

**Contract for the Provision of Non-Code  
User Pays Services  
Contract Change**

# Agenda

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- Current position re governance
- Review of issues
- Review of options

# Summary of Current Position

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- Separate governance arrangements for the Terms and Conditions and the Service Schedules proposed
- Terms and Conditions
  - Process to support change to terms and conditions drafted.
  - 100% agreement required for changes to Ts & Cs to be made
  - Agreement in principle but still subject to further review
- Service Schedules
  - Proposals discussed at recent meeting
  - Opinions differ on extent of xoserve participation

# Progress Update

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- xoserve have reviewed how the service schedules could be redrafted to ensure:
  - the contract remains a workable document for all parties given the governance proposals.
  - xoserve is not exposed to increased and/or unacceptable risk if it was not able to vote on any changes

# Summary Position

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- Following detailed review and consultation with our legal team and our Board of Directors the conclusions are:
- Ts & Cs and Services schedules are inextricably linked
  - It is not possible to redefine the schedules such that they are still meaningful, or such that changes can be made without implications for the Ts & Cs.
- Without the right to vote on proposals xoserve could be exposed to unacceptable levels of risk.
  - Financial risk – eg funding of development costs
  - Business risk – eg system security, prioritisation conflicts
  - Pricing basis does not enable pricing for increased risk

# Alternative Proposals

## 1

- “One-size” change process for the entire Contract (conditions and service schedules)
- Changes to the Contract effective where 100% agreement from the parties
- Contract to have a termination date of [31 March 2010]
  - Generally, contracts without a right to terminate are not favoured under the Competition Act
  - User Pays will look different in 2, 5, 10 years
  - A right to terminate on notice leads to uncertainty (unsure when it could occur)
  - A fixed date leads to certainty
  - Intention would be to either use or modify the existing contract as required
- ACS supports concept of “ad hoc” services, so mechanism exists to meet individual (or sub-set of user community) requirements

# Alternative Proposals

## 2

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- Contract to have a termination date [31 March 2010]
- No ability to change by any party.
  - Defers the problem
  - Not desirable for any party to the contract
- Other Thoughts?
  - Better understanding of perceived issues / risks if xoserve have a vote might help with developing proposals
  - Can the combined thoughts of our lawyers help?

# Contract for the Provision of Non-Code User Pays Services – next steps

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- xoserve to conclude other outstanding contract points with relevant parties
- xoserve would welcome comments on the suggested way forward from Customers by 2 September