

**This document details the contract refinements as discussed at the meeting on 24/25<sup>th</sup> June 2008 and an update provided by xoserve for submission to the October 2008 User Pays User Group meeting.**

For the avoidance of any doubt, this document is to assist in general understanding only. Nothing in it has any contractual effect nor shall any of it form any part of a contract for the provision of user pays services.

### **Refinements register**

<b>Framework Contract</b>		
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. <i>Clause 2.6 amended accordingly.</i>
<b>Conditions</b>		
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 <i>Definition more explicit regarding confidential information being pursuant to the Contract.</i>
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. <i>Clause 2.3 amended accordingly.</i>
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	Amend to be more explicit re the ACS modification e.g. “to include the Charges for the services detailed in the additional Service Schedule” <i>Clause removed following conclusion of the change discussions.</i>

	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 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 Clause 4.2 amended accordingly.
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. Clause 5.8 amended accordingly
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</p>	<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.</p> <p>Clause 7.4 amended, this amendment means there is no requirement to amend clause 7.5</p>

	computer systems but xoserve shall continue to comply with its obligations under clause 0 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.	Comments received re last sentence – regarding payment for all reasonable expenses incurred. The contract will be amended to meet reasonable Customer costs. <i>Clause 7.6 amended accordingly.</i>
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. <i>Clause has not been amended. A number of contradictory comments were received from customers on this section. xoserve has concluded that the current wording is appropriate for the contract.</i>
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. <i>Clause 10.1 has not been amended to address the points raised. Instead, Clause 10.4 has been amended to remove the limitation of liability on xoserve.</i>
10.2	xoserve may terminate the Contract and/or a Service Request	KW suggested a reasonableness test was needed, which xoserve agreed to

	by giving the Customer 12 months' notice of termination in writing.	consider. Clause 10.2 has not been amended to address this particular point. A reasonableness test is already inbuilt within the arrangements. The Gas Transporters have a licence condition to make available User Pays services, this is discharged under the ASA.
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 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.	Amend to cover circumstances where customer pays in advance for services Clause 11.3 has been amended accordingly.
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 Clause 11.5 has been amended accordingly.
Schedule 1		
Notice details for xoserve		Amend to cover the xoserve Contract Manager being a named person within xoserve xoserve has considered this and has concluded the arrangements as proposed i.e. a providing a nominated position will be better for the ongoing management of the Contract.
Schedule 3 E Mail Reporting		
Clause 2.3.1	the number of Email Reports being prepared by xoserve on the	Consider requirement / method of advising where daily volume exceeded, or

and 2.3.2	<p>date of issue of its Email Reporting Request Acknowledgement exceeds twenty (20) in aggregate in respect of all persons (including the Customer); or</p> <p>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,</p>	<p>where UNC obligation is taking precedent – to be dealt with operationally rather than in contract.</p> <p>Where the daily volume is exceeded, xoserve will not acknowledge the Service Request without first notifying the customer that the daily volume has been exceeded. If the customer still wishes the Service Request to proceed, xoserve will then issue an acknowledgement (assuming all other relevant validations have been passed).</p>
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 and public holidays).	<p>Add reference to normal operations include daily re-fresh.</p> <p>The introduction has been expanded to cover the daily re-fresh</p>
Performance standards		<p>Amend as per the UPUG 2<sup>nd</sup> June presentation, in line with SPAA amendment.</p> <p>The performance standards have been updated.</p>
Schedule 6 Registered user Portfolio Report Service		
Report schedule		<p>Finalise delivery dates for each report to enable performance to be measured.</p> <p>A separate schedule is available for publication.</p>
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.	<p>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.</p> <p>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</p>

		<p>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.</p> <p>Clause 4.4 has been amended to accommodate this suggestion regarding Telephone Enquiry Service password re-sets. The other comments are being addressed through system enhancements.</p>
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Additional comments recorded in the marked-up version of the contract discussed at the meeting, but not recorded on the Refinements Register:

Clause	Comment	xoserve response
Defined term “Charges”	Check is references to monies and sums should read charges	A check has been completed, the references are considered to be correct
5.10	xoserve to consider whether 5.10 can be restricted to make it clear the remedy will be used as a last resort	xoserve has considered this and believes the clause as written permits xoserve to apply discretion based upon the circumstances.
6.4	If under the terms of a Service Schedule the Customer considers that it is entitled to a rebate of Charges or to liquidated damages, to claim such rebate or liquidated damages 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 or liquidated damages as promptly as possible amend to read just promptly after the Customer becomes aware of the circumstances giving rise to the potential claim and in	Clause 6.4 has been amended accordingly

	any event within 90 180 suggested by Contract Expert Group days of the date on which the Customer did become aware [or (if earlier) should reasonably (having acted with all due diligence) have become aware] Contract Expert Group suggested deleting section in square brackets, which xoserve agreed to consider, of any such potential claim arising. Any such written notice must include:	
11.1	Clarify that liabilities are limited to the period for which maintenance is planned	Clause 11.1 has been amended accordingly
11.2	Contract Expert Group suggested making this “shall notify” not “reasonable endeavours”	Clause 11.2 has been amended accordingly
11.2.2	Add the words “in addition”	The words are not necessary, they do not add to the meaning of the clause
Schedule 3 Clause 2.3.2	Clause 2.3.2 details occasions where xoserve may not be able to deliver reports in accordance with the performance measures. E.g. during the AQ review. Attendees asked why this should apply to a chargeable service. xoserve offered to provide outages for the services, which would keep the contract simple. It was agreed that xoserve would look to clarify the circumstances for any such outage and potentially set a maximum number of days for this to apply.	xoserve has reviewed this. There are circumstances where other UNC obligations will either take priority over User Pays services, or will impact the data to be delivered under User Pays services. Because services can still be provided during these activities xoserve consider it is best to advise the industry in advance of the impacts of other UNC events and the customer can then decide if they wish to order services during these events.
Schedule 4 defined term IAD Account	Xoserve to consider a revised definition to avoid ambiguity and check implications for where an IAD account is referred to elsewhere	xoserve has reviewed the current definition and other references to IAD Account and consider that the definition and each use of the term IAD Account is clear.
Schedule 4 3.2.2 (c)	Update of data within 10 business days. Xoserve agreed to look at the process and consider the suggestion that the 10 business days should be reduced to 5.	xoserve reviewed this and presented their findings to the contract expert group. Essentially the costs built into the user pays charges are reflective of the 10 day period to correct data. xoserve could reduce the period to 5 days, but there would be an increase in xoserve costs which would have to be passed on

		through the charges.
Schedule 5	xoserve should consider encrypting the DVD	This is under review within xoserve but does not impact the contract terms
Schedule 6	xoserve to finalise delivery dates for reports	This has been completed and will be published shortly.
Schedule 7 2.1.3 (a)	The Contract Expert Group agreed that it may be appropriate to review the service standard in the User Pays User Committee.	Topic for a future UPUC
Schedule 7 2.2	It was suggested that the UPUC should consider the merits of strengthening this such that users are allocated a specific telephone number and this plus the password must be used as identification.	Topic for a future UPUC
Schedule 7 3.4	Add “within the same month” to the second sentence.	This addition is not required, and only creates conflict within the clause
Schedule 7 3.4	It was agreed that the UPUC could usefully consider the scope for monitoring usage and informing users when limits are being approached	Topic for a future UPUC
Schedule 7 4.3	It was agreed that the percentages involved merit discussion at the UPUC	Topic for a future UPUC