

# Agreement for the Supply of Services

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**Atos IT Services UK Limited**, Registered No: 01245534, England. Registered Office: Second Floor, Mid City Place, 71 High Holborn, London, WC1V 6EA

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This Agreement for the Supply of Services (the “**Agreement**”) is made between:

**Atos IT Services UK Limited** with registered company number 01245534 and its registered office at Second Floor, Mid City Place, 71 High Holborn, London, WC1V 6EA (“**Atos**”) or the “**Service Provider**”);

and

**Highways England Company Limited**  
of: Bridge House, 1 Walnut Tree Close,  
Guildford, Surrey, GU1 4LZ  
registered company number: 09346363

with an invoice address of:  
**Highways England Company Limited**  
FS Payments, The Cube, 199 Wharfside Street,  
Birmingham, B1 1RN ( the “**Customer**”)

This Agreement consists of this signature page (“the Signature Page”), the attached Terms and Conditions and the Schedules.

This Agreement (and all exhibits, appendices and amendments) may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same instrument, respectively. Executed copies of the signature pages of this Agreement transmitted by electronic signature or Portable Document Format (“**PDF**”) shall be treated as originals, fully binding and with full legal force and effect, and the parties waive any rights they may have to object to such treatment. Any party delivering an executed counterpart of this Agreement by electronic signature or PDF also may deliver a manually executed counterpart of this Agreement, but the failure to deliver a manually executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement.

Signed for and on behalf of  
**Atos IT Services UK Limited**

Signed for and on behalf of  
**Highways England Company Limited**



Name :   
Title : Regional Sales Operating Officer  
Date : 27 September 2019

Name :   
Title : Procurement delivery partner  
Date : 20 September 2019

## Terms and Conditions

### 1. DEFINITIONS & INTERPRETATION

“**Additional Charges**” means the charges for the chargeable work as notified to the Customer by the Service Provider.

“**Affiliate**” means any entity that directly or indirectly controls, is controlled by, or is under common control with that entity from time to time. For these purposes, “control” has the meaning ascribed to it in section 1124 of the Corporation Tax Act 2010.

“**Agreement**” means the Signature Page, the Schedules and these Terms and Conditions.

“**Brexit**” means the demission of the United Kingdom from the European Union in accordance with the European Union (Withdrawal) Act 2018 and any other arrangement entered into between H.M. Government and the European Union.

“**Business Day**” means Monday to Friday, excluding public holidays at the Site where the Equipment is located, and/or the Services provided.

“**Charges**” means the charges for the Services as set out in Schedule 1.

“**Clause**” means a clause in this Agreement.

“**Configuration Management Database**” means a database of Configuration Items and their attributes collected during the Implementation Services.

“**Customer**” means the party identified as such on the Signature Page.

“**Customer’s Authorised Buyer**” means the individual identified as such in the Implementation Services Process Document.

“**Customer Contract Manager**” means the Customer’s management point of contact for the Service Provider identified in the Implementation Services Process Document.

“**Customer Network Equipment**” means any of the End User Customer’s IT infrastructure, inclusive of but not limited to, personal computers, data network equipment, telecommunications network and all associated equipment, with which the Equipment is to inter-operate, which may be used by the Service Provider to provide the Services, as necessary.

“**Customer’s Third Party Service Supplier(s)**” means the supplier(s) to the Customer under the Customer’s Third Party Supplier(s) Service Contract(s) as set out in Schedule 2.

“**Customer Third Party Supplier(s) Maintained Equipment**” means the equipment which is the subject of the Customer’s Third Party Supplier(s) Service Contract(s) as set out in Schedule 2.

“**Customer’s Third Party Supplier(s) Service Contract(s)**” means the contract(s) (pricing details deleted by the Customer) for the Customer’s Third Party Service Supplier(s) as identified in the Implementation Services Process Document.

“**End User Customer**” means the ultimate entity purchasing the Services which may or may not be the Customer.

**“Equipment”** means the equipment which is the subject of a Service and which is listed in Schedule 2.

**“Ethics and Compliance Rules”** mean applicable national and international rules relating to the fight against corruption, money laundering, terrorist financing, fraud and tax evasion, respect for human rights, competition rules, export controls, national and international sanctions in connection with the performance of the Agreement.

**“Extension Term”** means the period of extension of the Minimum Term identified in Schedule 1 commencing on the day immediately following the last day of the Minimum Term.

**“Implementation Services”** means the service identified as such in the Services Descriptions.

**“Implementation Services Process Document”** means the document agreed by the parties as part of the Implementation Services.

**“Incident”** means an operational event which is not part of the standard operation of Equipment and or a Service and, in respect of Incident Management, equipment or services which are the subject of the Customer’s Third Party Supplier(s) Service Contract(s) as the case may be.

**“Incident Report”** means the Customer’s reporting of an Incident to the Service Provider’s Call Desk.

**“Invoice Address”** means the address for invoices set out above or any amendment thereto notified to the Service Provider in writing.

**“Letter of Agency”** means a letter of agency in which the Customer notifies the Customer’s Third-Party Service Supplier(s) and or its supplier(s) of Third Party Small Order Item(s) of the Service Provider’s appointment and authority.

**“Licensed Software”** means any replacement, Update or Upgrade to the Software supplied as part of the Services.

**“Minimum Term”** means the minimum term of this Agreement identified in Schedule 1 commencing on the Services Commencement Date.

**“Mini Project”** means a requirement for simultaneous On-Site MACs which exceed 5 or a requirement for simultaneous Remote MACs which exceed 30 or a requirement which the Service Provider anticipates will result in a quotation from the Service Provider with a value not in excess of £10,000 or which the Service Provider assesses as not sufficiently technically complex to require a Project Manager.

**“Network Operator(s)”** means a public or private telecommunications operator providing a network or services and regulated by a licence granted under the Telecommunications Act 1984.

**“Obsolete Equipment”** means Equipment which is either/or : non repairable, uneconomic to repair, no longer fit for purpose, decommissioned, disposed of, subject to a recall by the original supplier or otherwise agreed to be the case with the Customer.

**“On-Site MAC”** means a move, add, delete or change as described in Schedule 4.

**“Open Source Software”** means software contained within the Licensed Software where the source code is available to the general public for use and modification, generally free of charge and, in each case, where customers are granted a right to use such open source software via an open source licence.

**“Payment Milestones”** means the dates when payment of the Charges becomes due as set out in Schedule 1 and Clause 15.

**“Pre-Purchased MACs”** means the number of Remote MACs and or On-Site MACs which are purchased by the Customer as set out in Schedule 1.

**“Priority 1 or P1”** means:

- Incident(s) which severely impacts the business operation of the Equipment, its functions or applications in a production environment and for which no workaround is available; and/or
- Incident(s) which cause continuous or near continuous interruption of use of the Equipment and for which no workaround is available.

**“Priority 2 or P2”** means:

- Incident(s) which cause a very restricted use of the Equipment and/or availability of its applications, or its applications having poor quality (background noises, transmission faults, call processing is altered in such a way as to degrade service quality or handling of business data.); and/or

- Incident(s) which cause complete failure of a single component, module, or router element of the Equipment; and/or

- Incident(s) which cause intermittent disruption of use of the Equipment and for which no workaround is available.

**“Priority 3 or P3”** means:

- Incident(s) which slightly restrict use of the Equipment, its functions or applications; and/or

- Incident(s) which have a lesser business critical impact.

**“Project”** means a requirement which exceeds the parameters of a Mini Project.

**“Project Manager”** means the Service Provider’s nominated management point of contact responsible for the Implementation Services and Projects.

**“Recovery”** means reloading, to achieve Equipment in a working state, either via User data backups and/or full Equipment backups.

**“Remote MAC”** means a remote move, add, delete or change as described in Schedule 3.

**“Reporting Period”** means a calendar month.

**“Resolution”** means action that will resolve an Incident. This could be a work-around.

**“Respond”** means the action necessary to commence the diagnosis of an Incident. This may be by remote access or on-Site attendance.

**“Schedule”** means a schedule to this Agreement.

**“Services”** means the services purchased by the Customer as identified in Schedule 1 and described in detail in the Services Descriptions in Schedule 2.

**“Services Commencement Date”** means agreed date for commencement of the Services as set out in Schedule 1.

**“Service Dependencies”** means the dependency for each Service identified in the Services Descriptions or this Agreement.

**“Services Descriptions”** means the detailed descriptions of the Services set out in Schedule 2.

**“Service Credits”** means any Service Credits specified in Schedule 3 (Services Description, Service Levels and Service Credits) being payable by the Supplier to the Customer in respect of any failure by the Supplier to meet one or more Service Levels.

**“Service Development Manager”** means the Service Provider’s nominated management point of contact responsible for Service delivery.

**“Service Hours”** means the contracted service hours during which a Service is available as set out in the Services Descriptions.

**“Service Levels”** means the service levels set out in the Services Descriptions and as identified in Schedule 2.

**“Service Management System”** means the Service Provider’s tool providing workflow and trouble ticketing used to manage Service Requests.

**“Service Performance Report”** means the report produced under Service Level Management.

**“Service Provider Equipment”** means the equipment which the Service Provider installs on Site for the Service Provider’s use for provision of the Services.

**“Service Provider’s Service Centre”** means the centre(s) from which the Service Provider provides the Services.

**“Service Provider Small Order Item(s)”** means the item(s) of equipment which are handled by the Small Order Desk and to be supplied by the Service Provider as identified in the Implementation Services Process Document.

**“Service Provider Software”** means the software element of the Service Provider Equipment.

“Service Request” means a request for a Service.

“Signature Page” means the front page of this Agreement defined as such.

“Site(s)” means the site(s) where the Services will be provided as identified in Schedule 2.

“Software” means the software element of the Equipment at the date of this Agreement as updated and/or upgraded under this Agreement.

“Software Assurance” means the Service identified as such in the Services Descriptions.

“Software Assurance Term” means the period during which the Software Assurance will be supplied, as set out in Schedule 1.

“Third Party Small Order Item(s)” means the item(s) of equipment which are subject to Small Order and to be supplied by a Third Party Small Order Supplier(s) as identified in the Implementation Services Process Document.

“Third Party Small Order Supplier(s)” means the supplier(s) identified as such in the Implementation Services Process Document.

“Update/update” means a minor release (including fix releases and hot fixes) of software, denoted by moving from one minor release to another within one version number.

“Upgrade/upgrade” means a major release of software, denoted by change to its initial version number.

“User” means an authorised user of a Service as set out in the Service Description.

“Web Site” means the web site identified in Schedule 1 and any change thereto notified to the Customer in writing.

In this Agreement, use of the words “include”, “includes” or “including” shall be construed to mean “include without limitation”, “includes without limitation” or “including without limitation”, unless the contrary intention appears.

## 2. RELATIONSHIP OF CUSTOMER AND SERVICE PROVIDER

2.1 The Customer acknowledges that the Services have been selected by the Customer relying solely on its own judgement and that they are fit and suitable for its purposes.

## 3. CUSTOMER'S OBLIGATIONS

3.1 The Customer shall:

- 3.1.1 ensure that any Incidents are promptly reported in adequate detail to the Service Provider;
- 3.1.2 where the Service Provider is to provide Small Order Desk in respect of Third Party Small Order Item(s) and or Service Desk and or Multilingual Service Desk, complete and sign and send to the Service Provider the Letter of Agency;
- 3.1.3 ensure that the Customer Contract Manager is available to the Service Provider as reasonably required by the Service Provider to facilitate provision of the Services;
- 3.1.4 comply with its obligations and responsibilities set out in the Implementation Services Process Document;
- 3.1.5 ensure that the environmental conditions in which the Equipment is located at the Site comply with the manufacturers recommendations;
- 3.1.6 ensure that the Service Provider has full, safe, convenient, adequate (physical and remote) access to the Equipment at the Site and its associated documentation and the Site at all reasonable times (which may be outside of the Customer's normal working hours);
- 3.1.7 ensure that it and those for whom it is responsible do not hinder or interrupt the Service Provider's work;
- 3.1.8 comply with all statutory and regulatory requirements in relation to the Equipment and its use;

- 3.1.9 prevent anyone other than the Service Provider's staff from altering, disconnecting, adjusting, attempting to repair or otherwise interfering with the Equipment on the Site without the Service Provider's prior written consent;
- 3.1.10 promptly supply the Service Provider with such information as the Service Provider reasonably requires, and ensure that it is accurate and complete and ensure that subsequent significant changes to it are notified promptly to the Service Provider;
- 3.1.11 ensure that only properly trained staff operate the Equipment in accordance with best computing practice and that proper and adequate back-up plans and restart procedures are available;
- 3.1.12 ensure that the Network Operator(s)' connection point is undamaged and accessible to the Service Provider and repair any damage which prevents the connection of the Equipment;
- 3.1.13 at no cost to the Service Provider, ensure that the Service Provider and/or its subcontractors are authorised under a valid software licence to use any equipment and or the Customer Network Equipment necessary for the purposes of this Agreement;
- 3.1.14 take all reasonable precautions to prevent damage to or loss of Service Provider's Equipment and notify Service Provider immediately in writing upon becoming aware of any such occurrence;
- 3.1.15 not permit or cause any attachments to be connected to the Service Provider Equipment without the Service Provider's prior written consent (which shall not be unreasonably withheld);
- 3.1.16 ensure that all equipment, databases, access keys and other items upon which the Service Provider is reliant in order to provide the Services in accordance with this Agreement, and which it is not the responsibility of the Service Provider hereunder to provide, are provided in a timely manner and maintained in the condition necessary to facilitate provision of the Services by the Service Provider in accordance with this Agreement;
- 3.1.17 ensure that the Service Provider is promptly advised in writing of any upgrade to the Software which is carried out other than by the Service Provider;
- 3.1.18 ensure that Service Dependencies are fulfilled in a timely manner;
- 3.1.19 notify the Service Provider in writing of any planned changes to the Equipment which may affect the delivery of the Services;
- 3.1.20 provide safe and adequate working and storage space and such other facilities as the Service Provider may reasonably require;
- 3.1.21 ensure that the Service Provider is authorised to use the Customer Network Equipment for the purposes of this Agreement.

## 4. SUPPLY OF SERVICES

- 4.1 Subject to the Service Dependencies and Clause 4.9 below, the Service Provider shall provide Services Implementation following signature of this Agreement and use reasonable endeavours to provide the other Services from their respective Services Commencement Dates during any Service Hours and, subject to Clause 4.3, in accordance with any Service Levels.
- 4.2 The Service Provider may delegate any or all of its duties to subcontractors, subsidiaries or parent or affiliated companies (“Subcontractors”). A list of Subcontractors used by the Service Provider are set out in Schedule 5. The Service Provider shall notify the Customer of any change(s) to this list. The Service Provider shall be responsible for the acts and omissions of its

subcontractors in providing the Services hereunder as if such acts or omissions had been undertaken by the Service Provider directly, subject in each case to the limitations of liability set forth in this Agreement.

- 4.3 It shall be a Service Dependency for all Services which are dependent upon the Customer Network Equipment that it is sufficient to facilitate supply of the Services in accordance with this Agreement.
- 4.4 In addition to the provisions in Clause 20 below, the Service Provider's obligation to provide the Services is conditional upon the Customer complying with each of its obligations (in the timeframes required by the Service Provider or that are necessary to allow the proper performance of the Services by the Service Provider), including but not limited to the obligations in Clause 3, and in the event the Customer fails to do so:
  - 4.4.1 the Service Provider shall be relieved of its obligations to provide the Services to the extent that the Services are dependent upon the Customer's performance of its obligations; and
  - 4.4.2 such failure shall be construed as a material default for the purposes of Clause 18.3.1 and Clause 18.5 hereunder.
- 4.5 Time shall not be of the essence in respect of performance by the Service Provider of its obligations.
- 4.6 References to working days shall be Monday to Friday, 08:00 to 18:00hrs, excluding UK Bank Holidays.
- 4.7 Telephone calls to and from the Service Provider's Service Centre may be recorded.
- 4.8 The Service Provider may supply recycled/remanufactured parts, which shall be equivalent to new in performance, for the purposes of performance of the Services.

## 5. REMOTE MACS AND ON-SITE MACS

- 5.1 The Remote MAC and On-Site MAC Services are available for purchase and the Service Provider shall provide a quotation for such Services upon request.
- 5.2 Notwithstanding Clause 5.1, the Customer may pre-purchase a quantity of such Services (the Pre-Purchased MACs identified in Schedule 1).
- 5.3 Upon the anniversaries of this Agreement, the Service Provider shall assess the Customer's usage of the Pre-Purchased MACs in the previous year and if the Customer has not used all of them they shall be carried over into the next year. No credit shall be due in respect of any unused Pre-Purchased MACs existing at the time of termination of this Agreement. If the Customer has received such Services in excess of the Pre-Purchased amount, the Service Provider shall invoice the Customer at its current price for the difference.

## 6. DUE DILIGENCE

- 6.1 The parties acknowledge that the Service Provider has established the Services, the Service Levels, the Charges and otherwise based upon certain predicates which were known and understood by the parties prior to Brexit.
- 6.2 In the event that these predicates are compromised in any way as a function of the operation of Brexit (including by way of any action taken by either the United Kingdom or by the European Union and/or any of its member states following Brexit, or by means of any agreement effected by the United Kingdom and the European Union following Brexit), the Service Provider and the Customer shall agree, in good faith, any reasonable and necessary changes to the terms of this Agreement in writing by way of a written variation to this Agreement.

## 7. VARIATIONS

- 7.1 All changes to this Agreement shall be in writing.
- 7.2 The Service Provider may during the currency of this Agreement terminate supply of a Service in respect of Obsolete Equipment and any unexpired portion of the Charges for that Service shall be refunded. Prior to any such termination, the Service Provider and Customer shall discuss such Obsolete Equipment and shall, in good faith, seek to agree a course of action that is appropriate for both parties in the circumstances (which may include the Customer carrying out an upgrade or replacement of the Obsolete Equipment and/or the Service Provider providing a reduced service (where possible) in an attempt to support the Obsolete Equipment).
- 7.3 The Customer may, from time to time, vary the Sites by the addition of new sites and/or the removal of existing sites which are the subject of the Services, subject to:
  - 7.3.1 the Customer providing the Service Provider with no less than three (3) month's prior written notice of such requested addition and/or removal; and
  - 7.3.2 the parties agreeing in writing any changes to the Services as a result of such addition and/or removal which shall include, without limitation, such pro-rata change to the Service Provider's charges for 'Maintenance Service for OpenScope 4000' (listed in Schedule 1 (Charges)) as is proportionate to such addition and/or removal.

## 8. CHARGEABLE WORK

- 8.1 The Customer shall pay Additional Charges for all chargeable work agreed by both parties in writing and shall place an order for identified chargeable work it requires the Service Provider to carry out prior to its commencement and notwithstanding the Service Hours chargeable work shall be carried out during the Service Provider's working hours, save where agreed otherwise in writing.
- 8.2 Chargeable work shall mean work that both parties agree in writing that the Service Provider shall carry out in connection with, or as a result of:
  - 8.2.1 meeting a change in the requirements or practices of the Network Operator(s) or other relevant authority;
  - 8.2.2 loss of Customer-generated data, save where due to the Service Provider's negligence;
  - 8.2.3 errors in information supplied by the Customer and upon which the Service Provider has relied;
  - 8.2.4 Incidents existing prior to the Services Commencement Date save where such Incidents in respect of the Services are already the responsibility of the Service Provider under an existing written agreement between the Service Provider and the Customer;
  - 8.2.5 changes to the Equipment made other than by the Service Provider;
  - 8.2.6 updating or installation of virus protection software, save where it constitutes a Service;
  - 8.2.7 work which is identified as or caused by a Service Exclusion in the Services Descriptions;
  - 8.2.8 Services taking longer or attracting additional costs as a result of any of the above causes or the carrying out of excluded Services.

## 9. RISK AND TITLE

- 9.1 Throughout the duration of this Agreement, the Service Provider's Equipment located on the Customer's Site shall be at the Customer's risk.
- 9.2 All other equipment, such as tools and plant, taken onto the Customer's Site by the Service Provider or its contractors for the

purposes of this Agreement, shall, whilst on the Site, be at the Service Provider's risk, except insofar as any loss or damage to such equipment is due to the negligence of the Customer or those for whom it is responsible.

- 9.3 The Customer acknowledges that it acquires no legal or beneficial ownership in the Service Provider's Equipment whatsoever.
- 9.4 Where the Service entails provision of replacement parts by the Service Provider, the parts removed shall become the property of the Service Provider and replacement parts for Equipment, other than the Service Provider Equipment, shall become the property of the Customer except where such removed parts are the property of the Customer and the Customer has purchased the replacement parts (in which case both the removed parts and the replacement parts shall remain owned by the Customer). The aforementioned shall not apply to any Software.

## 10. WARRANTY

- 10.1 The Service Provider undertakes to exercise reasonable skill and care in the carrying out of its duties and obligations under this Agreement and all other warranties express, implied, statutory or otherwise are hereby excluded save where and to the extent that they may not be excluded by law.
- 10.2 The Service Provider provides no warranty for the Open Source Software programs contained in the Licensed Software and such Open Source Software shall be provided by the Service Provider "as is". The Open Source Software licences will define the warranty, if any, from the authors or licensors of the Open Source Software. The Service Provider specifically disclaims any warranties for defects caused by altering any Open Source Software program. The Customer has no warranty claims against the Service Provider in the event that the Open Source Software infringes the intellectual property rights of a third party.

## 11. LIABILITY AND ITS EXCLUSION AND LIMITATION

- 11.1 This Agreement sets out the entire liability of and exclusion and limitation thereof by the Service Provider under and/or in connection with this Agreement, whether by way of indemnity or otherwise, and in respect of breach of this Agreement or statutory duty, representations, statements or tortious act or omission including negligence.
- 11.2 Subject to Clause 11.9, in no event shall the Service Provider be liable for the following types of losses:
- 11.2.1 any and all direct or indirect:
- (a) loss of contracts; or
  - (b) loss of profits; or
  - (c) loss of anticipated savings; or
  - (d) loss of revenue; or
  - (e) loss of goodwill; or
  - (f) loss of business; or
  - (g) loss of the use of the Equipment; or
  - (h) loss or corruption of data or software programs; or
  - (i) financing expenses; or
  - (j) losses arising from interruption in the use or availability of data; or
  - (k) losses arising from stoppage to other work; or
- 11.2.2 any indirect, special or consequential losses; or
- 11.2.3 any loss or damage arising out of any failure by the Customer to keep full and up-to-date security copies of any software and data held or used by or on behalf of the Customer.
- 11.3 Subject to Clause 11.9, the Service Provider excludes, to the fullest extent permissible in law, all terms, conditions, warranties and stipulations, express (other than those set out in this Agreement) or

implied, statutory, customary or otherwise which, but for such exclusion, would or might subsist in favour of the Customer.

- 11.4 Subject to Clause 11.9, Service Provider shall not be liable for the fraudulent use of the Service Provider Equipment or the Equipment by the Customer and/or third parties (save where due to the Service Provider's negligence).
- 11.5. Subject to Clauses 11.6, 11.8 and 11.19, Service Provider's liability
- 11.5.1 arising due to events occurring in the period between signature of this Agreement and the first anniversary of the Services Commencement Date shall not exceed the Charges due in that period at the Site(s) in respect of which the liability arises; and
  - 11.5.2 arising due to events occurring in the periods between each anniversary of the Services Commencement Date shall not exceed the Charges due in each such period at the Site(s) in respect of which the liability arises.
- 11.6 Subject to Clause 11.9, the aggregate liability of Service Provider in respect of chargeable work shall be limited to the applicable Additional Charge.
- 11.7 Subject to Clause 11.9, Service Provider shall not be liable for any loss, costs, expenses and/or damages arising due to or in connection with a Network Operator(s) denying or withdrawing any connection facilities.
- 11.8 Service Provider's liability for damage to tangible property shall be limited to damage caused by its negligence and up to an amount of £2,000,000.00 in respect of each event or connected series of events and an annual aggregate of £5,000,000.00.
- 11.9 Service Provider does not limit or exclude its liability (if any) to the Customer:
- 11.9.1 for breach of Service Provider's obligations arising under Section 2 Supply of Goods and Services Act 1982, its amendments or any re-enactments;
  - 11.9.2 for personal injury or death resulting from Service Provider's negligence;
  - 11.9.3 under Section 2(3) Consumer Protection Act 1987;
  - 11.9.4 for any matter for which it would be illegal for Service Provider to exclude or limit or to attempt to exclude or limit its liability; or
  - 11.9.5 for fraud or fraudulent misrepresentation of Service Provider.

## 12. INTELLECTUAL PROPERTY RIGHTS - OWNERSHIP

All intellectual property rights in the Licensed Software and documents provided to the Customer in the performance of this Agreement and/or arising and created under and in connection with this Agreement shall remain vested in and/or automatically and immediately upon creation vest in Service Provider and/or its licensors as the case may be.

## 13. INTELLECTUAL PROPERTY INFRINGEMENT

- 13.1 For the purposes of this Clause 13.1, a reference to the Licensed Software shall be deemed to exclude Open Source Software. Subject to Clause 11, the Service Provider shall indemnify the Customer against reasonable costs and damages, incurred after the date of this Agreement, arising out of claims made against it by any third party, that the use of the Licensed Software and/or the Services infringes intellectual property rights of that third party which were published or acquired prior to the date of their supply under this Agreement, including patent, registered design right, trade mark, mask work, or copyright provided always that the Service Provider shall not be liable to indemnify the Customer if:
- 13.1.1 the infringement arises because the Service Provider has followed a design or instruction furnished or given by the Customer or the Licensed Software and/or the Services have been used in a manner or for a purpose or in a country not specified by or disclosed to and approved by the Service Provider in writing prior to the

date of this Agreement or if any Licensed Software has been used in association or combination with any other equipment not supplied or approved in writing by the Service Provider; or

- 13.1.2 the claim is in respect of costs and damages arising after the Service Provider has at its expense pre-empted, defended or settled the claim pursuant to Clause 13.3; or
- 13.1.3 The Customer has failed to comply with any of its obligations set out in Clause 13.2.

13.2 The Customer shall:

- 13.2.1 give the Service Provider the earliest possible notice in writing of any claim made or to be made or actioned, threatened or brought against it in respect of infringement of intellectual property rights as described in Clause 13.1;
- 13.2.2 not make any admission which is or may be prejudicial to the Service Provider in respect of an alleged infringement without the Service Provider's written consent;
- 13.2.3 permit the Service Provider at its expense to conduct any litigation that may ensue and all negotiations for a settlement of the claim in respect of any alleged infringement;
- 13.2.4 provide such assistance as the Service Provider reasonably requires in defending or settling the claim.

13.3 In pre-empting, defending or settling a claim for intellectual property rights infringement, the Service Provider may, at its option and expense, modify or replace the Licensed Software and/or the Services (provided that their specification and/or service descriptions (as appropriate) are substantially similar to those identified herein), or obtain a licence for the Customer to continue using the Licensed Software and/or the Services.

13.4 Notwithstanding any other provision herein, the Customer has no claim against the Service Provider in the event that any Open Source Software infringes the intellectual property rights of any third party.

#### 14. SOFTWARE LICENCES

14.1 Insofar as it is necessary to do so for the provision of the Services and where the Customer is the End User Customer, the Service Provider grants the Customer a non-exclusive, non-transferable licence to use the object code of the Licensed Software at the Site for the Customer's internal business use and by the number of licensed users, where applicable and, where the Customer is not the End User Customer, a licence to sublicense its customer as aforesaid and authorise such sublicensing, and all such sublicenses shall include materially the same provisions as are set out in this Clause 14.

14.2 Save as expressly provided by this Agreement, the Customer may not:

- 14.2.1 copy or permit the Licensed Software to be copied except for one back up security copy;
- 14.2.2 use the Licensed Software on behalf of any third party;
- 14.2.3 operate a software bureau or similar service using the Licensed Software;
- 14.2.4 remove any copyright or confidentiality notices contained in the Licensed Software and its related documentation;
- 14.2.5 amend the Licensed Software;
- 14.2.6 disassemble, decompile or reverse engineer the Licensed Software.

14.3 Any technological measures in the Licensed Software that are designed to prevent unlicensed or illegal use of the Licensed Software may not be removed and the Customer agrees to the

use by the Service Provider and/or its licensors of such measures.

14.4 The Service Provider and/or its licensors may automatically check the version level of the Licensed Software and/or its components that are being used by the Customer.

14.5 If the Customer requires information necessary to achieve the interoperability of the Licensed Software with other programs, it should contact the Service Provider. Any such information which is provided by the Service Provider shall only be used by the Customer to achieve such interoperability, and for no other purpose, and "interoperability" has the meaning within Section 50B of the Copyright Designs and Patents Act 1988.

14.6 Notwithstanding any other provision herein, any Licensed Software which is delivered with click-wrap or click-on license terms and conditions or is subject to an end user licence agreement which has been agreed in writing with the Service Provider, or is subject to Open Source Software licences, shall be subject to those terms/ that agreement in lieu of this Clause 14.

14.7 Where Licensed Software is subject to click-on or click wrap licence terms, the Customer hereby authorises the Service Provider to accept such terms on its behalf and accepts responsibility in respect thereof.

14.8 Usage rights to versions of the Licensed Software which are replaced will expire on such replacement. Existing copies must be either verifiably destroyed or returned to the Service Provider.

#### 15. CHARGES AND PAYMENT

15.1 Charges for the Implementation Services (if any) shall be due on signature of this Agreement.

15.2 Payment of the Charges for the Services (other than Implementation Services) shall be due annually in advance on the Services Commencement Date and each subsequent anniversary of the same, and for any renewals shall be due on the date of commencement of each renewal year.

15.3 Payment shall be made within thirty (30) days of the date of the Service Provider's invoice without deduction, set-off or counterclaim and time for payment shall be of the essence.

15.4 The Additional Charges shall be due the day following the day on which completion of an order for chargeable work occurs.

15.5 All invoices shall be sent to the Invoice Address.

15.6 All Charges and other payments due under this Agreement are exclusive of VAT which will be payable by the Customer.

15.7 Save in respect of the Minimum Term during which time the Charges shall be as set out in this Agreement, the Service Provider may increase the Charges by the change in the Retail Price Index (all items) with effect from the expiry of the Minimum Term and on each anniversary thereof by giving at least forty-five (45) days' prior written notice to the Customer.

15.8 The Service Provider may at any time increase the Charges, by reference to its current charges:

15.8.1 if revised software is installed by the Customer in the Equipment; and/or

15.8.2 if the Software installed in the Equipment is no longer a release supplied by its design authority save that the parties shall meet to discuss and agree, any changes to the Charges or any other terms of this Agreement where the Software is so affected; and/or

15.8.3 if the Equipment is extended by the Customer by the addition of further hardware or software.

15.9 If the Customer fails to make any or full payment in accordance with this Agreement, then, without prejudice to any other right or remedy, the Service Provider:

- 15.9.1 may recover what is owed by deducting money otherwise due by the Service Provider to the Customer whether under this Agreement or otherwise; and/or
- 15.9.2 will charge interest at the statutory interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998 and amendments thereto per month or part thereof on the unpaid sum for that period the sum remained properly due before and after any court judgement.

## 16. TAXES AND DUTIES

- 16.1 All fees and charges are stated exclusive of customs charges and duties. If the Service Provider is required to pay any such customs charges and duties, then such customs charges and duties shall be billed to and paid by the Customer.
- 16.2 If any withholding tax is levied on the sums due to the Service Provider under this Agreement, the Customer shall increase the sums payable to the Service Provider, so that the sum the Service Provider will receive after the payment of the withholding tax is equivalent to the sum the Service Provider would have received if no withholding had been made.

## 17. RELIEF

- 17.1 Should the Service Provider suffer loss or incur extra expense or its obligations under this Agreement be increased by reason of any delay, variation, interruption or suspension of or to the Services arising from or relating to Brexit or the consequences of Brexit (including any agreement entered into by the United Kingdom and the European Union or, in default of any such agreement, any action taken by the United Kingdom and/or the European Union and/or its member states) having an adverse impact upon the provision of the Services ("Brexit Events"), then, without prejudice to the Service Provider's other rights and remedies, the Service Provider and the Customer shall agree, in good faith, any reasonable and necessary changes to the terms of this Agreement in writing by way of a written variation to this Agreement which may include an extension of time for performance of the Services, relief from its obligations or any other adjustments to the terms.

## 18. TERM, TERMINATION AND TERMINATION CHARGE

- 18.1 This Agreement shall come into force on the date of signature and shall continue in force for the duration of the Minimum Term. The Customer may elect to extend the Agreement for the Extension Term by giving the Service Provider no less than 42 days prior written notice whereupon the Agreement shall continue in force until expiry of the Extension Term.
- 18.2 This Agreement shall automatically expire on the last day of the Extension Term (or, if the Agreement is not extended for the Extension Term, on expiry of the Minimum Term) unless the parties agree in writing to further extend the duration of this Agreement, on such terms as the parties so agree.
- 18.3 Either party may terminate this Agreement by written notice:
- 18.3.1 if the other party fails to remedy a material breach of this Agreement within forty-five (45) days of written notice identifying the breach and notifying of an intention to terminate; or
- 18.3.2 if the other party or its guarantor, if any
- (a) proposes or passes a resolution for its winding up or, in the case of a limited liability partnership, proposes or determines that it will be wound up (save for the purpose of a solvent reconstruction or amalgamation);
- (b) is subject to an order or notice issued by or a winding up petition presented to a court or other authority of competent jurisdiction for its winding up or striking off;
- (c) enters administration or is the subject of an application for administration filed at any court or a notice of intention to

appoint an administrator given by any person filed at any court;

- (d) proposes, makes or is subject to, any form of voluntary arrangement or any form of composition (in each case, whether company, partnership or individual) with its creditors generally, an application to a court of competent jurisdiction for protection from its creditors generally or a scheme of arrangement under Part 26 Companies Act 2006 (save in the latter case for the purpose of a solvent reconstruction or amalgamation);
- (e) has a receiver or a provisional liquidator appointed over any of its assets, undertaking or income;
- (f) threatens to or ceases to trade;
- (g) is unable to pay its debts within the meaning of section 123, or 267 and 268 of Insolvency Act 1986;
- (h) has any distraint, execution or other process levied or enforced on any of its property; or
- (i) is the subject of anything analogous to the foregoing under the laws of any applicable jurisdiction
- 18.4 The Service Provider may terminate this Agreement by written notice if the Customer fails to make payment in accordance with this Agreement within thirty (30) days of the date of written notice of the failure and of an intention to terminate.
- 18.5 If the Customer terminates this Agreement in breach of this Agreement or if the Service Provider terminates this Agreement in accordance with Clause 18.3 or 18.4, the Customer shall pay to the Service Provider all accrued Charges in respect of the Services, and an early termination charge comprising:
- 18.5.1 During the Minimum Term:
- all Charges which would otherwise have accrued due for the remainder of the year of the Minimum Term in which the termination takes place; and
  - 75% of all Charges which would otherwise have accrued due for the next year of the unexpired Minimum Term; and
  - 25% of all Charges which would otherwise have accrued due for each subsequent unexpired year of the Minimum Term.
- 18.5.2 During the Extension Term:
- all Charges which would otherwise have accrued due for the remainder of the Extension Term in which the termination takes place; and
  - in the absence of a notice of the period specified in Clause 18.2, all Charges which would otherwise have accrued due in the next renewal year of the Agreement.
- 18.6 Notwithstanding Clause 18.3.1 above, the Customer may, in lieu of terminating this Agreement, terminate only the affected Service.
- 18.7 The parties entire rights to terminate this Agreement are set out in this Clause 18.
- 18.8 Clauses expressed to or by their nature intended to survive termination of this Agreement shall survive any termination hereof.

## 19. RETURN OF SERVICE PROVIDER EQUIPMENT

- 19.1 Upon termination of this Agreement and following receipt of reasonable request of the Service Provider by the Customer, the parties shall agree a mutually convenient time, acting in good faith, for the Service Provider and its contractors to have safe access to retrieve any Service Provider Equipment recorded in the asset register maintained in connection with the Services by both parties. Any refurbishment or reinstatement costs at the Site will be the responsibility of the Customer.
- 19.2 The Service Provider will take reasonable care in the retrieval of the Service Provider Equipment.

## 20. SUSPENSION OF SERVICES

If the Customer fails to make payment in accordance with this Agreement, Service Provider may, by the service of at least ten (10) days written notice suspend provision of the Services and any reasonable costs thereby incurred by the Service Provider shall be paid by the Customer.

## 21. CONFIDENTIALITY

21.1 The parties may have access to information which is confidential to the other including, the Service Provider Software (which includes its structure, sequence, organisation and screen presentation, and any associated manuals and/or documentation which may not be copied without the Service Provider's prior written consent), information marked as confidential and/or information concerning business, finance, personnel and internal procedures "Confidential Information".

21.2 Confidential Information shall not be construed to mean information which is already in the public domain through no act or omission of the other party or breach of any Agreement or within the other party's lawful possession prior to the disclosure in connection with or under this Agreement.

21.3 Confidential Information may only be used by a receiving party for the purposes of this Agreement and, subject to Clause 21.4, may not be disclosed to any third party without the express written consent of the other party, and provided that such third party is bound by obligations of confidentiality materially in accordance with this Clause 21.

21.4 The Service Provider may disclose the Customer's Confidential Information to its Affiliates, suppliers and subcontractors it engages to carry out its business functions on its behalf (including those in relation to back office activities) or its obligations under or in connection with this Agreement, for the purpose of the carrying out of such functions and/or obligations, and provided that it ensures that such parties are bound by no less onerous obligations of confidentiality as set out in this Agreement. For the purposes of this Agreement, "Affiliates" shall mean any entity which is, in relation to a company, its parent undertaking, its subsidiary undertaking, or a subsidiary undertaking of its parent undertaking or any other entity controlled by or under the same control. "Parent undertaking" and "subsidiary undertaking" and "undertaking" shall have the meanings attributed to them in sections 1161 and 1162 of the Companies Act 2006.

## 22. THE WEB SITE

22.1 Where provision of the Services involves the use by the Customer of the Web Site, the Customer acknowledges that it is a condition of being a User and warrants that it will not:

- 22.1.1 Hack into the Web Site or any linked site;
- 22.1.2 Interfere with or seek to corrupt or alter any software accessible through the Web Site;
- 22.1.3 Introduce or cause to be introduced any computer virus into the Web Site or any linked site;
- 22.1.4 Disrupt or interfere with any part of the Web Site or any linked site;
- 22.1.5 Use the Web Site for any illegal or immoral activity;
- 22.1.6 Use the Web Site in any way which does or could cause nuisance or annoyance to any other party;
- 22.1.7 Disclose any password or account details which are provided to it hereunder to any other person or company.

22.2 Any data which is received by the Web Site will be retained for 6 months from the date of its receipt, whereupon it will be deleted. Thereafter summaries of such data will be retained for a period of 60 months from their date of production on the Web Site. Thereafter the data will be deleted and no copies will be retained.

22.3 The Web Site may only be used by the Users.

22.4 Upon termination of this Agreement the Customer shall return or destroy at the option of the Service Provider all confidential information related to the Services save to the extent that it is obligated by law to retain any such information.

22.5 The Service Provider shall not be responsible for (howsoever arising):

- 22.5.1 modifications made to the Web Site by persons other than the Service Provider's supplier or its nominee;
- 22.5.2 damage by virus to the Web Site;
- 22.5.3 hacking into the Web Site by any third party;
- 22.5.4 temporary bandwidth congestion causing problems of access to the Web Site;
- 22.5.5 interruption of internet connection; or
- 22.5.6 unlawful monitoring of telecoms traffic by the Customer.

## 23. FORCE MAJEURE

Neither party shall be responsible for any failure or delay in performance of its obligations under this Agreement (other than the obligation to make payments of money) due to any force majeure event including, but not limited to, Act of God, adverse weather conditions, volcanic eruption, earthquake or other natural disasters, refusal of licence (other than as a result of any act or omission of the Service Provider) or other Government act, governmental regulations superimposed after the fact, acts of war, threat of war, fire, explosion, embargo, sanctions, breaking off of diplomatic relations, terrorism, civil disturbance, accident, epidemics, pandemics, lightning damage, interruption or failure of utility services, communication line failures, power failure electromagnetic interference, radio interference, strikes, lock outs, industrial dispute, riots, or any other cause beyond its reasonable control, and in the case of the Service Provider, the occurrence of any of the aforementioned force majeure events to its subcontractors or suppliers which result in their delay or failure to perform. It is acknowledged that Brexit shall not be considered a force majeure event, save unless the political, economic or other consequences have, or are liable to have, a material adverse impact upon the ability of the Service Provider to Provide the Services in accordance with the commercial model that it generated prior to this Agreement being executed by both parties.

## 24. NON-SOLICITATION

The Customer shall not, during the term of this Agreement or for twelve (12) months afterwards, without the prior written consent of the Service Provider, either directly or indirectly through any company, firm or organisation employ and/or offer work under a contract for services to, any person who has been employed or engaged by the Service Provider in a technical, sales or administrative capacity and/or in a supervisory or managerial, technical, sales or administrative capacity, in respect of the performance of this Agreement in the previous 12 months and/or at any time during this Agreement, or approach any such person with the intention that the Customer (or any third party) might employ that person or enter into a contract for services with them. Where the Customer is not the End User Customer, it shall ensure that this obligation is passed on to its customer along with an obligation to similarly bind its respective customer.

## 25. DATA PROTECTION

25.1 The Service Provider shall maintain appropriate administrative, physical and technical safeguards for the protection of the security, confidentiality and integrity of Personal Data (defined in Schedule 4) as provided under this Agreement. Those safeguards shall include, but will not be limited to, measures for preventing access, use, modification or disclosure of Personal Data by any third party or Atos personnel except (a) to provide

the Services and prevent or address service or technical problems, (b) as required by law in accordance with the provisions of this Agreement, or (c) as expressly permitted in writing by the Customer.

25.3 The parties agree that the terms of Schedule 5 (Data Processing Obligations) shall apply to the extent that the Service Provider processes any Personal Data on the Customer's behalf in the provision of the Services, and the parties agree to comply with such terms. For the purposes of the 'Standard Contractual Clauses' referred to in Schedule 4, when applicable, the Customer is the data controller and data exporter.

## 26. SOFTWARE RELEASES

Where applicable in execution of the Services, the Service Provider may supply and install a later release of Software which will incorporate corrections and may include new features and functionality which, unless agreed otherwise in this Agreement or elsewhere in writing, shall be chargeable at the Service Provider's standard charge. Later releases of Software could create operational differences due to any new features and functionality and interoperability issues with any other equipment or the Equipment. The Service Provider shall use its reasonable endeavours to minimise such differences. However, the Customer shall be responsible for the cost of addressing any such interoperability issues. For the avoidance of doubt, this Clause 26 will not apply in circumstances where the Customer has purchased Software Assurance and/or any third party solution(s).

## 27. VIRUSES

The Service Provider shall use its reasonable endeavours, inclusive of use of reasonably commercially available current technologies, to prevent the introduction by it of any virus to the Service Provider Equipment, the Equipment or the Customer Network Equipment.

## 28. HEALTH AND SAFETY

28.1 The parties shall comply with applicable Health and Safety legislation.

28.2 The Service Provider shall comply with all reasonable safety requirements notified to it in writing by the Customer prior to the date of this Agreement and thereafter subject to agreement in respect of any cost implications.

28.3 The Customer shall take responsibility for ensuring that the Customer Network Equipment and the Equipment to which the Electricity at Work Regulations 1989 apply, is tested in accordance with these Regulations and any amendment thereto.

28.4 The Service Provider shall take responsibility for ensuring that any Service Provider Equipment to which the Electricity at Work Regulations 1989 apply, is tested in accordance with these Regulations and any amendment thereto.

## 29. WEEE REGULATIONS

In respect of any waste electrical and electronic equipment ("WEEE") or electrical and electronic equipment ("EEE"), as defined in Article 3 of Directive 2002/96/EC and any amendment or re-enactment thereof, which is to be replaced by the Service Provider Equipment and the title in which does not transfer to the Service Provider hereunder, the Customer shall, at its own expense, carry out all of the duties in relation to the treatment, disposal, recovery, re-use and/or recycling, and the financing of the treatment, disposal, recovery, re-use and/or recycling as set out in the Directive and applicable national legislation that implements it, as would otherwise fall on the Producer (as defined within the Directive).

## 30. ASSIGNMENT

30.1 This Agreement and the rights, obligations and remedies hereunder shall not be assignable or transferable by either party without the prior consent of the other party, such consent not to be unreasonably withheld.

30.2 Notwithstanding the above, the Customer's consent shall not be required for the transfer or assignment of this Agreement by the Service Provider in connection with the sale of any portion of the Service Provider's business, the sale of all or substantially all of its assets, or pursuant to any merger, consolidation or reorganization.

30.3 The Service Provider shall have the right to assign its right to receive due payment of any Charges to a third party and the Service Provider shall inform the Customer of the identity of such third party if and when such assignment takes place,

30.3 Subject to the other provisions of this Clause 30, this Agreement is binding upon and shall ensure for the benefit of the parties' personal representatives, assigns and successors in title.

## 31. EXPORT CONTROL AND CUSTOMS POLICY

31.1 The Service Provider's obligation to fulfil this Agreement is subject to the provision that the fulfilment is not prevented by any impediments arising out of national and international foreign trade and customs requirements or any embargos or other sanctions.

31.2 If the Customer transfers goods (hardware and/or software and/or technology as well as corresponding documentation, regardless of the mode of provision) delivered by the Service Provider or works and services (including all kinds of technical support) performed by the Service Provider to a third party worldwide, the Customer shall comply with all applicable national and international (re-)export control regulations. In any event the Customer shall comply with the relevant mandatory re-export control regulations.

31.3 If required to conduct export control checks, the Customer shall, upon request by the Service Provider, promptly provide the Service Provider with all information pertaining to the particular end customer, destination and intended use of goods, works and services provided by the Service Provider, as well as any export control restrictions existing.

31.4 The Customer shall indemnify and hold harmless the Service Provider from and against any claim, proceeding, action, fine, loss, cost and damages arising out of or relating to any noncompliance with export control regulations by the Customer, and the Customer shall compensate the Service Provider for all losses and expenses resulting thereof, unless such noncompliance was not caused by fault of the Customer. This provision does not imply a change in burden of proof.

31.5 Goods labelled with "Export List Number" not equal to "N" are subject to European authorisation when being exported out of the European Union. Goods labelled with "ECCN" not equal to "N" are subject to US re-export authorization. Even without a label, or with label "Export List Number: "N" or "ECCN:"N", authorization may be required due to the final end-use and destination for which the goods are to be used.

## 32. CUSTOMER'S NAME AND LOGO

Notwithstanding the provisions of Clause 21, the Service Provider and its third party suppliers and subcontractors shall, for the purposes of their internal and external communications, be permitted to use the Customer's name and logo and to advise third parties of the signature of this Agreement, its subject matter and the name of the Customer on any support material and media, including without limitation, in the press, on the Internet, in its commercial brochures and on lists of references that may be distributed among prospective customers and other third parties.

### **33. ETHICS AND COMPLIANCE**

- 33.1 The parties undertake to perform the Agreement in accordance with applicable laws and regulations and notably Ethics and Compliance Rules.
- 33.2 In case of potential non-compliance with Ethics & Compliance Rules, or any related event likely to affect the reputation of either party, the parties undertake to inform each other without any delay and to provide any information required by the other party on this matter.
- 33.3 The Customer accepts to submit in good faith to any audit process conducted by the Service Provider or any third-party selected by the Service Provider relating to compliance with Ethics and Compliance Rules, notably by giving access to its premises during normal business hours and providing without any delay the relevant information requested.
- 33.4 In case of non-compliance by one of the parties with its obligations under this Clause 33, the other party may immediately suspend the performance of the Agreement.
- 33.5 In case of a material breach of Ethics and Compliance Rules in connection with the performance of the Agreement by a party, the other party may immediately and unilaterally terminate the Agreement without being liable for any penalty or indemnification due to such termination.

### **34. CHANGE IN LAW OCCASIONED BY BREXIT**

Notwithstanding any other term of the Agreement, in the event of any changes in law or regulation arising as a result of Brexit, the Service Provider shall comply with such changes provided that where in complying with such changes the Service Provider incurs any additional costs, losses or expenses (whether direct or indirect), the Service Provider and the Customer shall agree, in good faith, any reasonable and necessary changes to the terms of this Agreement in writing by way of a written variation to this Agreement dealing with any such costs, losses and expenses.

### **35. GENERAL**

- 35.1 If any provision of this Agreement is invalid, illegal or unenforceable, the other provisions of this Agreement shall remain in full force.
- 35.2 Failure or delay by either party to enforce or exercise any right under this Agreement shall not amount to a waiver or bar to enforcement of that right.
- 35.4 Save as expressly set out in this Agreement, the Customer acknowledges that this Agreement has not been entered into

wholly or partly in reliance on, nor has it been given, any warranty, statement, promise or representation by or on behalf of the Service Provider.

- 35.5 Clause headings shall not affect the legal interpretation of this Agreement.
- 35.6 Notices shall be in writing and sent to the addresses set out herein, or such other address notified in writing.
- 35.7 Third parties have no rights under the Contracts (Rights of Third Parties) Act 1999 or any amendment to or re-enactment of it to enforce any provision of this Agreement.
- 35.8 Where the Customer is a partnership the partners shall be jointly and severally liable in respect of this Agreement.
- 35.9 Where the Customer is a partnership, the signatory for the Customer represents and warrants that it is acting as agent for the other partners and shall be deemed to have executed this Agreement on its own and their behalf.
- 35.10 Rights accrued at the date of any termination of this Agreement and rights intended by their nature to survive termination shall survive any such termination of this Agreement.
- 35.11 This Agreement, and any non-contractual obligations arising out of or in connection with it, shall be governed by and construed in accordance with the laws of England and Wales. Each party irrevocably submits to the exclusive jurisdiction of the courts of England and Wales in respect of any dispute, suit, action or proceedings which may arise out of or in connection with this Agreement.

### **36. ENTIRE AGREEMENT**

- 36.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous drafts, agreements, letters, proposals, discussions and other documents, arrangements and understandings between them, whether written or oral, regarding the Services and the matters addressed in the Agreement.
- 36.2 Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement.

**SCHEDULE 1**

**SERVICES COMMENCEMENT DATE, PRE-PURCHASED MACS, PAYMENT MILESTONES, MINIMUM TERM, EXTENSION TERM, CHARGES**

<b>PAYMENT MILESTONES:</b> Annually in advance
<b>MINIMUM TERM (of Agreement) (NOTE: any Software Assurance has a separate term):</b> Two years
<b>EXTENSION TERM (of Agreement):</b> One year
<b>SOFTWARE ASSURANCE TERM:</b> Not applicable (not included in the Services)
<b>SERVICES COMMENCEMENT DATE:</b> 1 October 2019

<b>Charges</b>			
Revised AtoS Bid (May 2019)			
<b>Services (per annum)</b>		<b>Additional Services (per annum)</b>	
<b>Atos annual charges</b>			
Annual Line Rental	£3,000	50 Engineer Days	£55,750
Maintenance Service: OpenScape 4000	£128,726	12 Days Configuration	£9,900
UPS Warranty	£3,492	Proactive Patch Management	£35,493
Cisco	£19,050	ServiceNow API	FOC
Service Management	£8,369	<b>Total</b>	<b>£101,143</b>
<b>Total</b>	<b>£162,638</b>		
<b>Additional one-off charges</b>			
Proactive Patch Management (to be applied to first year of Agreement)	£3,379		
Contract Set-up (to be applied to first year of Agreement)	£4,350		
Exit Charges (*show in Year 3 charges below but to be applied to final year of Agreement which may be Year 2 or Year 3 depending on whether the Extension Term is required)	£3,688		
<b>Total</b>	<b>£11,417</b>		
<b>Total annual charges during Minimum Term and Extension Term</b>	<b>Committed</b>	<b>Optional</b>	<b>Total due in each year of the Agreement</b>
<b>Year 1 (of Minimum Term)</b>	£170,367	£101,143	<b>£271,510</b>
<b>Year 2 (of Minimum Term)</b>	£162,638	£101,143	<b>£263,781</b>
<b>Year 3 (of Extension Term)</b>	£166,326*	£101,143	<b>£267,469</b>

SERVICE	PRE-PURCHASED MACs (VOLUME)
On-Site MAC	N/A
Remote MAC	N/A

SERVICE	VOLUME OF COMPONENTS OF THE EQUIPMENT
Network Performance standard reports Network Performance Reporting Enhanced Reports	N/A
Selected Components	As identified in the Service Provider's Configuration Management Database and agreed in writing during Implementation Services

## SCHEDULE 2

### SERVICES DESCRIPTION, EQUIPMENT, SITES, SERVICE LEVELS AND SERVICE CREDITS

#### 1. MANAGED SERVICE FOR THE RCC

The Contractor will provide an operational support model to support, maintain and manage on-site equipment so there is minimal disruption to the Telephony Service. The Contractor will provide processes for End Users to request changes, report incidents and have regular meetings with the Contractor's SLM. Where possible, the contractor will use its existing procedures and processes for RCC current operation and make modifications from time to time with the agreement of the Customer Authority as required. The Contractor's support model is structured according to the ITIL v3 service lifecycle framework.

The support model is a Service Desk to Service Desk operating model as outlined in figure 1

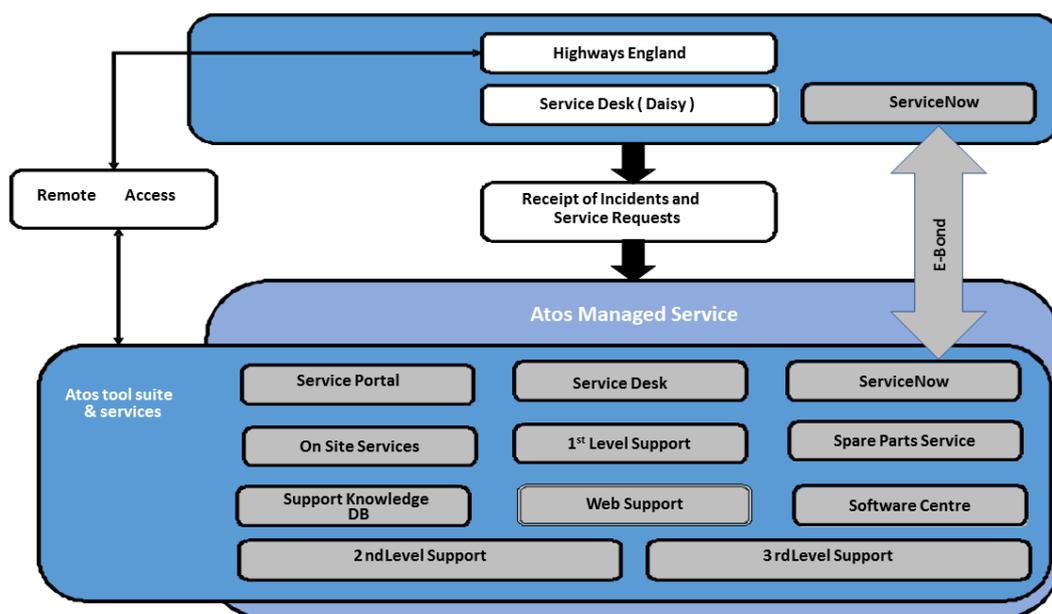


Figure 1 –Support model

#### 2. SERVICE DESK

Retain ownership of the Service Requests until closed

Notify the Customer Authority of Incidents identified by the Contractor

Manage Incidents relating to the following, chosen from the Contractor's list of options:

- For Incidents which relate to Equipment initiate and co-ordinate Remote - & On-Site Service where they form part of the Services
- For Incidents which relate to Customer Authority's Third Party Service Supplier(s), initiate and co-ordinate activities with the appropriate party
- For Incidents which relate to the performance of a Service, investigate and co-ordinate activities to effect a Resolution

- Validate that Service Requests for Remote Software Moves Adds and Changes are within the scope of the Services
- Assess whether a Service Request for Remote Software Moves Adds & Changes, or On-Site Moves Adds & Changes is a Mini Project, a Project, a Small Order or for User Assistance and advise the Customer Authority accordingly
- If it is a Remote SW Moves Adds and Changes and the requested changes are in accordance with the Process Document pass them to the Contractor's Remote Clearing Desk
- Update Service Level Manager of status of outstanding Service Requests
- Keep the Highways England Service Desk informed of progress and – where necessary – variations to the Incident in accordance with the Process Document
- Liaise with the Customer Authority Contacts in accordance with the Process Document

### 3. HOURS OF COVER

Incident Priority	Definition	Hours of Cover
Priority 1	Major incident, total loss of OS 4000 at a Site whereby 100% of IP handsets and analogue handsets at that Site are non-operational	24/7
Priority 2	Loss of a single OS 4000 peripheral card affecting multiple users. Loss of a single OS 4000 Legacy card affecting multiple users Loss of component within the OS 4000 core	24/7
Priority 3	Loss of a service to a single user or single device, Loss of peripheral equipment and handsets	24/7
Priority 4	Non service affecting enquiries, e.g.: Service Desk user enquiries. Request for information	Mon-Fri 08.00-18.00 Excl. Public holidays

Table 1 – Hours of Cover

### 4. SERVICE MANAGEMENT TOOLSET E-BONDING

The supplier will facilitate the creation of an e-bond between HE's instance of ServiceNow and Atos' instance of service now. The scope and deliverables associated with the E-Bond will be agreed between HE and Atos. The following elements will be included :

- Incident ticket updates and transfer
- Service request
- Problem management
- Change Management
- Asset & Configuration Management

Note : Direct user access to Service Now may be used for some elements

## 5. SITE LOCATIONS

### Equipment covered by the service

Equipment and locations covered by the service is shown below:

<p>Coleshill DC</p> <p>Coleshill Heath Road Coleshill Birmingham B46 6JB</p>			
Equipment	Software Level	Cisco IOS	Date installed
Cisco Router	N/A		26/01/2019
Cisco switch 1	CAT3K_CAA-UNIVERSALK9	16.3.7	30/01/2019
Cisco switch 2	CAT3K_CAA-UNIVERSALK9	16.3.7	30/01/2019
Openscape 4000	HicomVariant=UV8.2-SA22		30/01/2019
HiPath Manager	V8 R2.22.1		30/01/2019
Tiger Call Logger	Will be removed on completion of Hosted CIL solution		31/10/2013

<p>East Midlands RCC</p> <p>Eric Bellfield House Lawrence Drive Nottingham Business Park Nottingham NG8 6PZ</p>			
Equipment	Software Level	Cisco IOS	Date installed
WS-C3650-24PS	CAT3K_CAA-UNIVERSALK9	16.3.7	12/03/2019
WS-C3650-24PS	CAT3K_CAA-UNIVERSALK9	16.3.7	12/03/2019
Openscape 4000	UV4.0-R1.7.15		12/03/2019
Tiger Call Logger	Blue buffer box		12/03/2019

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<p>East RCC</p> <p>St Albans Road South Mimms Potters Bar EN6 3NP</p>			
Equipment	Software Level	Cisco IOS	Date installed
WS-C3650-24PS	CAT3K_CAA-UNIVERSALK9	16.3.7	06/03/2019
WS-C3650-24PS	CAT3K_CAA-UNIVERSALK9	16.3.7	06/03/2019
Openscape 4000	HicomVariant=UV8.2-SA22		06/03/2019
Tiger Call Logger	Blue buffer box		06/03/2019

<p>Hindhead Tunnel</p> <p>Principal Tunnel Services Booking Boundless Road Brook Godalming Surrey GU8 5LF</p>			
Equipment	Software Level	Cisco IOS	Date installed
WS-C3650-24PS	CAT3K_CAA-UNIVERSALK9	16.3.7	10/12/2018
Openscape 4000	HicomVariant=UV8.2-SA22		10/12/2018
Tiger Call Logger	Blue Buffer box		10/12/2018

<p>Northeast RCC</p> <p>Kestrel House Calder Business Park Peel Avenue Durkar Wakefield West Yorkshire WF2 7UA</p>			
Equipment	Software Level	Cisco IOS	Date installed
WS-C3650-24PS	CAT3K_CAA-UNIVERSALK9	16.3.7	20/02/2019
WS-C3650-24PS	CAT3K_CAA-UNIVERSALK9	16.3.7	20/02/2019
Openscape 4000	HicomVariant=UV8.2-SA22		20/02/2019
Tiger Call Logger	Blue buffer box		20/02/2019

Northwest RCC			
Rob lane Newton – Le Willows Warrington Cheshire WA12 0DS			
Equipment	Software Level	Cisco IOS	Date installed
WS-C3650-24PS	CAT3K_CAA-UNIVERSALK9	16.3.7	20/03/2019
WS-C3650-24PS	CAT3K_CAA-UNIVERSALK9	16.3.7	20/03/2019
Openscape 4000	HicomVariant=UV8.2-SA22		20/03/2019
Tiger Call Logger	Blue buffer box		20/03/2019
Announcement	Call announcement device		20/03/2019

Southeast RCC			
Nr M25 Jct 6 Fosterdown Godstone Surrey RH9 8BQ			
Equipment	Software Level	Cisco IOS	Date installed
WS-C3650-24PS	CAT3K_CAA-UNIVERSALK9	16.3.7	13/02/2019
WS-C3650-24PS	CAT3K_CAA-UNIVERSALK9	16.3.7	13/02/2019
Openscape 4000	HicomVariant=UV8.2-SA22		13/02/2019
Tiger Call Logger	Blue buffer Box		13/02/2019

Southwest RCC			
St Brendon's Court Avonmouth Bristol BS11 9FB			
Equipment	Software Level	Cisco IOS	Date installed
WS-C3650-24PS	CAT3K_CAA-UNIVERSALK9	16.3.7	06/02/2019
WS-C3650-24PS	CAT3K_CAA-UNIVERSALK9	16.3.7	06/02/2019
Openscape 4000	HicomVariant=UV8.2-SA22		06/02/2019
Tiger Call Logger	Blue buffer box		06/02/2019
West midlands RCC			
Unit 1			

Quinton Business Park 1 Ridgeway Birmingham B32 1AF			
WS-C3650-24PS	CAT3K_CAA-UNIVERSALK9	16.3.7	26/02/2019
WS-C3650-24PS	CAT3K_CAA-UNIVERSALK9	16.3.7	26/02/2019
WS-C3650-24PS	CAT3K_CAA-UNIVERSALK9	16.3.7	26/02/2019
Openscape 4000	Hicom Variant=UV8.2-SA22		26/02/2019
Tiger Call Logger	Blue buffer box		26/02/2019
GPS receiver 1 & 2	SN 024919 / SN 024983		26/02/2019
Cisco ASA 5506	Remote access		19/08/2019
Zenox collector	Remote access		19/08/2019

## 6. SERVICE REPORTING

The supplier will provide monthly service reporting. A copy of the service report is supplied as an appendix to this schedule. Changes to the format and content of the report will be agreed and documented within the operational process document including

- Availability and SLA performance by OS4K instance and overall estate
- Incidents ticket status by Priority
- Response times by Priority and failure by exception all to be reported
- Restore times by Priority and failure by exception all to be reported
- Service Requests
- Root Cause analysis for P1 and P2 Service affecting Incidents
- Open Incidents (P1 & P2)
- Supplier identified incidents
- Continuous Service Improvements (Offered, planned and delivered)
- Change Management (planned, unplanned, delivered and failed)
- Problem Management

The Supplier shall provide Incident, Problem and Improvement data from their internal system monitoring within the reporting pack

## 7. AVAILABILITY MEASUREMENT

Availability shall be measured by the Contractor as a percentage of the total time in a Service Period, in accordance with the following formula:

$$\text{Availability \%} = \frac{\text{MP} - \text{SD}}{\text{MP}} \times 100$$

MP = total number of minutes, excluding Planned Maintenance, within the relevant Service Period.

SD = total number of minutes of Service Downtime, excluding Planned Maintenance and failure of the OS 4000 caused by OS 4000 Legacy Cards, in the Service Period

The above measurement will be used to measure both site, and overall availability

## 8. SERVICE LEVEL TARGET AND SERVICE FAILURE THRESHOLD

The values to calculate the Service Credit is detailed in table 2. Failure to meet the availability targets below will result in the credit defined within the table.

Reporting period = Per Calendar month

SLA	Threshold	Min Service Credit	Increment	Max Threshold	Max Service Credit
Individual Site availability	99.8%	3% of site monthly contract charge	1% per 0.1%	99%	10% of site monthly contract charge
Overall availability	99.95%	5% of overall monthly contract charge	1% per 0.01%	99.9%	10% of overall monthly contract charge

## 9. INCIDENT MANAGEMENT

This section covers all the services that constitute the managed service for the Equipment on the Sites.

All Services will have a maximum priority as set out in table 3

Equipment	Service Priority				Comments
	Priority 1	Priority 2	Priority 3	Priority 4	
OS 4000 Core	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Note 1
OS 4000 peripheral cards	N/A	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Note 2
OS 4000 legacy cards	N/A	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Note 2
Ethernet switch	N/A	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Buffer box	N/A	N/A	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Call logger	N/A	N/A	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
UPS	N/A	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Announcement device	N/A	N/A	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	

OS Manager	N/A	N/A	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
IP handsets and analogue handsets	N/A	N/A	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	

Table 3 Priority levels by equipment

#### Notes

1. This includes the CPU, PSU for all OS 4000 shelves and the OS 4000 shelf interface cards
2. This includes analogue extension cards, the CDG cards that provides DASS and DPNSS signalling protocol cards.

Atos will identify and make recommendations for service improvements that will be reviewed during the monthly cross supplier review meeting with Highways England.

## 10. INCIDENT PRIORITY LEVELS

Incident Priority Levels for the Telephony Service are set out in table 4.

Incident Priority	Definition
Priority 1	Major incident, total loss of OS 4000 at a Site whereby 100% of IP handsets and analogue handsets at that Site are non-operational
Priority 2	Loss of a single OS 4000 peripheral card affecting multiple users. Loss of a single OS 4000 Legacy card affecting multiple users Loss of component within the OS 4000 core
Priority 3	Loss of a service to a single user or single device, Loss of peripheral equipment and handsets
Priority 4	Non service affecting enquiries, e.g.: Service Desk user enquiries. Request for information

Table 4 Incident Priority Levels for the Telephony Service

## 11. REMOTE INCIDENT RESPONSE TARGETS

Remote Incident Response targets are defined below

Service Measure	SLA	
Remote Response times	Priority	SLA
	P1	0.25 hours
	P2	1 hour
	P3	2 hours

Table 5. Response Targets

## 12. INCIDENT RESOLUTION

Resolution targets are defined in the table below

Service Measure	SLA	
Service Restoration times.	Priority	SLA
	P1	4 hours
	P2	8 hours
	P3	24 hours

Table 6. Incident resolution targets

## 13. MAJOR INCIDENT MANAGEMENT

Atos/Unify will participate in the Major Incidents Management (MIM) conference call for major incidents and escalations as required. This will enable Atos/Unify to collaborate with HE in order to resolve the incident. Atos/Unify will contribute to the completion of post MIM event documentation / RCA's as and when requested to do so by the MIM / problem management team.

For conferences calls, update / timescales will be agreed between Atos/Unify and HE.

Full details of the MIM process will be agreed and documented in the OPD.

## 14. REMOTE MONITORING

Atos will provide a remote access solution selected from the options detailed in the white paper (v3) provided to HE in June 2019. The white paper is supplied as an appendix to Schedule 2. The supplied solution will comply with HE's Information security requirements and ISO27001 requirements.

## 15. CAPACITY MANAGEMENT

Atos will utilise Zenoss analytics as an addition to the current Zenoss platform in order to provide usage reporting information on the supplied service.

Atos will monitor system capacity utilisation improvement recommendations by exception as part of the standard service offering.

## 16. SERVICE REQUESTS

Atos will provide HE with the ability to log service requests via the HE ServiceNow instance.

## 17. MAC DEFINITION

<i>OpenScape Voice</i>	<u>MAC Type</u>	<u>Class of MAC and MAC Count</u>			<u>Project Provision</u> (not classed as MAC)	<u>Notes</u>
<u>MAC tasks</u>	<u>Software (Remote),</u>	<u>Standard Provision</u>	<u>Complex Provision</u>	<u>Urgent Provision</u> (optional)		
<b>User Related MAC's</b>						
<i>Add or Delete Peripheral Port</i>						
Add New Peripheral Port (End Device Cost and provision not included)	SW	1			If > 10	Dependant on numbers could be classed as complex or project.
Cease Peripheral Port	SW	1			If > 30	Dependant on numbers could be classed as complex or project.
<i>Modify Peripheral Port</i>						
Change of Class of Service ( Per Feature)	SW	1	If > 5	Possible	If > 10	Allow / Dis Allow User features
Change to Trunk Access	SW	1	If > 5	Possible	If > 10	

Add / Delete extension from Hunt Group	SW	1		Possible	If > 10	
Add / Delete extension from Pickup Group	SW	1		Possible	If > 10	
Add / Delete extension Time of Day Changeover	SW	1		Possible	If > 10	
Change Name	SW	1		Possible	If > 10	
Change extension Key Layout (Labelling not included)	SW	1	If > 5	Possible	If > 10	
Change individual Short Code List max 10 entries	SW	1	If > 5	Possible	If > 10	
Add / Delete Hunt Group	SW	1		Possible	If > 10	Includes up to 10 members of the group
Add / Delete Pickup Group	SW	1		Possible	If > 10	Includes up to 10 members of the group
<i>Software Add, Modify or Remove End Device</i>						
Two Way Swap	SW	1	If > 5		If > 10	Includes all existing features
Three Way Swap	SW	2	If > 5		If > 10	Includes all existing features
Multiple Swap up to Max of 10	SW	1 Per Swap	If > 5		If > 10	Includes all existing features
Multiple Swap > 10	SW				Yes	Needs to be planned classed as project
<i>OpenScope Voice</i>	<u>MAC Type</u>	<u>Class of MAC and MAC Count</u>			<u>Project Provision</u> (not classed as MAC)	<u>Notes</u>
<u>MAC/Project Categories</u>	<u>Software (Remote),</u>	<u>Standard Provision</u>	<u>Complex Provision</u>	<u>Urgent Provision</u> (optional)		
<u>Additional User Services</u>						
<i>Add, Delete or Modify Voicemail Box</i>						
Add new Voicemail Box	SW	1	If > 5	Possible	If > 10	Subject to System Capacities
Change Class of Service to Voice Mail Box	SW	1	If > 5	Possible	If > 10	

Reset Voicemail Box Password	SW	1	If > 5	Possible	If > 10	
<i>Add, Delete or Modify ACD parameter</i>						
Add / Delete ACD user from group	SW		1		If > 10	
Release of new feature	SW	n/a	n/a	n/a	Yes	Requires rollout planning and full testing. Requires Change Control.

Table 7. MAC definition table

## 18. ENGINEER DAYS

Atos will provide up to 50 days of Engineering Man days of effort at a pre-agreed rate. The man days will be tracked and reported as part of the monthly reporting cycle. Man days will be called off and invoiced monthly as they are used.

## 19. SERVICE ASSET AND CONFIGURATION MANAGEMENT

Atos will update the HE ServiceNow CMDB with all the new assets supplied as part of the service. HE will review any existing assets with the Atos Client Manager to ensure the CMDB it is accurate/up to date.

Any exceptions moving forward caused by Incident/Change will be reported in the Monthly Reporting pack.

OS4K systems are backed up on a regular basis with local copies kept as a secondary backup

## 20. CONFIGURATION FILE CHANGES

Atos will provide up to 12 days of file configuration effort at a pre-agreed rate. The days will be tracked and reported as part of the monthly reporting cycle. Man days will be called off and invoiced monthly as they are used.

## 21. PROACTIVE PATCH MANAGEMENT

- Proactive Patch Management supports customers to master the challenge of efficiently managing patch update / hotfix requirements. Proactive patch management provides the following services:

Quarterly Software Inventory including operating systems where required

Release Planning provides customers with quarterly notification of vendor software updates (incl. operating system on a monthly basis), validates which software updates are actually relevant for the target systems, and then seeks approval from the customer for installation of relevant software updates.

Software Implementation provides quarterly installation of new software updates and rollback in case of software update failure.

- Prerequisites for Proactive Patch Management (PPM)  
A patch window needs to be agreed with HE and Atos/Unify
- The Process  
A ticket for Proactive Patch Management (PPM) will be raised with Atos/Unify Service Desk automatically on the agreed patch window day  
The Patches will be reviewed/applied using the agreed process with HE  
Ticket will be closed on Atos/Unify ServiceDesk

## **22. EQUIPMENT RACKED BATTERY/UPS MAINTENANCE**

Atos/Unify provide one battery health check per annum at each of the Nine sites managed by the service.  
UPS Maintenance is backed off to Riello and is managed by Atos/Unify and covers the following:

Riello Platinum Service which comprises:

Remote Network Monitoring

Service Hours of 24x7x365

P1 and P2 SLA: 4 hour response, no guaranteed fix time

Parts are excluded and are chargeable

## **23. CALL LOGGING**

Call logging will be provided via the Atos hosted DC for the 9 sites

## **24. ANNOUNCEMENT DEVICE**

Announcement device is covered under the proposed service agreement on a 24/7 basis and will be reported on as / when appropriate in the monthly reporting pack. Changes can be made locally or optionally with the assistance of onsite engineering attendance.

## **25. SOFTWARE ASSURANCE**

Software assurance is not included

## **26. HANDSET MAINTENANCE**

Handset Maintenance is not included

**SCHEDULE 3  
ON-SITE MAC & REMOTE MAC**

**N/A**

**SCHEDULE 4**  
**DATA PROCESSING OBLIGATIONS**

This Schedule 4 sets out the parties' obligations regarding the protection of Personal Data, associated with the processing of Personal Data on behalf of the Customer by Atos. The measures provided for in this Schedule shall apply to any and all activities associated with this Agreement. The provisions set forth below apply where Atos processes Personal Data for the purposes of performing the Services.

The terms used in this Schedule 4 shall have the meanings set out below and shall prevail over the definitions in Clause 1 of the Agreement. Capitalized terms used in this Schedule 4 not otherwise defined below shall have the meaning defined in the GDPR or, where not defined in the GDPR, the meaning given to them in Clause 1 of this Agreement.

**1. Definitions**

The following words and expressions shall have the meanings set out below:

**Applicable Data Protection Law** means the laws and regulations relating to the processing and protection of Personal Data applicable in the country where Atos is established. In particular, Applicable Law means:

- (a) EU Regulation 2016/679 (General Data Protection Regulation (the "GDPR"));
- (b) Member State laws or regulations relating to the processing and protection of Personal Data implementing or complementing GDPR; and
- (c) any other applicable laws or regulations relating to the processing and protection of Personal Data for the purpose of this Agreement;

**Associated Company** means any entity controlled by or under the same control as or controlling the relevant Party, where control means owning or controlling the majority (more than fifty percent (50%)) of the voting rights, either directly or indirectly, or, if no voting stock exists, possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of the concerned entity;

**Atos Group** means Atos and all its Associated Companies;

**Binding Corporate Rules** or **BCR** mean those rules (and the associated protocol) for the processing of Personal Data pursuant to the Applicable Data Protection Law which Atos SE (being the ultimate parent entity of Atos and acting for and on behalf of Atos and its affiliate entities) has agreed with the European Commission, such that Atos and its affiliate entities shall be entitled to process personal data in any jurisdiction where Atos and its affiliate entities operate without infringing the Applicable Data Protection Law and without Atos having to enter into any model clauses for the processing of Personal Data with the relevant affiliate entity.

**Customer Personal Data** means any Personal Data processed by Atos on the Customer's behalf pursuant to the Services under this Agreement;

**Data Controller (or Controller)** means the natural or legal person which alone or jointly with others determines the purposes and means of the Processing. For the purposes of this Agreement, the Customer acknowledges that it is the Data Controller for the processing of Customer Personal Data undertaken for the provision of the Services under this Agreement;

**Data Processor (or Processor)** means any natural or legal person which processes Personal Data on behalf of and under the strict instructions of the Data Controller. For the purposes of this Agreement, the Customer acknowledges Atos is the Processor for the processing of Customer Personal Data undertaken for the provision of the Services under this Agreement;

**EEA** means the European Economic Area.

**Personal Data** means any information relating to an identified or identifiable natural person ("**Data Subject**"); an identifiable person is one who can be identified, directly or indirectly, in particular, by reference to an identification number or to one or more factors specific to his/her physical, physiological, mental, economic cultural or social identity;

**Processing** means any operation or set of operations which is performed upon Personal Data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction and "**Processed**" shall be construed accordingly;

**Third Party** means any company, other than an Atos Associated Company, which is engaged by Atos for the provision of the Services;

**Third Party Country** designates any country or jurisdiction outside the EEA which has not been recognized by the European Commission and/or competent data protection authorities as providing an adequate level of protection to Personal Data as per the provision of the GDPR; and

**2. The Customer's role and obligations**

2.1 The parties expressly agree that the Customer is the Data Controller for the Personal Data Processed for the purpose of the provision of the Services under this Agreement.

2.2 Provisions regarding processing

The Customer, as Data Controller, shall ensure that any Customer Personal Data Processed by Atos on its behalf for the purposes of this Agreement is Processed in accordance with Applicable Data Protection Law and shall ensure that it complies with its own obligations regarding the processing of Customer Personal Data. Accordingly, the Customer agrees and confirms that:

- 2.2.1 any Customer Personal Data is Processed on the basis of an adequate legal ground as permitted under Applicable Data Protection Law;
- 2.2.2 any Customer Personal Data is Processed for a defined, explicit and legitimate purpose;
- 2.2.3 any Customer Personal Data Processed is relevant and non-excessive in consideration of the purpose of the processing;
- 2.2.4 any Customer Personal Data is and will be maintained accurate and up to date for the entire term of the provision of the Services under this Agreement;
- 2.2.5 a term of retention has been defined for Customer Personal Data, which is legitimate in consideration of the purpose of the Processing and the nature of Customer Personal Data Processed;
- 2.2.6 complete, clear and accurate information is provided to the Data Subjects whose Personal Data is Processed under this Agreement, including, if relevant, information about the fact that Personal Data may be transferred outside the EEA;
- 2.2.7 Data Subjects whose Personal Data is Processed under this Agreement are granted adequate and effective means to exercise their rights with regards to the processing of their Personal Data in accordance with applicable legislation (access, rectification, update, erasure, etc. as applicable). Where the Data Subject's request is addressed directly to Atos, Atos shall promptly inform the Customer, Atos shall not be liable in cases where the Customer fails to respond to the Data Subject's request in total, correctly, or in a timely manner;
- 2.2.8 all adequate and necessary formalities, if any, or internal documentation, as per Applicable Data Protection Law, have been completed with all competent authorities or otherwise retained internally by the Customer;
- 2.2.9 it has conducted all relevant verifications and obtained all relevant information which it deems necessary regarding Atos and it is satisfied that Atos provides sufficient guarantees to process Customer Personal Data in accordance with the requirements of Applicable Data Protection Law.
- 2.2.10 it shall maintain a record of data processing activity.

#### **The Customer's processing instructions**

- 2.3 As Data Controller, the Customer shall provide Atos with documented instructions (the 'Instructions') regarding the processing of Customer Personal Data. The parties agree that the Customer's Instructions are a condition for Atos to be in a position to adequately assist the Customer with complying with its obligations under Applicable Data Protection Law.
- 2.4 The Instructions shall include, at least, a description of the purposes of the Processing, the nature of the Processing operations conducted on Customer Personal Data, the list of the categories of Personal Data Processed, the categories of Data Subjects whose data is being Processed and the applicable terms of retention of the Customer Personal Data Processed. The Customer will regularly assess the risks related to the processing carried out for the provision of Services performed by Atos and properly adapt its instructions.
- 2.5 The parties agree that the Instructions shall form part of an overall document entitled "Record of Processing Activities ("RPA"), which shall also contain details of the approach and technical measures deployed in relation to data processing including any sub-contract arrangements. The RPA is attached as Annex 1 to this Schedule 1 duly completed by Atos and the Customer. Should the Customer wish to make any amendments to the Instructions, it shall notify Atos at least thirty (30) days in advance in order for both parties to evaluate the proposed modifications. In the event that the Customer requests the implementation of modifications to the Instructions, it is expressly agreed between the parties that:
  - 2.5.1 such modifications may have a direct impact on the delivery of the Services which may require a review and modification of the terms of this Agreement, including the scope of the Services, the amount of the Charges and the applicable commercial terms;
  - 2.5.2 they shall negotiate in good faith the necessary revisions to the terms of this Agreement as necessary, including the term of implementation of requested modifications; and
  - 2.5.3 for the purpose of effecting the changes referred to in paragraphs 2.5.12.5.2 above, the parties shall use the variation procedure described in Clause 6 of the Agreement.

#### **3. Atos' role and obligations**

- 3.1 The parties expressly agree that Atos is the Data Processor in the event Atos collects or otherwise processes (including storing) Personal Data on behalf of the Customer when performing the Services.
- 3.2 Compliance with the Customer's Instructions
  - 3.2.1 Atos shall Process Personal Data on behalf of the Customer exclusively and only in accordance with the Instructions received from the Customer as documented in the RPA attached in Annex 1 to this Schedule.
  - 3.2.2 Any modification of, amendment to or replacement of such Instructions by the Customer shall be agreed only in accordance with paragraph 2.2 of this Schedule 5 above.
  - 3.2.3 If, for whatever reason, Atos is unable to comply with the Customer's Instructions in accordance with the above, Atos shall inform the Customer as soon as possible of such inability to comply, and the Customer and Atos shall agree an amendment to the Instructions to enable Atos to comply (such agreement not to be unreasonably withheld or delayed).

- 3.2.4 If Atos becomes aware of the fact that all or part of the Customer's Instructions may breach any Applicable Data Protection Law or any relevant applicable law, it shall inform the Customer of such potential breach and request revised Instructions, unless Applicable Data Protection Law or other applicable law prohibits the provision of such information, and the Customer shall amend the Instructions, with the reasonable assistance of Atos, in order to comply with such legislation. Such modifications may have a direct impact on the delivery of the Services which may require a review and modification of the terms of this Agreement, including, notably, the scope of the Services and the financial terms; in which case the parties shall negotiate in good faith the necessary revisions to the terms of this Agreement as necessary, including, notably, the term of implementation of requested modifications.
- 3.2.5 Atos shall in no event be liable or bear any responsibility for any breach of applicable law (including Applicable Data Protection Law) as a result of complying with the Customer's Instructions.
- 3.2.6 In any event, the Customer hereby expressly acknowledges and accepts that Atos shall not be bound by any Instructions that breach applicable law (including Applicable Data Protection Law) and Atos shall be entitled to suspend performance of such Instructions until the Customer conforms or modifies such Instructions. In such a case, Atos shall provide prior notice to the Customer of such intended suspension.

### **3.3 Assisting the Customer**

#### Data Subjects' rights

- 3.3.1 While the Customer is responsible for determining the manner in which it responds to Data Subjects requests to exercise their rights under Applicable Data Protection Law, Atos shall, in accordance with Applicable Data Protection Law and taking into account the nature of the processing, assist the Customer by appropriate technical and organizational measures, insofar as possible, for the fulfilment of the Customer's obligation to respond to requests for exercising the Data Subjects' rights in complying with its obligations.
- 3.3.2 Where the Data Subject's request is addressed directly to Atos, Atos shall inform the Customer of the receipt of such request without undue delay. In such a case, unless expressly agreed otherwise by the parties as part of the Services under this Agreement, Atos shall not directly answer such Data Subject requests. Atos shall not be liable in any case where the Customer fails to respond to the Data Subject's request in an accurate and timely manner.
- 3.3.3 Where Atos and the Customer have agreed that Atos shall be responsible for addressing Data Subjects requests, Atos shall respond to requests in accordance with the terms of the Agreement relating to such responses as part of the agreed Services.
- 3.3.4 Upon the Customer's reasonable written request, Atos shall assist the Customer to enable the Customer to comply with its obligations concerning requests for access, rectification and/or deletion and portability of Personal Data from a Data Subject and/or to enforce the rights of a Data Subject under Applicable Data Protection Law and/or to comply with requests received from a competent data protection authority, notably in the event of an investigation. The cost of Atos' assistance shall be invoiced and payable by the Customer at Atos' then applicable rates.

### **3.4 Security of processing**

- 3.4.1 Where the Customer requests and deems necessary, Atos shall, in accordance with Applicable Data Protection Law and taking into consideration the nature of the processing, assist the Customer in ensuring compliance with its obligation to define adequate technical and organizational measures to ensure the security and confidentiality of the Personal Data Processed under this Agreement.
- 3.4.2 Any change to the Services pursuant to this exercise shall be subject to the variation procedure described in Clause 6 of the Agreement.

### **3.5 Data Protection Impact Assessments**

Upon the Customer's reasonable written request, Atos shall provide the Customer with information Atos has reasonable access to and that is relevant to the processing of Personal Data by Atos under this Agreement, in order to enable the Customer to complete any reasonably necessary documents (such as a data protection impact assessment) or to enable the Customer to comply with its obligations to demonstrate or implement adequate technical and organizational measures for the purpose of ensuring the security of Customer Personal Data. The cost of Atos' assistance shall be invoiced and payable by the Customer at Atos' then applicable rates.

### **3.6 Records of processing activities**

- 3.6.1 Without prejudice to the Customer's own obligation under paragraph 2.2.10 above, Atos shall maintain a record of categories of Processing activities carried out on behalf of the Customer as part of the Services provided under this Agreement. Such record shall contain, for the Customer:
  - 3.6.1.1 the categories of data Processed and Processing activities carried out on behalf of Customer;
  - 3.6.1.2 where applicable, any international transfers of Personal Data; and
  - 3.6.1.3 where possible, a general description of the technical and organizational security measures implemented.
- 3.6.2 The Customer shall be entitled to request a copy of the above record on written request to Atos. Atos shall provide such copy within fifteen (15) Business Days of receipt of such request.

### **3.7 Other Atos obligations**

- 3.7.1 Atos confirms that its personnel in charge of processing Personal Data under this Agreement shall be bound by an appropriate obligation of confidentiality regarding the processing of Personal Data.
- 3.7.2 Atos shall ensure that its personnel in charge of processing Personal Data under this Agreement are required to participate in mandatory training or e-learning regarding the processing and protection of Personal Data.
- 3.7.3 Atos shall inform the Customer of any intended substantial change to the delivery of the Services which would have a significant impact on the processing of Personal Data.

### **3.8 Atos as Data Controller**

- 3.8.1 The Customer acknowledges that Atos may use its Associated Companies based anywhere in the world or Third Parties based in the United States of America (or such other Third Party Countries) to provide its service desk and/or back office functions. These functions are managed or subcontracted directly by Atos and any Personal Data processed by Atos, its Associated Companies or Third Parties in connection with such functions is undertaken by Atos for its own purposes as a Data Controller and not as Data Processor.

### **4. Subcontracting**

- 4.1 The Customer hereby acknowledges and accepts that Atos shall be entitled to share Customer Personal Data or subcontract (in whole or in part) the Processing of such Customer Personal Data for the purposes of the provision of the Services under this Agreement to any Associated Company of Atos or any Third Party.
- 4.2 The Customer is hereby duly informed of the identity of the Third Party subcontractors, and hereby expressly authorises them to be used by Atos for the provision of the Services as set out in the RPA. In addition, the Customer acknowledges and accepts that Atos may subcontract all or part of the Services to one of its Associated Companies as listed in Appendix 2 of the Binding Corporate Rules of the Atos Group (as described in paragraph 5 below) (an "**Affiliate**").
- 4.3 In the event that Atos intends to use a new Third Party subcontractor which is not identified in the RPA for the Processing of such Customer Personal Data, it shall inform the Customer of such intent. If the Customer wishes to object to Atos' use of such new Third Party subcontractor, the Customer shall notify Atos in writing within ten (10) working days after receipt of Atos' notice and shall provide its reasonable written material or legal reasons for such objection. For the avoidance of doubt, it is expressly agreed that the Affiliates shall not be governed by this provision and the Customer agrees that it shall not be entitled to object to the use of such Affiliates.
- 4.4 Atos shall implement or rely on appropriate documentation (contracts, binding corporate rules, codes of conduct, etc.) to ensure that the applicable Third Party subcontractor or Affiliate implements a level of protection for Customer Personal Data similar to the provisions set out under this Schedule.
- 4.5 Upon the Customer's reasonable written request, Atos shall provide the Customer with information Atos has reasonable access to and that is relevant to the processing of Personal Data by any such Third Party subcontractors and Affiliates under this Agreement, in order to enable the Customer to complete any reasonably necessary documents (such as a data protection impact assessment) or to enable the Customer to comply with its obligations to demonstrate or implement adequate technical and organizational measures for the purpose of ensuring the security of Customer Personal Data. The cost of Atos' assistance shall be invoiced and payable by the Customer at Atos' then applicable rates.

### **5. Transfers of Customer Personal Data to Third Party Countries**

- 5.1 By entering into this Agreement, the Customer hereby expressly acknowledges and accepts that Customer Personal Data may be transferred to and/or Processed by Affiliates and/or Third Party subcontractors as provided for in paragraph 4 above, including to entities located outside the EEA.
- 5.2 The members of the Atos Group are bound by Binding Corporate Rules (Controller and Processor) as approved by the European data protection authorities and as attached as Annex 3 to this Schedule (the "BCR").
- 5.3 The Customer acknowledges that, in the event that Atos transfers Customer Personal Data to any entity of the Atos Group located outside the EEA, the BCR constitutes a sufficient safeguard to establish that such entities provide an adequate protection to Personal Data as required under Applicable Data Protection Law.
- 5.4 For the purposes of this Agreement, Atos commits to comply with the terms of the BCR. Accordingly, the Customer hereby expressly consents that Customer Personal Data may be transferred to any of the Atos Group entities bound by the terms of the BCR as listed in Annex 2 of the BCR (attached). Atos shall make available by any appropriate means to the Customer any updates to Annex 2 of the BCR. The Customer commits to provide adequate information to Data Subjects regarding use of Atos as Processor (including Atos Group entities located outside the EEA) as well as the BCR which are available at [www.atos.net/privacy](http://www.atos.net/privacy).
- 5.5 In addition, the Customer hereby expressly consents to the transfer of Customer Personal Data to a Third Party (approved pursuant to paragraph 4) located in a Third Party Country.
- 5.6 Upon express request from the Customer, Atos shall provide the Customer with a list of subcontractors used by Atos for the provision of the Services.
- 5.7 Where Atos transfers Customer Personal Data to an entity located outside the EEA which does not fall within the scope of the BCR, provided the Customer has approved such Third Party under paragraph 4, the Customer hereby expressly grants Atos a mandate to enter into any relevant agreements to ensure that the receiving entity implements an adequate level of protection to Customer Personal Data.
- 5.8 Atos shall ensure that Third Party subcontractors provide an adequate level of protection to Customer Personal Data. For that purpose, Atos shall:

- 5.8.1 procure that any duly authorized subcontractor which processes Personal Data outside the EEA shall enter into and comply with the obligations set out in appropriate standard contractual clauses for the transfer of personal data as set out by the European Commission (or any competent authority) (in particular the European Commission's "Processor" Standard Contractual Clauses pursuant to decision 2010/593 in the format attached as Annex 4 to this Schedule) with the Customer or with Atos in accordance with the mandate granted above; or
- 5.8.2 implement alternative means to the Standard Contractual Clauses in order to ensure an adequate level of protection of Personal Data if acknowledged as appropriate by the competent European or local authorities.

## **6. Security and confidentiality measures**

### **6.1 Application of technical and organizational security measures**

- 6.1.1 Atos shall apply appropriate technical and organizational security and confidentiality measures aimed at preventing accidental or unlawful destruction, loss, alteration or unauthorized disclosure or access to Customer Personal Data as set out in the RPA..
- 6.1.2 The Customer expressly acknowledges that
  - 6.1.2.1 the technical and organizational security measures defined and applied by Atos are based on the Instructions and information it has received from the Customer which are used to assess and evaluate, with the Customer, the risks associated with the processing of Customer Personal Data;
  - 6.1.2.2 it has reviewed the technical and organizational security measures set out in the RPA and deems them adequate taking into consideration the risks of the processing and the defined purposes Processing.
- 6.1.3 Atos will not materially decrease the overall security of the Services during the term of this Agreement, without the prior written consent of the Customer.

### **Modification of technical and organizational security measures following modification of Customer Instructions**

- 6.1.4 The Customer expressly acknowledges and accepts that, in the event that it modifies its Instructions in accordance with the provisions of paragraph 2.2 above, the technical and organizational security measures initially defined and implemented may no longer be adequate to the risks of the Processing and the defined purposes of the Processing. Accordingly, the Customer acknowledges and accepts that such technical and organizational security measures may need to be adapted and that such adaptations may have an impact on the delivery of the Services and the terms of the Agreement, including, notably, the financial provisions.

### **6.2 Significant security threats and vulnerabilities**

- 6.2.1 The Customer shall inform Atos in respect of any particular threats or vulnerabilities that it becomes aware of.
- 6.2.2 The Customer acknowledges and accepts that significant security threats and vulnerabilities may, from time to time occur and be identified by Atos.
- 6.2.3 Where such threats and vulnerabilities result from or are connected to the Customer's technical or operational decisions (e.g. initial security measures decided, systems implemented, etc.), Atos shall, without undue delay, notify the Customer of said threat or vulnerability on becoming aware of such threat or vulnerabilities. Atos shall, where possible, recommend a course of action or remediation to suppress, mitigate or limit the impact of the threat or vulnerability and the parties shall agree any such changes under the Change Control Procedures under the Agreement.
- 6.2.4 Once notified, the Customer shall instruct Atos of its decided course of action without undue delay. In the absence of adequate Customer instructions, Atos shall not be required to take any action and shall in no event be held responsible or liable for any security event which may occur and result in a Breach (as defined below). Notwithstanding the above, in the event that the Customer's failure to provide adequate instructions causes a threat to Atos' or any of Atos' clients systems or data, Atos shall be entitled to take any action it deems reasonably necessary to protect its and its clients' systems or data. In such a case, Atos shall notify the Customer of its actions and shall be entitled to invoice the Customer for such activities at Atos' then applicable rates.

## **7. Breach of Personal Data**

- 7.1 A breach of Personal Data ("Breach") shall mean a breach of security leading to the accidental or unlawful destruction, loss, alteration or unauthorized disclosure of or access to Customer Personal Data Processed under this Agreement.
- 7.2 In the event of a Breach arising during the performance of the Services by Atos, Atos shall, without undue delay, after having identified and determined the main circumstances and consequences of the Breach, notify the Customer of the Breach, and provide the following:
  - 7.2.1 where possible, the categories and approximate number of Data Subjects concerned and the categories and approximate number of data records concerned;
  - 7.2.2 the name and contact details of the relevant contact point where more information can be obtained;
  - 7.2.3 where possible, describe the likely consequences of the Breach; and
  - 7.2.4 a description of the measures taken or proposed to be taken by the controller to address the Breach, including, where appropriate, to mitigate its possible adverse effects.

7.3 The Customer, as Data Controller, expressly acknowledges that it is responsible for ensuring compliance with Applicable Data Protection Law requirements and that it shall bear sole responsibility of completing such obligations (including, notably any formalities such as notifications).

#### 8. Audit

The Customer may, no more than once in any twelve (12) month period and subject to prior written notice to Atos of at least three (3) weeks, carry out or have an independent duly appointed third party established on the market for its auditing functions and bound by a strict written obligation of confidentiality in Atos' favour, carry out an audit of Atos' processing facilities in order to ensure the compliance with the obligations set out in this Schedule. Atos shall be entitled to reject any proposed third party auditor who is a competitor of Atos or any Affiliate. Such audit shall not exceed a period of twelve (12) hours in any twelve (12) month period, shall not hinder or otherwise disrupt in any fashion Atos' operations or business activities and shall only relate to that part of the relevant IT infrastructure which Processes the Customer Personal Data. Such control shall not relieve Atos of its obligations under this Agreement. Atos' assistance in relation to such activity shall be invoiced at Atos' then applicable rates.

#### 9. Personal Data on Termination of the Agreement

Upon termination of this Agreement for whatever reason, Atos shall cease Processing any Customer Personal Data on behalf of the Customer and, at the Customer's written option, shall either forthwith return to the Customer all of the Personal Data and any copies thereof in its possession, or destroy such Personal Data within 15 calendar days of being requested to do so by the Customer and provide written confirmation of such destruction, unless otherwise required by Law.

#### 10. Changes to this Schedule

Save where otherwise expressly stated in this Schedule 5, no modification of this Schedule and/or any of its provisions shall be valid and binding unless made in writing and signed by both parties, expressly stating that it applies to so modify the provisions of this Schedule 5.

#### ANNEX 1: DETAILS OF PROCESSING OF COMPANY PERSONAL DATA: the RPA attached includes:

- Instructions from the Customer (which shall include a description of the type of Personal Data and purposes of the data processing)
- Atos' technical measures and other relevant details in relation to data processing
- Security measures – which should satisfy the requirement that appropriate technical and security measures are in place
- Sub-contracting arrangements



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England 13 09 19.xls

#### ANNEX 2: INTERNATIONAL TRANSFERS FRAMEWORK: List of approved sub-contractors

*RPA to be agreed between the parties and attached here*

*See above*

#### ANNEX 3: INTERNATIONAL TRANSFERS - ATOS BCR



BCRs.zip

#### ANNEX 4:

European Commission's "Processor" standard contractual clauses pursuant to decision 2010/593 (as referred to in paragraph 5.8.1 of this Schedule)



Microsoft Word  
Document

**SCHEDULE 5**  
**SUBCONTRACTORS**

Daisy UK

Focus Services UK

Tiger Call Logging UK