination and any applicable early termination charges as set out in the Services Schedule. A Service Request shall continue for the period stated in the Service Request or until the Services to be provided under the Service Request have been completed or until terminated in accordance with these Conditions.

- 10.2 xoserve may terminate the Contract and/or a Service Request:
- 10.2.1 by giving the Customer 12 months' notice of termination in writing at any time; or
 - 10.2.2 immediately by giving the Customer notice of termination in writing in the event of a Change in Law which affects the right, authority or ability of xoserve to deliver the Services.
- 10.3 Each of the Customer and xoserve may terminate the Contract with immediate effect if the other:
- 10.3.1 commits a material breach of the Contract (and, if capable of remedy, fails to remedy the breach within 28 days of receiving written notice from the other requiring the breach to be remedied); and/or
 - 10.3.2 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 a similar event or analogous procedure occurs in another jurisdiction.
- 10.4 The Contract shall terminate with immediate effect upon the expiry or termination of the Agency Services Agreement (and xoserve shall give to the Customer as much notice as is reasonably practicable of any early termination of the Agency Services Agreement).
- 10.5 If either party has the right to terminate the Contract in accordance with the provisions of these Conditions, it may elect to terminate solely the affected Service Request rather than the Contract as a whole.
- 10.6 On the date of termination of the Contract, all outstanding Service Requests shall immediately terminate.
- 10.7 On termination of the Contract and/or a Service Request:
- 10.7.1 xoserve shall be entitled to issue an invoice to the Customer for all Services performed under the Contract/terminated Service Request up to and including the date of termination. Unless otherwise agreed in writing between the parties, the Customer shall pay such invoice within 28 days after the date of the invoice;
 - 10.7.2 if the Customer has paid in advance for Services which were to be provided under the Contract and/or a terminated Service Request, the Customer shall (subject to any specific provisions in the Services Schedule) be entitled to a refund of a proportion of the advance payment, pro rated to reflect the Services provided up to the date of termination. Any refunds due to the Customer shall be paid to it by xoserve within 28 days of the date of termination of the Contract and/or the relevant Service Request; and
 - 10.7.3 if the Services Schedule requires the payment of early termination charges, xoserve shall, as soon as reasonably possible following termination of the Contract and/or the relevant Service Request, issue an invoice to the Customer for the amount of the early termination charges. Unless otherwise agreed in writing between the parties, the Customer shall pay such invoice within 28 days after the date of the invoice.

11. SERVICE DOWN TIME, FORCE MAJEURE AND VIRUSES ETC.

- 11.1 Due to the need to perform maintenance work in respect of its computer systems on which it holds the data and/or information required to perform the Services, xoserve may from time to time be unable to perform the Services. xoserve shall use all reasonable endeavours to ensure that the provision of the Services is resumed as promptly as possible following such maintenance work. Subject to any specific provisions in the Services Schedule, xoserve will have no liability to the Customer for its failure to perform or any delay in performing the Services for the period notified by xoserve of any planned downtime or maintenance work.
- 11.2 xoserve shall notify the Customer (with as much notice as is practicable) of any planned downtime and maintenance work which will affect the performance of the Services by email notice to the Customer in accordance with the provisions of clause 12.7, and/ or by such other means as xoserve may reasonably deem to be appropriate.
- 11.3 Neither party shall be liable (including without limitation to refund Charges) for failure to perform and/or any delay in performing any obligations (other than obligations as to payment) to the extent that such failure and/or delay is caused or contributed to by a Force Majeure Event. The party which suffers a Force Majeure Event shall use its reasonable endeavours to mitigate the effects of the Force Majeure Event and to recommence performance of its affected obligations as soon as possible and to the extent reasonably practicable. xoserve will not charge the Customer for Services which have not been provided/made available to the Customer due to any Force Majeure Event affecting xoserve. In the event that the Customer has paid in advance for Services for the period of the Force Majeure Event then, to the extent that any charges for which such payment has been made are calculated based on the length of the period for which the Services are to be provided, the Customer shall be entitled to a refund of such sum as is appropriate, for the period for which the Services are not provided as a consequence of the Force Majeure Event.
- 11.4 The party seeking to exempt itself from any liability due to the operation of clause 11.3 above shall notify the other party of the nature of the failure as soon as reasonably practicable after becoming aware of the Force Majeure Event and also of the cessation of the Force Majeure Event as soon as reasonably practicable after becoming aware of the cessation.
- 11.5 Without prejudice to any provisions of the Uniform Network Code, the Customer agrees to use all reasonable endeavours to ensure that, in passing any data to xoserve electronically and/or accessing any computer systems and/or databases of xoserve as part of the Services, it does not introduce any viruses and/or other harmful code into xoserve's computer systems.
- 11.6 Without prejudice to any provisions of the Uniform Network Code, whilst xoserve will use all reasonable endeavours to ensure that its databases, computer systems and/or any data which it provides to the Customer electronically are free from any viruses and/or other harmful code, data provided into such databases and systems may be input by third parties and xoserve has no liability to the Customer for any loss and/or liability the Customer suffers (including but not limited to any loss of and/or corruption of data) as a result of any virus and/or other harmful code being introduced into the Customer's computer systems as a result of the performance of the Services.

12. GENERAL

- 12.1 The Contract is entered into between xoserve and the Customer as principals and neither Party shall be entitled to assign the benefit or burden of it or any interest in it without the prior written consent of the other (not to be unreasonably withheld or delayed). xoserve shall be entitled to sub-contract the whole or part of its obligations under the Contract at any time but will remain responsible for the actions and/or omissions of its sub-contractors as if they were its own actions and/or omissions under the Contract.

- 12.2 The Contract contains the whole agreement between the parties and supersedes any prior written or oral agreement between them and is not affected by any other promise, representation, warranty, usage, custom or course of dealing. The parties confirm that they have not entered into the Contract on the basis of any representation that is not expressly included and incorporated in the Contract.
- 12.3 Without prejudice to clause 12.2, neither party shall have any remedy in respect of any untrue statement made to it upon which it may have relied in entering into the Contract and that party's only remedy is for breach of contract. Nothing in these Conditions purports to exclude liability for any fraudulent statement.
- 12.4 If any provision of the Contract shall be or become void in whole or in part, the other provisions shall remain valid and enforceable and the void provisions shall, where appropriate, be replaced by other provisions corresponding as closely as possible with the void provisions.
- 12.5 Save as otherwise provided herein, a failure by either party to exercise, or a delay in exercising, any right or remedy under the Contract shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies which that party may otherwise have and no single or partial exercise of any right or remedy under the Contract shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.
- 12.6 Any waiver by either party of a breach of any of the terms of the Contract or of any default under the Contract shall not be deemed a waiver of any subsequent breach or default.
- 12.7 Notices shall be delivered to, in the case of xoserve, the address or facsimile number in the United Kingdom or email address and contact person specified as such in schedule 1 of these Conditions (or such other address or number or person as xoserve may notify to the Customer from time to time) and, in the case of the Customer, the address or facsimile number in the United Kingdom or email address of its Contract Manager. Notices shall (unless otherwise provided in the Services Schedule) be sent by first class post or by facsimile or email. Unless otherwise acknowledged, receipt shall be deemed to be:
- 12.7.1 two Business Days after despatch, for notices despatched by first class post (subject to evidence of posting); or
 - 12.7.2 on receipt of a successful facsimile transmission report, for notices sent by facsimile (or at 9am on the first Business Day thereafter if sent on a non Business Day or after 5pm on a Business Day); or
 - 12.7.3 on receipt of a successful delivery receipt for notices sent by email (or at 9am on the first Business Day thereafter if sent on a non-Business Day or after 5pm on a Business Day).
- 12.8 A person who is not a party to the Contract (a "third party") shall have no rights pursuant to the Contracts (Rights of Third Parties) Act 1999 (the "Act") to enforce any part of the Contract. Any right or remedy of a third party which exists or is available apart from the Act is not affected.
- 12.9 xoserve shall, from time to time, send to each User Pays Customer in accordance with the provisions of Clause 12.7, notification of the identity of all User Pays Customers at that time (and the Customer consents to its own name being notified to other User Pays Customers for such purposes).

13. DISPUTE RESOLUTION

- 13.1 If a dispute arises out of or in connection with the Contract ("Dispute") then the parties shall follow the dispute resolution procedure as set out in this clause:
- 13.1.1 either party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("Dispute Notice"), together with relevant supporting documentation. On service of the Dispute Notice the contact persons named pursuant to Clause 12.7 above (or persons holding an equivalent role of responsibility) of each party shall attempt to resolve the Dispute in good faith;
 - 13.1.2 if such contact persons are for any reason unable to resolve the Dispute within 30 days of the date of the Dispute being referred to them then the chief executive officers (or persons holding an equivalent role of responsibility) of each party shall attempt to resolve the Dispute in good faith;
 - 13.1.3 if the chief executive officers are for any reason unable to resolve the Dispute within 30 days of the date of the Dispute being referred to them then the parties will attempt to settle it by way of mediation in accordance with the Centre for Effective Dispute Resolution ("CEDR") Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing ("Notice") on the other party requesting mediation. A copy of the Notice should be sent to CEDR. The mediation shall start no later than 21 days after the date of the Notice. Unless otherwise agreed by the parties, the place of mediation shall be nominated by the mediator; and
 - 13.1.4 no party may commence any court proceedings in relation to any Dispute until 30 days after the appointment of a mediator, provided that the right to issue proceedings is not prejudiced by a delay. Nothing in this clause shall, however, prevent either party from seeking interim injunctive relief where appropriate.
- 13.2 The parties agree that any disputes arising or in any way connected with the subject matter of the Contract (whether of a contractual or tortious nature or otherwise) shall be subject to the laws of England and (subject to clause 13.1) the exclusive jurisdiction of the English Courts.

SCHEDULE 1

Notice Details for xoserve

Address: 31 Homer Road, Solihull B91 3LT

Facsimile Number: 0121 623 2806

Email: xoserve.userpays@xoserve.com

In each case marked for the attention of: User Pays Customer Manager

SCHEDULE 2

Services Schedule Change Procedure

This schedule establishes the change procedure which will apply if xoserve, the Customer or any other User Pays Customer wishes to initiate a change to the Services Schedule (a "Service Change"). This schedule may only be amended in accordance with clause 3.1 of the Conditions.

1. Definitions

1.1 In this Schedule, the following terms shall have the following meanings:

"BEO"	means Business Evaluation Order, a form submitted to xoserve by the Relevant Governance Committee approving an EQR and requesting a BER in relation to a specific Change Order;
"BER"	means Business Evaluation Report, a report issued by xoserve in response to a BEO, setting out such matters as are referred to in paragraph 5.1 below;
"EQR"	means Evaluation Quotation Report, a report issued by xoserve in response to a Change Order, setting out such matters as are referred to in paragraph 3.1 below;
"Relevant Governance Committee"	has the meaning given to it in paragraph 2.5 below;
"User Pays User Committee" or "UPUC"	has the meaning given to it in the main body of the Conditions; and
"User Pays User Committee Sub Group" or "UPUCSG"	has the meaning given to it in the main body of the Conditions.

2. Raising a Service Change

2.1 If the Customer or any other User Pays Customer wishes to propose a Service Change, it must submit to xoserve a change order (any such change order to be in the form prescribed by xoserve and notified to User Pays Customers from time to time) ("Change Order"). xoserve shall then submit the Change Order to UPUC for consideration. xoserve itself may submit a Change Order to UPUC at any time

2.2 A Change Order shall include, without limitation, details of the expected beneficiaries of the Change Order and whether the proposed Service Change would be a change to an existing Service already provided under the Services Schedule or whether it would be a new service not currently provided for in the Services Schedule.

2.3 UPUC shall consider the Change Order and shall (always in accordance with its then prevailing terms of reference):

2.3.1 if the proposed Service Change would be a change to an existing Service already provided under the Services Schedule, determine whether to:

- (i) reject the Change Order (in which case the person which submitted it shall be informed accordingly); or
 - (ii) approve it in which case it shall be progressed in accordance with the provisions of this schedule 2 by UPUC, and UPUC shall submit the Change Order back to xoserve with a request for xoserve to prepare an EQR;
- 2.3.2 if the proposed Service Change would be a new service not currently provided for in the Services Schedule, determine whether to:
 - (i) approve it as a Change Order to be progressed in accordance with the provisions of this schedule 2 by UPUC, in which case UPUC shall then submit the Change Order back to xoserve with a request for xoserve to prepare an EQR; or
 - (ii) not so approve it in which case the person which submitted the Change Order may submit it to a sub group of UPUC comprising xoserve and such User Pays Customers as the submitting person shall determine ("UPUCSG") for the Change Order to be progressed in accordance with the provisions of this schedule 2 by such UPUCSG. UPUCSG shall then determine whether to:
 - (aa) reject the Change Order (in which case the person which submitted it shall be informed accordingly); or
 - (bb) approve it in which case it shall be progressed in accordance with the provisions of this schedule 2 by UPUCSG and UPUCSG shall submit the Change Order back to xoserve with a request for xoserve to prepare an EQR.
- 2.4 In the event that the proposed Service Change is to be progressed in accordance with the provisions of this schedule 2 by UPUC, then all development and implementation costs and any costs involved in preparing a BER shall be paid from the Change Budget. In the event that the proposed Service Change is to be progressed in accordance with the provisions of this schedule 2 by UPUCSG, then all development and implementation costs and any costs involved in preparing a Business Evaluation Report shall be paid by those User Pays Customers who are the members of the relevant UPUCSG and each of such User Pays Customers shall be required to provide its written confirmation (in a form acceptable to xoserve) to provide such funding.
- 2.5 For the purposes of the remainder of this schedule 2, 'Relevant Governance Committee' shall mean UPUC or UPUCSG as the case may be in respect of the relevant Change Order.
- 3 Preparation of Evaluation Quotation Report**
- 3.1 Upon receipt of a request to such effect from the Relevant Governance Committee, xoserve shall prepare an EQR. Once it is complete, xoserve shall submit that EQR to the Relevant Governance Committee. The EQR will set out:
 - 3.1.1 the details of the Service Change (i.e. describe the new service requirements) and the expected beneficiaries, based on xoserve's understanding of the Change Order;
 - 3.1.2 xoserve's initial view of whether and (if relevant) how the Service Change can reasonably be implemented;

and, if xoserve's initial view is that the Service Change could reasonably be implemented, the EQR will also set out:

 - 3.1.3 xoserve's impact assessment of what analysis work is required in order to develop the BER;

- 3.1.4 if xoserve has determined that it needs to recover the costs of preparing the BER, a quotation for such costs; and
- 3.1.5 any initial view that xoserve may have of potential likely changes to the Services Schedule, the Conditions and/ or the Agency Charging Statement.

4 Agreeing the Evaluation Quotation Report

- 4.1 If the EQR states that, in xoserve's view, the Service Change cannot reasonably be implemented (and giving reasons therefor, having due regard to the provisions of paragraph 9.1 below) or if there is a lack of full funding for any development and implementation costs or costs of preparing the BER (in particular the availability of sufficient funds in the Change Budget, or the provision, or binding commitment (in a form acceptable to xoserve) to provide, funding from the User Pays Customer members of the relevant UPUCSG), then the relevant Change Order will be referred back to the Relevant Governance Committee. Any User Pays Customer may then, should it choose to do so, submit a new or revised Change Order pursuant to the provisions of paragraph 2.1 above and the Services Schedule Change Procedure will recommence.
- 4.2 If the EQR states that, in xoserve's initial view, the Service Change may reasonably be implemented then the Relevant Governance Committee will then consider the EQR. The Services Schedule Change Procedure will not progress until the Relevant Governance Committee has agreed and approved the EQR (including any quotation for the funding required by xoserve to complete the BER) in accordance with its then prevailing terms of reference. The Relevant Governance Committee will notify xoserve that it has approved the EQR by submitting, in accordance with its then prevailing terms of reference, a BEO to xoserve. Any such BEO shall be in the form prescribed by xoserve and notified to User Pays Customers from time to time.

5 Preparation of Business Evaluation Report

- 5.1 Once the Relevant Governance Committee has, in accordance with its then prevailing terms of reference, provided xoserve with the BEO and, if relevant, any funding outlined in the quotation forming part of the EQR has also been provided or committed (in a form acceptable to xoserve), xoserve will prepare the BER. Once the BER is complete, xoserve shall submit it to the Relevant Governance Committee. The BER will set out:
 - 5.1.1 whether, after further business analysis, xoserve still considers that the Service Change can reasonably be implemented;

and if xoserve still considers that the Service Change can reasonably be implemented, the BER will also set out:

 - 5.1.2 the various design options for how the Service Change may be delivered by xoserve (including timescales) ("Design Options");
 - 5.1.3 the estimated development and implementation costs of each Design Option;
 - 5.1.4 the estimated ongoing service costs/price (and cost recovery mechanisms) of each Design Option;
 - 5.1.5 any system constraints;
 - 5.1.6 any amendments which will be required to the wording of the Services Schedule;
 - 5.1.7 any required Contract Changes, which would need to be agreed pursuant to clause 3.1 of the Conditions; and

- 5.1.8 any necessary changes to the Agency Charging Statement which would need to be submitted to the Gas and Electricity Markets Authority (“Ofgem”) pursuant to the provisions of Standard Special Condition A15 of the Transporter’s Licence.

6 Agreeing the Business Evaluation Report

- 6.1 If the BER states that, in xoserve’s view, after further business analysis, the Service Change cannot reasonably be implemented (and giving reasons therefor, having due regard to the provisions of paragraph 9.1 below), or if there is a lack of full funding for any development and implementation costs (in particular the availability of sufficient funds in the Change Budget or the provision, or binding commitment (in a form acceptable to xoserve) to provide, funding from the User Pays Customer members of the relevant UPUCSG), then the relevant Change Order will be referred back to the Relevant Governance Committee. Any User Pays Customer may then, should it choose to do so, submit a new or revised Change Order pursuant to the provisions of paragraph 2.1 above and the Services Schedule Change Procedure will recommence.
- 6.2 If the BER states that, in xoserve’s view, after further business analysis, the Service Change may reasonably be implemented, the Relevant Governance Committee will then consider the BER and shall either agree on one of the proposed Design Options and approve the BER on that basis, or elect to cancel the Change Order.
- 6.3 The Services Schedule Change Procedure will not progress until the Relevant Governance Committee has agreed and approved the BER in accordance with its then prevailing terms of reference.

7 Development and Implementation

- 7.1 If the Relevant Governance Committee agrees and approves the BER, any necessary development and implementation funding has been provided or committed (in a form acceptable to xoserve), and there are no required Contract Changes or changes to the Agency Charging Statement detailed in the BER, xoserve will commence work to develop and implement the chosen Design Option.
- 7.2 If the Relevant Governance Committee agrees and approves the BER, but there are required Contract Changes or changes to the Agency Charging Statement then:
- 7.2.1 the Contract Changes will be referred to the User Pays Contract Expert Group for consideration; and/ or (as appropriate)
- 7.2.2 the revised Agency Charging Statement will be submitted to Ofgem pursuant to the provisions of Standard Special Condition A15 of the Transporter’s Licence.
- 7.3 Once the Contract Changes have been agreed and the Conditions varied in accordance with clause 3.1 of the Conditions, the Agency Charging Statement has been modified pursuant to the provisions of Standard Special Condition A15 of the Transporter’s Licence, and any necessary development and implementation funding has been provided or committed (in a form acceptable to xoserve), xoserve will proceed to implement the chosen Design Option and the changes to the Service Schedules as set out in the BER shall be made and shall be binding on all User Pays Customers.
- 7.4 xoserve will provide ongoing progress reports to the Relevant Governance Committee as the development and implementation of the chosen Design Option progresses. This will include performance against planned timescales and budgets.

8 Post Implementation Appraisal

- 8.1 xoserve will complete a post implementation appraisal and provide a report to the Relevant Governance Committee.

9. Interpretation

- 9.1 For the purposes of this schedule 2, in assessing whether a Service Change can or cannot reasonably be implemented, xoserve may have regard to, by way of illustration but without limitation, the following factors:

- 9.1.1 any increased likelihood of xoserve incurring non-recoverable costs in providing the Services;
- 9.1.2 the potential for the Service Change to adversely impact on xoserve's delivery of its existing legal and contractual obligations;
- 9.1.3 the Transporters' regulatory obligations (including without limitation those under the Uniform Network Code and the Transporter's Licence) and xoserve's obligations under the Agency Services Agreement; and
- 9.1.4 xoserve's existing capability to perform the Services, as they would be varied by the proposed Service Change.

- 9.2 In the performance of this Services Schedule Change Procedure, all parties shall act without unreasonable delay.

10. Notification

- 10.1 If at any time xoserve is unclear as to whether any of UPUC or UPUCSG has approved or agreed any documents (including without limitation a BEO, BER, EQR, Change Order or Design Option) then it can require confirmation at the subsequent meeting.
- 10.2 xoserve shall not be required to process a Service Change until it has received any required confirmations under this paragraph 10 and shall not be in breach of this Framework Agreement for not processing a Service Change in circumstances where it has not received the relevant confirmations.