

Contract for the Provision of Non-Code User Pays Services

Refinements register

Framework Contract		
Clause	Current wording	Meeting Attendee Consensus
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	Amend to cover xoserve to reasonably accept service requests
Conditions		
Definitions: Confidential Information	means any and all confidential and commercially sensitive information acquired by either party about the other party's business and/or given by one party to the other party and/or generated by either party from the other party's Confidential Information;	Definition to be expanded – xoserve to provide additional background as to why the change is proposed
2.3	These Conditions supersede and replace all other terms and conditions previously notified to the Customer in connection with the provision of the Services in respect of the period prior to the date on which the Framework Contract became effective.	Further words to be added to expressly cover rights accrued under previous arrangements, such that existing rights are not impacted by the new contract.
3.4	xoserve may from time to time add additional Service Schedules to these Conditions by publishing the same on the Website. In the event of an additional Service Schedule the Agency Charging Statement may require modification accordingly. Any such modification shall be made in accordance with the provisions of Special Standard Condition A15 of the Transporter's Licence. The addition of Service Schedules shall not amount to an alteration or change of these Conditions or of the Service Schedules for the purposes of this	Amend to be more explicit re the ACS modification e.g. "to include the Charges for the services detailed in the additional Service Schedule"

	clause.	
4.2	To enable xoserve to perform the Services, 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. 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.	Amend to limit clause to data only relating to the services provided
5.8	The Customer shall be responsible for the payment of any and all bank charges which may be incurred (either by the Customer or xoserve) in the payment and receipt of payment of xoserve's invoices.	Amend to be more clear on requirements i.e. that xoserve receives the full amount it has invoiced after taking into account any charges incurred due to the Customer, but not xoserve.
7 Data Protection	<p>Clauses 7.4 and 7.5</p> <p>In performing the Services, to the extent that xoserve is processing any Personal Data provided to it by the Customer xoserve agrees to comply with its obligations under the DPA as a Data Processor.</p> <p>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 but xoserve shall continue to comply with its obligations under clause 0 above.</p>	Comments received and being reviewed. Changes will be proposed by xoserve, with the same intent as the present terms but through different wording. Attendees expressed concern in light of the sensitivities surrounding data protection and indicated they would welcome early sight of what is to be proposed.
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,	Comments received re last sentence – regarding payment for all reasonable expenses incurred. The contract will be amended to meet reasonable Customer costs.

	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 reinstatement of the data.	
8.3	The obligations of confidentiality shall continue indefinitely except they shall not apply to information:	In light of comments, xoserve would be happy to amend to limit of 5 years beyond the end of the contract. Attendees were surprised by the suggested change, and xoserve agreed to speak to the party who had raised the suggestion.
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 any of the Service Schedules) 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 relevant Service Schedules.	Comments received re what if xoserve action leads to termination (also 10.4). Under review by xoserve, with an initial view that remedies are already provided by the contract. xoserve will either explain why no change is proposed to the party which raised the issue, or propose an appropriate change. CB questioned the link between this clause and the 10 day notice period under Schedule 4. AM clarified that the notice under Schedule 4 to relinquish an IAD account would not terminate the service.
10.2	xoserve may terminate the Contract and/or a Service Request by giving the Customer 12 months' notice of termination in writing.	KW suggested a reasonableness test was needed, which xoserve agreed to consider.
11.3	Neither party shall be liable (including without limitation to refund Charges or pay liquidated damages) 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	Amend to cover circumstances where customer pays in advance for services

	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.	
11.5	Without prejudice to Section U1.9 of the Uniform Network Code, the	To be amended to cover all of UNC, not just specific clause
Schedule 1		
Notice details for xoserve		Amend to cover the xoserve Contract Manager being a named person within xoserve
Schedule 3 E Mail Reporting		
Clause 2.3.1 and 2.3.2	the number of Email Reports being prepared by xoserve on the date of issue of its Email Reporting Request Acknowledgement exceeds twenty (20) in aggregate in respect of all persons (including the Customer); or Uniform Network Code obligations (including without limitation the Annual Quantity (as defined in the Uniform Network Code) review process and system changes notified via the UK Link Committee) at the relevant time are such that it is not reasonably practicable for xoserve to produce the Email Reports in accordance with such performance measures,	Consider requirement / method of advising where daily volume exceeded, or where UNC obligation is taking precedent – to be dealt with operationally rather than in contract.
Schedule 4 IAD Services		
Introduction	The normal operational hours of the IAD Service are from 06.00 to 22.00 hours Monday to Saturday (excluding all bank	Add reference to normal operations include daily re-fresh.

	and public holidays).	
Performance standards		Amend as per the UPUG 2 nd June presentation, in line with SPAA amendment.
Schedule 6 Registered user Portfolio Report Service		
Report schedule		Finalise delivery dates for each report to enable performance to be measured.
Schedule 7 Telephone Enquiry Service		
Clause 4.4	For the avoidance of any doubt, no reduction to the Charges shall be applied in the event that there is any failure to amend the Customer Password in accordance with the provisions of paragraph 2.5.3, nor shall xoserve incur any liability as a consequence thereof.	Amend to cover for liabilities if xoserve fail to update password within required time, with the scale of liabilities consistent with the rest of the contract. CB, supported by other attendees, suggested this principle should also apply to password resets in Schedule 4 to similarly incentivise the speed of IAD password resets. GF suggested he would prefer to develop self service resets in preference to liabilities. Shippers felt they would prefer to see liabilities until self service was available, and were concerned that xoserve's proposed reset functionality was not fit for purpose. GF said a simpler approach would be offered, in light of feedback received. HB emphasised that xoserve faced a challenge in light of their service provider contract, and introducing liabilities would have cost implications for xoserve and consequently users. AM suggested that perhaps password resets should be a chargeable service with associated liabilities. xoserve agreed to take this away and consider what could be offered.