

RESTRICTED - CONTRACTS

**SECRETARY OF STATE FOR
SOCIAL SECURITY
- and -
PATHWAY GROUP LIMITED**

**INFORMATION TECHNOLOGY
SERVICES AGREEMENT FOR
BRINGING TECHNOLOGY TO
POST OFFICES AND
BENEFITS PAYMENTS**

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THIS AGREEMENT is made the fifteenth day of May 1996
BETWEEN:

(1) The Secretary of State for Social Security, acting through and on behalf of the Department of Social Security and on behalf of the Department of Health and Social Services for Northern Ireland ("DSS");

(2) PATHWAY GROUP LIMITED whose registered office is at ICL House, Putney, London SW15 ("the CONTRACTOR").

RECITALS

WHEREAS:

- (a) DSS and Post Office Counters Ltd ("POCL") (collectively "the AUTHORITIES") wish to contract for the design, development, integration and establishment of the Service Infrastructure (as defined herein) and for the Services (as defined herein);
- (b) The AUTHORITIES and the CONTRACTOR have entered into an Agreement on the same date herewith ("the AUTHORITIES' Agreement") for the supply of the Service Infrastructure and the provision of certain of the Services which are of common interest to both AUTHORITIES;
- (c) DSS and the CONTRACTOR wish to contract for the provision of the DSS Services (as defined herein).

NOW THEREFORE IT IS HEREBY AGREED as follows:

PART 1 : INTRODUCTION

Clause 101. Contract Structure

101.1 The Related Agreements

This agreement forms part of a suite of three related agreements between the parties ("the Related Agreements") comprising:

- (a) a separate agreement between DSS, POCL and the CONTRACTOR ("the AUTHORITIES' Agreement");
- (b) this agreement between DSS and the CONTRACTOR ("the DSS Agreement"); and
- (c) a separate agreement between POCL and the CONTRACTOR ("the POCL Agreement").

101.2 Precedence of the Related Agreements

In the event of and to the extent only of any conflict or inconsistency between the provisions of the AUTHORITIES'

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Agreement and the provisions of the DSS Agreement, the provisions of the AUTHORITIES' Agreement shall prevail.

101.3 Amendments to Clauses, Schedules and Annexes of the DSS Agreement

The provisions of the DSS Agreement may not be amended unless such amendment is approved on behalf of the parties at the appropriate levels of authority as follows:

- (a) except as provided by paragraph (b) below, and subject to the change control procedures specified in Schedule A5 of the AUTHORITIES' Agreement, amendments to the Clauses, Schedules and Annexes of the DSS Agreement must be approved by the BA Project Director or his successor on behalf of DSS and by the Managing Director or his successor on behalf of the CONTRACTOR;
- (b) any amendment to the Clauses, Schedules or Annexes of the DSS Agreement which conflicts or is inconsistent with the Double Key Requirements in Schedule B4 of the AUTHORITIES' Agreement or of the Double Key Solutions in Schedule B5 of the AUTHORITIES' Agreement in whole or in part shall be subject to the approval of all three parties thereto in accordance with Clause 101.3.1 (a) thereof.

101.4 Other Changes

Changes in connection with the DSS Agreement which do not require any amendment to the DSS Agreement may be approved by the BA/POCL Procurement Manager or his successor on behalf of DSS and by the Managing Director or his successor on behalf of the CONTRACTOR in accordance with the change control procedures specified in Schedule A5 of the DSS Agreement.

101.5 Failure by the AUTHORITIES to Perform Obligations Under the Related Agreements

The CONTRACTOR shall not be liable to DSS for any failure to perform or delay in performing its obligations hereunder where the CONTRACTOR proves that such failure or delay has been caused directly by the failure of DSS or POCL to perform any of its obligations under the Related Agreements. This Clause shall not apply to Clause 808, which shall be governed by the specific rule stated in Clause 809.2.

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Clause 102. Interpretations

102.1 As used in the DSS Agreement:

102.1.1 the terms and expressions set out in Schedule A1 shall have the meanings ascribed therein;

102.1.2 the masculine includes the feminine and the neuter; and

102.1.3 the singular includes the plural and vice versa.

102.2 A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof.

102.3 Headings are included in the DSS Agreement for ease of reference only and shall not affect the interpretation or construction of the DSS Agreement.

102.4 References in this DSS Agreement to Clauses, Parts and Schedules are, unless otherwise provided, references to the clauses, parts, and schedules of the DSS Agreement.

102.5 In the event and to the extent only of any conflict or inconsistency between the Clauses and Schedule A1 and the Schedules (other than Schedule A1), the Clauses and Schedule A1 shall prevail. In the event and to the extent only of any conflict or inconsistency between the Schedules (other than Schedule A1), the provisions of Schedules 2, A2 to A11, A13 and A14 shall prevail over those of all other Schedules (other than Schedule A1), the provisions of Schedule A15 shall prevail over those of all other such Schedules, and the provisions of Schedule A16 shall prevail over those of the other Schedules except those of the Schedules listed above. Notwithstanding the foregoing, if and only to the extent that Schedule 3 expressly states that a particular requirement in Schedule A15 will be met in a particular form, manner or quantity, or at a particular time or place, the terms set out in Schedule 3 will prevail. Moreover, for the avoidance of doubt, DSS acknowledges that a particular solution in Schedule A16 shall not be treated as being in conflict or inconsistent with any requirement in Schedule A15 merely because the solution states that the requirement will be met in a particular form, manner, quantity, time or place.

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102.6 The Recitals are not legally binding, but are intended as a guide to the interpretation and construction of the DSS Agreement.

Clause 103. Severability

If any provision of the DSS Agreement is held invalid, illegal or unenforceable for any reason by any court or regulatory body of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the DSS Agreement had been executed with the invalid illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the DSS Agreement, DSS and the CONTRACTOR shall immediately commence good faith negotiations to remedy such invalidity. However, if DSS and the CONTRACTOR fail to conclude such negotiations within a reasonable period of time, the DSS Agreement shall terminate without further liability to any party (subject to Clause 902.7).

Clause 104. Law and Jurisdiction

104.1 The DSS Agreement shall be considered as a contract made in England and according to English Law and, subject to Clause 807, shall be subject to the exclusive jurisdiction of the English Courts to which the parties hereby submit.

104.2 Except as specified in Clause 101, the DSS Agreement is binding on DSS and its successors and permitted assignees and on the CONTRACTOR and the CONTRACTOR's successors and permitted assignees.

Clause 105. Entire Agreement

This DSS Agreement and the applicable provisions of the AUTHORITIES' Agreement constitute the entire understanding between the parties relating to the subject matter of the DSS Agreement and, save as may be expressly referred to or referenced herein, supersede all prior representations, agreements, negotiations or understandings with respect thereto, whether oral or in writing, except in respect of any fraudulent misrepresentation made by either party.

Clause 106. General Principles

106.1 The CONTRACTOR shall offer all reasonable assistance to DSS in preventing fraudulent use of the DSS Services

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and DSS Service Infrastructure by DSS employees and Agents.

106.2 The DSS Services and the DSS Service Infrastructure shall be provided in accordance with and comply with all relevant applicable industry standards as specified in Schedule A2.

106.3 For the avoidance of doubt, the CONTRACTOR shall ensure migration of appropriate automated systems without any reduction in existing service or security levels to DSS's customers.

Clause 107. Condition Precedent

The parties hereto shall have no obligation or liabilities hereunder until successful completion of the process of extrapolation and transposition of Schedules 3, A6, B1 to B5, B7, B8 and C5 of the AUTHORITIES' Agreement and of clarification of Schedule B1 of the AUTHORITIES' Agreement in accordance with Clause 201 of the AUTHORITIES' Agreement. The Schedules listed in Schedule 2 shall be populated from Schedules 3, A6, B1 to B5, B7, B8 and C5 of the AUTHORITIES' Agreement as specified in Schedule 2.

PART 2 : PERFORMANCE OF DSS SERVICES AND SUPPLY OF PRODUCTS

Clause 201. Performance of Basic DSS Services

201.1 The CONTRACTOR shall be responsible for meeting the requirements specified in Schedule A15 in accordance with the Solutions specified in Schedule A16 by performing the Basic DSS Services referred to in Clause 201.2. However, for the avoidance of doubt, and subject to Clause 102.5, the parties acknowledge that DSS's acceptance of the CONTRACTOR's solutions in Schedule A16, and their agreement to the service descriptions contained in the relevant Schedules of the DSS Agreement, shall not relieve the CONTRACTOR of its obligation to meet the requirements specified in Schedule A15, as modified by Schedule 3.

201.2 The CONTRACTOR shall perform the following Basic DSS Services in accordance with all applicable provisions hereof:

201.2.1 the DSS Development Services pursuant to Clause 402;

201.2.2 the roll out Services pursuant to Clause 404;

201.2.3 the DSS Steady State Services pursuant to Clause 405;

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201.2.4 the management Services pursuant to Clause 602;

201.2.5 the DSS Contingency Services pursuant to Clause 409; and

201.2.6 the Transfer Services pursuant to Clause 906.

Clause 202. Performance of Optional DSS Services

DSS shall have the option, exercisable on prior written notice thereof as specified in Schedule C1 to the CONTRACTOR, of obtaining the following Optional DSS Services:

202.1 The Optional DSS Services identified as such in Schedule A6 of the AUTHORITIES' Agreement.

Such Optional DSS Services shall be performed in accordance with all applicable provisions hereof.

Clause 203. Performance of Additional DSS Services

The CONTRACTOR undertakes to perform at any time during the term of the DSS Agreement such Additional DSS Services as may be agreed by it and DSS in accordance with the provisions of Clause 101.3 for the purposes contemplated by the Related Agreements and within the scope of the Advertisement. Such Additional DSS Services shall be performed in accordance with all applicable provisions of the DSS Agreement.

Clause 204. Supply of Basic Products

204.1 To support the performance of the DSS Services, the CONTRACTOR shall supply the following Basic Products in accordance with all applicable provisions hereof:

204.1.1 all of the Products comprising the DSS Service Infrastructure;

204.1.2 the Documentation.

204.2 The CONTRACTOR warrants that the Documentation comprises:

- (a) a complete set of operating manuals; and
- (b) a complete set of manuals for the DSS Service Architecture (which for the avoidance of doubt shall not include the DSS Service Architecture Design Document).

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Clause 205. Supply of Optional Products

DSS shall have the option, exercisable on written notice thereof as specified in Schedules B1 and B2 to the CONTRACTOR, of obtaining all or any of the following Optional Products:

205.1 items of the same type as the elements of the Service Infrastructure to be provided by the CONTRACTOR for use on the Premises (other than any Public Service Telecommunications Network Equipment).

The Optional Products shall be supplied in accordance with all applicable provisions hereof.

Clause 206. Supply of Additional Products

The CONTRACTOR undertakes to supply at any time during the term of DSS Agreement such Additional Products as may be agreed by it and DSS in accordance with the provisions of Clause 101.3 for the purposes contemplated by the Related Agreements and within the scope of the Advertisement. Such Additional Products shall be supplied in accordance with all applicable provisions hereof.

Clause 207. Supply of DSS Consumables

DSS shall have the option of obtaining all or any of the DSS Consumables in such quantities as may be reasonably required by DSS by giving the CONTRACTOR not less than thirty (30) days prior written notice thereof. The DSS Consumables shall be supplied in accordance with all applicable provisions hereof.

Clause 208. CONTRACTOR Consumables

The CONTRACTOR shall at its own expense provide all CONTRACTOR Consumables which are required for the performance of the DSS Services.

PART 3 : CONSIDERATION

Clause 301. Charges

301.1 Basic DSS Services

The Charges for the Basic DSS Services shall be calculated in accordance with the Common Charging Mechanism in

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Schedule A6 of the AUTHORITIES' Agreement and the provisions of Schedules D7 or E7 (as appropriate).

301.2 Optional DSS Services

The Charges for any Optional DSS Services shall be calculated in accordance with the Common Charging Mechanism or such other mechanism as may be specified to apply thereto in Schedule A6 of the AUTHORITIES' Agreement and the provisions of Schedules D7 or E7 (as appropriate).

301.3 Additional DSS Services

Whenever possible, the Charges for any Additional DSS Services shall be calculated in accordance with the Common Charging Mechanism or such other mechanism as may be specified to apply thereto in Schedule A6 of the AUTHORITIES' Agreement. Where it is agreed that this is not possible, such Charges shall be calculated in accordance with such alternative provisions as may be agreed by the parties and specified in Schedule A6 of the AUTHORITIES' Agreement.

301.4 Basic Products

The Charges for the supply of the Basic Products shall be included within the Common Charging Mechanism in Schedule A6 of the AUTHORITIES' Agreement.

301.5 Optional Products

The Charges for the supply of any Optional Products shall either (a) be included within the Common Charging Mechanism or such other mechanism as may be specified to apply to Optional DSS Services in Schedule A6 or the AUTHORITIES' Agreement or (b), if not so included, shall be calculated in accordance with the CONTRACTOR's then current list prices less the discount specified in Schedule A6 of the AUTHORITIES' Agreement, but shall in no event exceed the prices then generally offered in the United Kingdom for such products on similar terms.

301.6 Additional Products

The Charges for the supply of any Additional Products shall either (a) be included within the Common Charging Mechanism or such other mechanism as may be specified to apply to Additional DSS Services in Schedule A6 or the AUTHORITIES' Agreement or (b), if not so included, shall be calculated in accordance with the CONTRACTOR's then

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current list prices, but shall in no event exceed the prices then generally offered in the United Kingdom for such products on similar terms.

301.7 DSS Consumables

The Charges for the supply of any DSS Consumables shall be as specified in Schedule B4.

301.8 Variation of Charges

The Charges for Basic DSS Services, Optional DSS Services and Additional DSS Services shall be subject to annual variation in accordance with the procedures set out in Schedule A6 of the AUTHORITIES' Agreement.

Clause 302. Packaging

No additional charge shall be made for packaging used by the CONTRACTOR. All such packaging shall be removed by the CONTRACTOR at no additional cost when no longer required.

Clause 303. Payment

303.1 In consideration of the supply of the Products and the performance of the DSS Services in accordance with the provisions of the DSS Agreement DSS shall pay the Charges in accordance with the invoicing and payment procedure specified in Schedule A10.

303.2 Payment of Charges in relation to the DSS Services performed hereunder shall be made within thirty (30) days of receipt by DSS (at its nominated address for invoices) of a valid invoice, in accordance with the provisions of Schedule A10, from the CONTRACTOR.

303.3 In the event that the CONTRACTOR, in accordance with the terms of the DSS Agreement, enters into a supply contract or a sub-contract in connection with the DSS Agreement, the CONTRACTOR shall ensure that a term is included in the supply contract or a sub-contract which requires the CONTRACTOR to pay all sums due thereunder to the relevant supplier or sub-contractor within a specified period, not to exceed thirty (30) days, from the date of receipt of a valid invoice as defined by the terms of the supply contract or sub-contract (as appropriate).

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Clause 304. Value Added Tax

It is hereby agreed that the Charges are exclusive of Value Added Tax, which DSS shall pay to the CONTRACTOR at the rate and in the manner prescribed by law from time to time, subject to the production by the CONTRACTOR of a valid tax invoice giving the requisite details of the taxable supply.

**PART 4 : DEVELOPMENT, IMPLEMENTATION AND PERFORMANCE OF DSS
STEADY STATE SERVICES**

**Clause 401. Transfer of Undertakings (Protection of
Employment) Regulations 1981**

401.1 In the event that, by virtue of the application for whatever reason of the Transfer of Undertakings (Protection of Employment) Regulations 1981 (as amended or replaced from time to time) to the assumption of responsibility by the CONTRACTOR for the provision of all or any part of the Services hereunder, there is transferred to the CONTRACTOR any contract of employment of any employee of DSS and provided that the CONTRACTOR:

- (i) shall not have offered employment to such employee or otherwise have encouraged him to seek or to claim employment with the CONTRACTOR; and
- (ii) shall have notified the DSS in writing of the CONTRACTOR's intention to terminate the employment of such employee at least fourteen (14) days before terminating such employment; and
- (iii) shall immediately after such notification to DSS have given DSS reasonable opportunity to offer such employee reemployment with DSS; and
- (iv) shall have terminated the employment of such employee as soon after the date on which the CONTRACTOR first became aware of the transfer to it of his employment as permitted under the relevant contract of employment,

DSS subject always to the CONTRACTOR's proper observance of its obligations under this Clause, shall fully indemnify the CONTRACTOR from and against any and all liabilities and obligations which the CONTRACTOR may incur in connection therewith (including any liabilities and obligations accruing, prior to such transfer of employment, in relation to personal injury, sexual discrimination and any liabilities and obligations arising after such transfer of employment on the subsequent

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termination of employment by the CONTRACTOR of any such employees so transferred to it).

401.2 In the event of any claim or demand being made or action brought to which Clause 401.1 applies, DSS shall be promptly notified thereof and DSS shall at its own expense conduct all negotiations for settlement of the same and any legal proceedings that may rise therefrom. The CONTRACTOR, its sub-contractors, agents and employees shall at the request of DSS afford all reasonable assistance for the purpose of contesting any such claim or demand or action and shall be repaid any reasonable expense incurred in so doing and shall not make any admissions which may be prejudicial to the defence of any such claim or demand or action.

Clause 402. DSS Development Services

402.1 The CONTRACTOR shall perform the following DSS Development Services:

402.1.1 development of Optional DSS Services as described in Schedule C1;

402.1.2 development of the Card Management Service as described in Schedule E1;

402.1.3 development of the Payment Authorisation Service as described in Schedule D1;

402.1.4 development of the DSS Service Architecture Design Document; and

402.1.5 development of the DSS Contingency Services as described in Schedules D9 and E9.

Clause 403. DSS Operational Trial

403.1 The CONTRACTOR shall, during the DSS Operational Trial Period, make available the DSS Operational Trial System (which for the purposes of this Clause 403 shall include the DSS Service Architecture Design Document) for the DSS Operational Trial as set out in Schedules F1 to F5 to be performed in accordance with the timetable set out in Schedule F2. DSS shall be entitled to subject all Basic DSS Services and Optional DSS Services to the DSS Operational Trial, but in relation to Optional DSS Services, the rights of termination granted pursuant to this Clause shall apply only to the particular Optional DSS Service being tested.

403.2 The objectives of the DSS Operational Trial shall be as specified in Schedule F1. The DSS Operational Trial Criteria:

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403.2.1 for the Card Management Service shall be as set out in Schedule E2;

403.2.2 for the Payment Authorisation Service shall be as set out in Schedule D2; and

403.2.3 for the DSS Contingency Services shall be as set out in Schedules D9 and E9.

403.3 DSS shall accept the DSS Operational Trial System in accordance with the DSS Operational Trial Procedures.

403.4 The DSS Operational Trial shall be recorded as successful and the CONTRACTOR notified accordingly where all the DSS Operational Trial Criteria are met in accordance with the DSS Operational Trial Procedures.

403.5 The DSS Operational Trial shall be recorded as unsuccessful and the CONTRACTOR notified accordingly where any of the DSS Operational Trial Criteria are not met in accordance with the DSS Operational Trial Procedures.

403.6 If the DSS Operational Trial, in respect of the DSS Operational Trial System, has not been recorded as successful pursuant to Clause 403.4 by the end of the DSS Operational Trial Period, DSS shall have the right without prejudice to its other rights and remedies:

403.6.1 to accept such part of the DSS Operational Trial System as DSS may decide and pay a pro-rated Charge therefor or such other charge as may be agreed between the parties;

403.6.2 to extend the DSS Operational Trial Period for up to two (2) consecutive additional periods of the same duration or of such shorter duration as DSS may notify to the CONTRACTOR, during which the CONTRACTOR shall use reasonable endeavours to correct the deficiency or Acceptance Incident which caused the DSS Operational Trial to be recorded as unsuccessful; or

403.6.3 (subject to Clause 403.10) to terminate this DSS Agreement or the relevant DSS Services in accordance with Clause 902.2 or 903.2 (as appropriate).

For the purposes of the foregoing, the "relevant" DSS Services mean the DSS Services in respect of which the DSS Operational Trial has been recorded as unsuccessful.

403.7 In the event that DSS extends the DSS Operational Trial Period for a period pursuant to Clause 403.6.2 and the DSS Operational Trial has not been recorded as successful by the end of that period, DSS shall have the right without prejudice to its other rights and remedies:

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403.7.1 to accept such part of the DSS Operational Trial System as DSS may decide and pay a pro-rated Charge therefor or such other charge as may be agreed between the parties;

403.7.2 to extend the DSS Operational Trial Period for a further period in accordance with Clause 403.6.2 up to a maximum of three (3) consecutive periods in total; or

403.7.3 (subject to Clause 403.10) to terminate this DSS Agreement or the relevant DSS Services in accordance with Clause 902.2 or 903.2 (as appropriate).

For the purposes of the foregoing, the "relevant" DSS Services mean the DSS Services in respect of which the DSS Operational Trial has been recorded as unsuccessful.

403.8 DSS will perform the DSS Trial Responsibilities as set out in Schedule F4.

403.9 For the avoidance of doubt, the CONTRACTOR acknowledges that successful completion of acceptance testing of any part of the DSS Operational Trial Systems shall not relieve it of its obligation to continue to perform the DSS Services in accordance with all applicable provisions hereof.

403.10 Notwithstanding the foregoing provisions of this Clause, DSS shall have no right of termination of the DSS Agreement in relation to failure of the DSS Operational Trial System successfully to complete the DSS Operational Trial, except in accordance with Schedules A11 and F5.

Clause 404. Roll Out of DSS Service Infrastructure and DSS Steady State Services

404.1 The CONTRACTOR shall implement the DSS Service Infrastructure in accordance with the provisions and the timetable in Schedule B6. Elements of the DSS Service Infrastructure shall be subject to DSS Acceptance Testing in accordance with Clause 408.

404.2 DSS may on prior written notice defer implementation of any part of the DSS Service Infrastructure and of any of the DSS Steady State Services until successful completion of the Operational Trial under the AUTHORITIES' Agreement.

404.3 The CONTRACTOR shall implement the Card Management Service in accordance with the timetable in, and provisions of, Schedule E4. Elements of the Card

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Management Service shall be subject to DSS Acceptance Testing in accordance with Clause 411.

404.4 The CONTRACTOR shall implement the Payment Authorisation Service in accordance with the timetable in, and the provisions of, Schedule D4. Elements of the Payment Authorisation Service shall be subject to DSS Acceptance Testing in accordance with Clause 411.

Clause 405. Performance of DSS Steady State Services

The CONTRACTOR shall, from the Operational Trial Acceptance Date (as defined in the AUTHORITIES' Agreement), perform the following DSS Steady State Services:

405.1 the Card Management Service, in accordance with the provisions of Schedule E1; and

405.2 the Payment Authorisation Service, in accordance with the provisions of Schedule D1;

405.3 the DSS Contingency Services, in accordance with the provisions of Schedules D9 and E9; and

405.4 any Optional DSS Services ordered pursuant to Clause 202 in accordance with the provisions of Schedule C1.

Clause 406. Inspection of DSS Premises

406.1 The CONTRACTOR confirms that it has been offered the opportunity to inspect the DSS Premises in order to satisfy itself that the DSS Premises are suitable for the installation and operation of the Products in the DSS Service Infrastructure and the supply of the DSS Services. However, the CONTRACTOR does not warrant that the use of the Products when installed will comply with applicable Health and Safety legislation, or that the DSS Premises will comply with such legislation, only that installation work carried out by the CONTRACTOR and the Products as installed in their immediately surrounding environment will so comply. The CONTRACTOR shall not be liable for any delay or Default directly caused by any delay or failure in obtaining any third party consents or licences which are necessary to permit such installation.

406.2 DSS shall only be liable to pay for the CONTRACTOR's costs for changes to the DSS Premises strictly necessary to install the Products to enable the CONTRACTOR to perform the DSS Services, and shall be chargeable pursuant to the charging structure in Schedule A6 of the

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AUTHORITIES' Agreement. The CONTRACTOR will minimise such installation and operation costs.

Clause 407. Marking of Products

The CONTRACTOR shall ensure that each Product in the DSS Service Infrastructure is clearly marked with a functional title or code so that it can be readily identified in the relevant Documentation and related to its proper place in the DSS Service Infrastructure.

Clause 408. Delivery and Acceptance of Products, and DSS Consumables

408.1 The CONTRACTOR shall deliver any Products, and DSS Consumables to an authorised representative of DSS at times and locations to be mutually agreed between the CONTRACTOR and DSS (such agreement not to be unreasonably withheld or delayed). Any Software supplied as a Product will be delivered in object code.

408.2 DSS shall accept the relevant Product or DSS Consumables in accordance with the DSS Acceptance Procedures contained in Schedule A11. The DSS Acceptance Criteria for Basic Products shall be as specified in Schedule B5.

408.3 A DSS Acceptance Test shall be recorded as successful and the CONTRACTOR notified accordingly where all the DSS Acceptance Criteria are met in accordance with the DSS Acceptance Procedures.

408.4 A DSS Acceptance Test shall be recorded as unsuccessful and the CONTRACTOR notified accordingly where any of the DSS Acceptance Criteria are not met in accordance with the DSS Acceptance Procedures.

408.5 If the DSS Acceptance Procedures, in respect of the relevant Product or DSS Consumable have not been recorded as successful pursuant to Clause 408.3 by the end of the DSS Acceptance Period, DSS shall have the right, without prejudice to its other rights and remedies (excluding the right to terminate the DSS Agreement under Clause 902.2 or any DSS Services under Clause 903.2) either:

408.5.1 to accept such items of the relevant Products or DSS Consumables as DSS may decide and (where appropriate) pay a pro-rated Charge therefor or such other charge as may be agreed between the parties; or

408.5.2 to extend the DSS Acceptance Period for a period or periods, specified by DSS, during which

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the CONTRACTOR shall use reasonable endeavours to correct the deficiency or Acceptance Incident which caused the DSS Acceptance Procedure to be recorded as unsuccessful.

408.6 In the event that DSS extends the DSS Acceptance Period for a period pursuant to Clause 408.5.2 and the DSS Acceptance Procedures have not been recorded as successful by the end of that period, DSS shall have the right, without prejudice to its other rights and remedies (excluding the right to terminate the DSS Agreement under Clause 902.2 or any DSS Services under Clause 903.2):

408.6.1 to accept such items of the relevant Products or DSS Consumables as DSS may decide and (where appropriate) pay a pro-rated Charge therefor or such other charge as may be agreed between the parties; or

408.6.2 to extend the DSS Acceptance Period for a further period in accordance with Clause 408.5.2; or

408.6.3 to reject the relevant Product or DSS Consumable, in which case the CONTRACTOR shall return to DSS any payment made in respect of the relevant Optional or Additional Product or DSS Consumable, or, in the case of Basic Products, shall provide replacement Basic Products or repair the relevant Basic Products (as agreed by the parties, such agreement not to be unreasonably withheld or delayed), in which case such replacement or repaired Basic Products shall be subject to DSS Acceptance Testing in accordance with this Clause 408.

Clause 409. DSS Contingency Services

The CONTRACTOR shall perform the DSS Contingency Services in accordance with the provisions of Schedules D9 and E9.

Clause 410 Products and Services

The CONTRACTOR shall not introduce any product or service into the DSS Service Infrastructure or DSS Services, nor make any change to any Products or DSS Services, without DSS's prior written consent, in accordance with Schedule A5.

Clause 411. Acceptance of DSS Steady State Services

411.1 DSS shall accept the elements of the DSS Steady State Services in accordance with the DSS Acceptance Procedures contained in Schedule A11. The DSS Acceptance

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Criteria for DSS Steady State Services shall be as specified in Schedules D2 and E2, as appropriate.

411.2 The DSS Acceptance Test in relation to any such element shall be recorded as successful and the CONTRACTOR notified accordingly where all the DSS Acceptance Criteria are met in accordance with DSS Acceptance Procedures.

411.3 The DSS Acceptance Test in relation to any such element shall be recorded as unsuccessful and the CONTRACTOR notified accordingly where the relevant DSS Acceptance Criteria are not met in accordance with the DSS Acceptance Procedures.

411.4 If the DSS Acceptance Test, in respect of the relevant element of the DSS Steady State Services has not been recorded as successful pursuant to Clause 411.2 by the end of the DSS Acceptance Period, DSS shall have the right, without prejudice to its other rights and remedies (excluding the right to terminate the DSS Agreement under Clause 902.2 or any DSS Services under Clause 903.2), either:

411.4.1 to accept such part of the DSS Steady State Services as DSS may decide and pay a pro-rated Charge therefor or such other charge, as may be agreed between the parties; or

411.4.2 to extend the DSS Acceptance Period for a period or periods, specified by DSS, during which the CONTRACTOR shall use reasonable endeavours to correct the deficiency or Acceptance Incident which caused the DSS Acceptance Test to be recorded as unsuccessful.

411.5 In the event that DSS extends the DSS Acceptance Period for a period pursuant to Clause 411.4.2 and the DSS Acceptance Procedures have not been recorded as successful by the end of that period, DSS shall have the right, without prejudice to its other rights and remedies (excluding the right to terminate the DSS Agreement under Clause 902.2 or any DSS Services under Clause 903.2);

411.5.1 to accept such part of the DSS Steady State Services as DSS may decide and pay a pro-rated Charge therefor or such other charge, as may be agreed between the parties; or

411.5.2 to extend the DSS Acceptance Period for a further period in accordance with Clause 411.4.2.

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PART 5 : OWNERSHIP, LICENCES AND RISK**Clause 501. Ownership of Hardware**

Ownership of the Hardware shall either vest in DSS upon acceptance thereof or shall remain in the CONTRACTOR (or its licensors), as specified in Schedule B2. However, DSS shall not acquire title to any Intellectual Property Rights in the Hardware.

Clause 502. Ownership of Software

Ownership of the media on which such Software is supplied by the CONTRACTOR shall either vest in DSS upon acceptance thereof or shall remain in the CONTRACTOR (or its licensors), as specified in Schedule B1. However, DSS shall not acquire title to any Intellectual Property Rights in the Software, other than Specially Written Software, the Intellectual Property Rights to which are specified in Schedule B1 as vesting in DSS, the ownership to which shall vest in DSS upon acceptance thereof.

Clause 503. Ownership of Documentation

503.1 Ownership of the media on which such Documentation is supplied by the CONTRACTOR shall vest in DSS. However, DSS shall not acquire title to the Intellectual Property Rights in the Documentation.

Clause 504. Ownership of DSS Data and NINOs

504.1 The CONTRACTOR acknowledges that the DSS Data is the property of the Crown and DSS hereby reserves all Intellectual Property Rights which may subsist in the DSS Data. The CONTRACTOR shall not delete or remove any copyright notices contained within or relating to the DSS Data.

504.2 The CONTRACTOR shall preserve the integrity of the DSS Data once the CONTRACTOR has received such DSS Data, shall prevent any corruption or loss of the DSS Data, and shall comply with the validation procedures set out in Schedule B8 as such procedures may be updated and amended from time to time. The CONTRACTOR shall not be liable for any loss or corruption of DSS Data nor for any failure to perform the DSS Services if it can prove that such loss or corruption or failure to perform any DSS Services was caused by DSS Data which was lost or corrupted before the CONTRACTOR received it, and that the CONTRACTOR has

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complied with the validation procedures in relation to such DSS Data.

504.3 In the event that the DSS Data is corrupted or lost in the course of providing the Services DSS shall have the option, in addition to any other remedies that may be available to it either under the DSS Agreement or otherwise, to elect either of the following remedies:

504.3.1 DSS may require the CONTRACTOR at its own expense to restore or procure the restoration of the DSS Data; or

504.3.2 DSS may itself restore or procure restoration of the DSS Data, and shall be repaid by the CONTRACTOR any reasonable expenses so incurred.

504.4 The CONTRACTOR acknowledges that each NINO is the property of the Secretary of State for Social Security. The CONTRACTOR shall only use the NINOs in performing the DSS Services.

504.5 DSS Data constitutes Confidential Information and may not be reproduced without DSS's prior written consent except as necessary to perform the DSS Services.

Clause 505. Ownership of Intellectual Property Rights in the DSS Service Architecture, Cards, Tokens and Receipts

505.1 The CONTRACTOR acknowledges that ownership of the Cards (and of any tokens issued in lieu thereof) and of all Intellectual Property Rights in the livery (including without limitation text and graphics) of the Cards (and in any tokens issued in lieu thereof) vests in the Secretary of State for Social Security as soon as such Cards are liveried. All other Intellectual Property Rights in the Cards remain in the CONTRACTOR or its licensors. The CONTRACTOR will at the request and expense of DSS execute all such documents and do all such further acts as DSS may require in order to perfect the Secretary of State for Social Security's title to the Cards (and in any tokens issued in lieu thereof) and the Intellectual Property Rights in the livery (including without limitation text and graphics) of the Cards (and in any tokens issued in lieu thereof). The CONTRACTOR hereby grants a perpetual, royalty-free, non-exclusive and irrevocable licence, or shall procure the grant of a sub-licence or of a direct licence from the ultimate licensor, using all reasonable endeavours to ensure that such sub-licence or direct licence is perpetual, royalty-free, non-exclusive and (subject to Clause 507.11) irrevocable, to DSS permitting DSS or a replacement contractor, to use the Cards and the

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procedures related to the Cards for the purposes of the Related Agreements (and equivalent purposes) and for no other purposes. For the avoidance of doubt, the procedures in relation to which the Intellectual Property Rights are licensed by this Clause shall not be deemed to include any procedures relating to the manufacture, personalisation or distribution of the Cards. Subject to such licence or sub-licence, the CONTRACTOR reserves for itself and its licensors all Intellectual Property Rights in the procedures related to the Cards.

505.2 In particular, the CONTRACTOR shall not do anything to prejudice the security of the DSS Services, including the Cards (and any tokens issued in lieu thereof).

505.3 Ownership of all benefit receipts issued at post offices, and of the Intellectual Property Rights therein, shall vest in DSS. DSS shall be entitled to determine the storage, availability and disposal of such benefits receipts, in accordance with the provisions of Schedules D1 and E1.

505.4 Ownership of any Intellectual Property Rights in the overall design of the DSS Service Architecture (as set out in the DSS Service Architecture Design Document) which arise as a result of the performance of the DSS Services shall vest in the CONTRACTOR. The CONTRACTOR shall not do anything which would disclose to any third party any element of DSS's security procedures. Any use by the CONTRACTOR of the overall design of the DSS Service Architecture within the United Kingdom for purposes other than in connection with the Related Agreements shall be subject to the prior written agreement of DSS on reasonable commercial terms (such agreement not to be unreasonably withheld or delayed).

Clause 506. Ownership of DSS Consumables

Ownership of any DSS Consumables supplied hereunder shall vest in DSS upon acceptance thereof in accordance with Clause 408.3.

Clause 507. Licences to use Intellectual Property Rights

507.1 In consideration of the payment of the relevant Charges the CONTRACTOR hereby grants, or shall procure that the owner of the Intellectual Property Rights in the Specially Written Software and the Documentation (other than the Specially Written Software and Documentation in which ownership of the Intellectual Property Rights vests in DSS pursuant to Clause 502) grants to DSS a perpetual, royalty-free, irrevocable (subject to Clause 507.11) and

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non-exclusive licence to Use the relevant Specially Written Software and to use, copy and modify the Documentation solely in connection with the Services.

507.2 [Not Used].

507.3 In consideration of the payment of the relevant Charges the CONTRACTOR hereby grants to DSS a royalty-free, non-exclusive licence to Use the CONTRACTOR's Software. Such licence to Use the CONTRACTOR's Software shall, subject to Clause 507.11, be perpetual and irrevocable. In the case of any CONTRACTOR's Software for which the Charges are periodic, the licence to Use shall subsist, subject to Clause 507.11, until the expiry of written notice by DSS terminating such licence. DSS's licence to use such CONTRACTOR's Software shall be subject to any additional terms and conditions specified in Schedule B1 which do not detract from the rights granted to DSS hereunder.

507.4 In consideration of the payment of the relevant Charges in respect of Third Party Software supplied hereunder, the CONTRACTOR shall:

507.4.1 use all reasonable efforts to procure the right to grant to DSS a perpetual, royalty-free, irrevocable (subject to Clause 507.11) and non-exclusive sub-licence to Use such Third Party Software, subject to Clause 507.6 and Clause 507.7, and, by the entering into of this DSS Agreement shall grant such sub-licence; or

507.4.2 if the CONTRACTOR is unable to procure the right to grant the sub-licence referred to in Clause 507.4.1 the CONTRACTOR shall procure, prior to the commencement of the DSS Operational Trial Period (or in respect of Optional Products or Additional Products, the DSS Acceptance Period), that the third party grants to DSS a royalty-free and non-exclusive licence to Use the Third Party Software, subject to Clause 507.6 and Clause 507.7 and shall use all reasonable endeavours to ensure that such licence is perpetual and (subject to Clause 507.11) irrevocable;

DSS's licence or sub-licence to use such Third Party Software shall be subject to any additional terms and conditions imposed by the licensor, provided that any terms of any sub-licence granted under sub-Clause 507.4.1 or any licence granted under sub-Clause 507.4.2 shall not detract from the rights granted to the DSS hereunder.

507.5 In consideration of the payment of the relevant Charges the CONTRACTOR hereby grants to DSS, or shall

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procure prior to the commencement of any use by DSS, that the relevant Third Party grants to DSS, a royalty-free non-exclusive licence to use the Internal Code in connection with the Hardware of which it forms an integral part. Such licence to use the Internal Code shall, subject to Clause 507.11, be perpetual and irrevocable. On the sale or transfer of an item of Hardware of which Internal Code is an integral part, DSS's licence to use such Internal Code in combination with the said item of Hardware shall pass to the purchaser or other transferee of the said item of Hardware. DSS shall take all reasonable steps to ensure that the purchaser or transferee of the said item of Hardware agrees to comply with the licence to use the Internal Code that was previously enjoyed by DSS.

507.6 DSS shall be entitled to engage a third party to Use the Specially Written Software and to Use the CONTRACTOR's Software, (and the CONTRACTOR shall use reasonable endeavours to enable DSS to engage a third party to use Internal Code and Third Party Software) subject to and in accordance with this DSS Agreement on behalf of DSS provided that such third party shall have entered into a confidentiality undertaking in accordance with Clause 607.5.2.

507.7 DSS shall be entitled to copy the appropriate CONTRACTOR's Software, Internal Code and Third Party Software in order to create as many archival or back-up copies of the same as are necessary. When copying Software DSS shall include the original machine readable copyright notice, and a label affixed to the media identifying the Software and stating: "This medium contains an authorised copy of copyrighted software which is the property of [the CONTRACTOR or the Third Party Software Owner]."

507.8 The CONTRACTOR shall place the Source Code of the Deposited Software in escrow with the NCC on the basis of the appropriate standard agreement or on such other terms as DSS, the CONTRACTOR, the Third Party Software Owner (if applicable) and the NCC shall agree. Such escrow agreement to be entered into within thirty (30) days of the date of this DSS Agreement.

507.9 The CONTRACTOR hereby grants to DSS, a perpetual, royalty-free, irrevocable (subject to Clause 507.11) and non-exclusive licence to Use, reproduce, modify, adapt and enhance (and to authorise a third party to Use, reproduce, modify, adapt and enhance) the Source Code version of the Deposited Software. However, the foregoing licence shall only become effective if DSS becomes entitled to obtain

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access to the Source Code version of the Deposited Software pursuant to the source code escrow agreement referred to in Clause 507.8 and the licence shall be subject to any restrictions contained herein in respect of the object code version of the Deposited Software.

507.10 Subject to any necessary consents (which the CONTRACTOR shall use all reasonable endeavours to obtain) any licence or sub-licence granted by the CONTRACTOR to DSS hereunder shall be transferable in accordance with the provisions of Clause 604.3.2.

507.11 The CONTRACTOR may at any time by notice in writing terminate any licence granted under Clause 505.1, Clause 507.1, Clause 507.3, Clause 507.4, Clause 507.5, Clause 507.9, Clause 904.1.2, or Clause 905.1.2 if DSS is in Default of its obligations under the relevant Clause in relation to such licence and DSS shall fail to remedy such Default within thirty (30) days of written notice to DSS specifying the Default and requiring its remedy. Upon termination of the relevant licence, DSS shall cease to use any Software which is the subject matter of such licence and shall either return or destroy all copies of such Software, as directed by the CONTRACTOR, and, in the case of the procedures related to the Cards, shall cease to use all procedures which are the subject matter of such licence.

Clause 508. Risk in Products

508.1 Risk in the Products (other than Cards) shall pass to DSS upon acceptance thereof or shall remain with the CONTRACTOR, as specified in Schedules B1 and B2. Risk in Cards shall remain with the CONTRACTOR.

508.2 Notwithstanding the provisions of Clause 508.1, DSS shall be liable for any loss of or damage to any Products or part thereof supplied under this DSS Agreement while it is at the DSS Premises prior to acceptance of the Products if such loss or damage is occasioned by the negligence or wilful acts or omissions of DSS.

508.3 The CONTRACTOR shall, on being so ordered by DSS, with all possible speed make good any loss or damage affecting the Products, whether such loss or damage arises in the circumstances referred to in Clause 508.2 or otherwise, and shall notwithstanding such loss or damage proceed with and complete the installation of the DSS Service Infrastructure (where appropriate) and the performance of the DSS Services in accordance with the DSS Agreement. DSS shall pay the costs of making good unless

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the loss or damage is occasioned by the Default of the CONTRACTOR.

Clause 509. Damage to Plant, Tackle and Tools

509.1 All plant, tackle and tools at the DSS Premises provided by or on behalf of the CONTRACTOR shall stand at the risk and be in the sole charge of the CONTRACTOR.

509.2 The CONTRACTOR shall be required to remove all such plant, tackle and tools which it brings to the DSS Premises.

509.3 The CONTRACTOR shall ensure that all such plant, tackle and tools shall meet minimum safety standards required by law.

Clause 510. Licences for CONTRACTOR to use Intellectual Property Rights

510.1 DSS hereby grants to the CONTRACTOR a non-exclusive licence to use any software included within the DSS Transferred Assets, the DSS Leased Assets and the Software in which the Intellectual Property Rights vest in DSS for the term of this DSS Agreement solely for the purposes of performing the DSS Services and for no other purposes. The CONTRACTOR shall be entitled to copy such software for operational purposes in accordance with the foregoing licence and in order to make DSS back up copies of such software. Upon termination of the DSS Agreement or upon the CONTRACTOR ceasing to use such software, the CONTRACTOR shall either return or destroy all copies of such software as directed by DSS.

510.2 Neither the CONTRACTOR, nor any sub-contractor, nor any other person, shall have a lien on any Products owned by DSS for any sum due to the CONTRACTOR, sub-contractor or other person and the CONTRACTOR shall take all reasonable steps to ensure that the title of DSS and the exclusion of any such lien are brought to the notice of all sub-contractors and other persons dealing with any such Products.

PART 6 : CONTRACT AND SERVICE MANAGEMENT

Clause 601. Monitoring

DSS shall be entitled to monitor the performance by the CONTRACTOR of its obligations under the DSS Agreement in accordance with the procedures set out in Schedule A4.

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Clause 602. Management Interfaces and Service Management

602.1 The parties shall establish the management interfaces set out in Schedule A4. All contract management of the DSS Agreement shall be performed in accordance with the provisions of Schedule A4.

602.2 In relation to the Card Management Service and the Payment Authorisation Service, the DSS Services shall be managed in accordance with the provisions of Schedules D5 and E5 respectively. The CONTRACTOR shall provide the contract management services specified in Schedules D5 and E5. In respect of the DSS Contingency Services and the Transfer Services, the DSS Services shall be managed in accordance with the provisions of Schedules D5 and E5.

Clause 603. Communications

603.1 Except as otherwise expressly provided no communication from one party to another shall have any validity under the DSS Agreement unless made in writing by or on behalf of DSS or the CONTRACTOR, as the case may be.

603.2 Any notice or other communication whatsoever which any party hereto is required or authorised by the DSS Agreement to give or make to another shall be given or made either by post in a prepaid letter, or by telex or by facsimile transmission confirmed by post in a prepaid letter, addressed to such other party in the manner referred to in Clause 603.3 below and if that letter is not returned as being undelivered that notice or communication shall be deemed for the purposes of the DSS Agreement to have been given or made after two days, for a letter, or four hours, for a telex or facsimile transmission.

603.3 For the purposes of Clause 603.2 above the address of each party shall be:

603.3.1 For DSS:

3rd Floor
Terminal House
52 Grosvenor Gardens
London
SW1W 0AB

For the attention of

Andrew Stott

Telephone **GRO**

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Facsimile GRO

603.3.2 For the CONTRACTOR:

Pathway Group Limited

Forest Road

Feltham

Middlesex

TW13 7EJ

For the attention of

J H Bennett

Telephone GRO

Facsimile GRO

603.4 Any party may change its address for service by notice as provided in this Clause 603.

Clause 604. Transfer and Sub-Contracting

604.1 The DSS Agreement is personal to the CONTRACTOR. The CONTRACTOR shall not assign, novate, sub-contract or otherwise dispose of the DSS Agreement or any part thereof without the previous written consent of DSS.

604.2 DSS hereby consents to the CONTRACTOR's sub-contracting of its obligations specified in Schedule A8 to the respective sub-contractors specified therein at the date hereof. Additional or substitute sub-contractors may be approved from time to time in accordance with Clause 604.1 after the date hereof, in which case Schedule A8 shall be amended accordingly. Notwithstanding any sub-contracting permitted in the DSS Agreement, the CONTRACTOR shall remain primarily responsible for the acts and omissions of its sub-contractors committed by them in the course of performing or purporting to perform any of the DSS Services on the CONTRACTOR's behalf as though such acts and omissions were its own.

604.3 Subject to Clause 604.5, DSS shall be entitled to:

604.3.1 assign, novate or otherwise dispose of its rights and obligations under the DSS Agreement or any part thereof (including, where appropriate, requiring the grant by the CONTRACTOR or its licensors of a direct licence of any Software other than Third Party Software, and requiring the CONTRACTOR to use all reasonable endeavours to procure the grant of a direct licence of any Third Party Software) to any contracting authority (as

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defined in Regulation 3(1) of the Public Services Contracts Regulations 1993) (a "Contracting Authority"); or

604.3.2 novate the DSS Agreement to any other body (including but not limited to any private sector body) which performs any of the functions that previously had been performed by DSS;

provided that any such assignment, novation or other disposal pursuant to Clause 604.3.1 or 604.3.2 shall not increase the burden of the CONTRACTOR's obligations pursuant to the DSS Agreement.

604.4 If the DSS Agreement is novated to a body which is not a Contracting Authority pursuant to Clause 604.3.2 (in the remainder of this Clause such a body is referred to as the "transferee"):

604.4.1 the transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the DSS Agreement or any part thereof with the previous consent in writing of the CONTRACTOR;

604.4.2 the rights acquired by the transferee relating to the Use of the Software shall not extend beyond the activities previously performed by DSS and, in particular, the transferee shall not be entitled to perform any service bureau or facilities management services utilising the Software for any third party.

604.4.3 the rights of the transferee under Clause 611 shall cease; and

604.4.4 the following Clauses shall be varied from the date of the novation or the date of the change of status (as appropriate) as set out below as if the DSS Agreement had been amended by the parties in accordance with Clause 101.3:

- (a) in Clause 804, the words "or with any department, office or agency of the Crown" shall be deleted;
- (b) in Clause 607.1, the words "to the Crown, or its respective servants or agents is the property of the Crown" shall be replaced with "to DSS or its servants or agents is the property of DSS";
- (c) in Clause 1001.1.1, the words "on Her Majesty's Service (which term shall include all persons employed or engaged by the Crown

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and all persons providing services to the Crown)" in the second line shall be replaced with "employed or engaged by DSS or acting on its behalf" and the reference to "Her Majesty's Service" in the sixth line shall be replaced with "DSS";

(d) in Clause 1001.1.2, the words "on Her Majesty's Service" shall be replaced with "employed by DSS or acting on its behalf"; and

(e) in Clause 1001.2, the words "for Her Majesty's Service" shall be replaced with "with DSS".

604.5 DSS shall be entitled to disclose, to the extent necessary for the purposes of the Related Agreements, to any transferee any Confidential Information of the CONTRACTOR which relates to the performance of the DSS Services by the CONTRACTOR. In such circumstances DSS shall authorise the transferee to use such Confidential Information only for purposes relating to the performance of the DSS Services and for no other purposes and, for the avoidance of doubt, the transferee shall be bound by the confidentiality undertaking contained herein in relation to such Confidential Information.

Clause 605. DSS Responsibilities

Subject to the provisions of Clause 607, DSS undertakes to provide at its own cost and expense to the CONTRACTOR, all information, services, facilities and responses designated as DSS Responsibilities in Schedules D3 and E3. DSS shall use all reasonable endeavours to perform such DSS Responsibilities in accordance with any agreed timetable specified in Schedule B9 or elsewhere herein.

Clause 606 Time**606.1 Timetable**

606.1.1 The CONTRACTOR shall perform the DSS Services in accordance with any timescales specified in Schedule B9 or elsewhere herein as "contractual milestones", and shall use all reasonable endeavours to perform the DSS Services in accordance with any other timescales specified in Schedule B9 or elsewhere herein, which shall be treated as "target dates". In the event of failure to meet any target date, the CONTRACTOR shall provide DSS with a method

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statement showing how it intends to recover any time lost. For the avoidance of doubt, time shall not be of the essence in relation to any contractual milestone unless notice is served in accordance with Clause 606.4.

606.1.2 Before DSS exercises its option for any Optional DSS Service, and DSS and the CONTRACTOR agree on the supply of any Additional DSS Service, DSS and the CONTRACTOR shall agree a timetable for the performance of such DSS Services and such timetable shall be incorporated into the DSS Agreement as an additional Schedule in accordance with Clause 101.3.

606.2 Extension of Time

606.2.1 If the performance of the DSS Agreement by the CONTRACTOR be delayed by reason of Default by DSS or by its employees or authorised agents, the CONTRACTOR shall be entitled to a reasonable extension of time and to any reasonable additional costs and expenses which it can show were directly incurred by the CONTRACTOR as a result of the delay. The CONTRACTOR shall notify DSS in writing within three (3) working days of becoming aware of such Default.

606.2.2 If the performance of the DSS Agreement by either party be delayed by reason of any force majeure event (as defined in Clause 606.3), both parties shall be entitled to a reasonable extension of time subject to there being no entitlement to any additional costs or expenses incurred as a result of the delay. The party so delayed shall notify the other party in writing within one (1) working day of becoming aware of the force majeure event.

606.3 Force Majeure

606.3.1 For the purposes of the DSS Agreement the expression "Force Majeure" shall mean any cause affecting the performance by a party hereto of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control including (but without limiting the generality thereof) (i) Governmental Regulations (subject to Clause 606.5), (ii) fire, (iii) flood, or (iv) any disaster or an industrial dispute affecting a third party. Any act, event, omission, happening or non-happening will only be considered

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Force Majeure if it is not attributable to the wilful act, neglect or failure to take reasonable precautions of the affected party, its agents or employees, and only if a substitute third party is not reasonably available (having regard, without limitation, to the cost and quality of such substitute) to perform the affected obligation. In no event shall any fraudulent act or omission by any third party or party relating to the DSS Services for which the CONTRACTOR is liable under Clause 809.1 constitute a Force Majeure event.

606.3.2 Neither party hereto shall in any circumstances be liable to the other party hereto for any loss of any kind whatsoever including but not limited to any damages or abatement of Charges whether directly or indirectly caused to or incurred by the other party by reason of any failure or delay in the performance of its obligations under the DSS Agreement which is due to Force Majeure. Notwithstanding the foregoing, each party shall use all reasonable endeavours to continue to perform, or resume performance of, such obligations under the DSS Agreement for the duration of such Force Majeure event. In the case of the CONTRACTOR, the parties shall agree an orderly process for such continuation or resumption of performance (such consent not to be unreasonably withheld or delayed), and the CONTRACTOR shall comply with such procedure. The CONTRACTOR shall remain liable to perform the DSS Contingency Services, save where such DSS Contingency Services are themselves also affected by Force Majeure, in which case the CONTRACTOR shall be required to use all reasonable endeavours to perform such DSS Contingency Services.

606.3.3 If the CONTRACTOR shall become aware of circumstance of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part it shall forthwith notify DSS within one (1) working day and shall inform DSS of the period which it is estimated that such failure or delay shall continue. If DSS shall become aware of circumstances of Force Majeure which give rise to any such failure or delay on its part, it shall forthwith notify the CONTRACTOR within one (1) working day and shall inform the CONTRACTOR of the period which it is estimated that such failure or delay shall continue.

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606.3.4 It is expressly agreed that any failure by the CONTRACTOR to perform, or any delay by the CONTRACTOR in performing, its obligations under the DSS Agreement which results from any failure or delay in the performance of its obligations by any person, firm or company with which the CONTRACTOR shall have entered into any contract, supply arrangement or sub-contract or otherwise shall be regarded as a failure or delay due to Force Majeure only in the event that such person firm or company shall itself be prevented from or delayed in complying with its obligations under such contract, supply arrangement or sub-contract or otherwise as a result of circumstances of Force Majeure and there is no person, firm or company reasonably available (having regard, without limitation, to the cost and quality of such substitute) to perform the affected obligation.

606.3.5 [Not used]

606.3.6 If any Force Majeure event prevents any party from performing its obligations hereunder for a period in excess of ninety (90) consecutive days, DSS may, after consulting with the CONTRACTOR and taking into account the CONTRACTOR's views, terminate the DSS Agreement or the DSS Service affected by the Force Majeure event in accordance with Clause 902.1.6 or 903.1.6.

606.4 Time of the Essence

Where DSS after undue delay by the CONTRACTOR notifies the CONTRACTOR that time is of the essence of the DSS Agreement and any of its obligations stated in such notice shall not have been performed by the CONTRACTOR by any reasonable date stated in the notice, DSS may terminate the DSS Agreement in accordance with Clause 902.2.3, or the relevant DSS Service in accordance with Clause 903.3.3. In relation to the timescales specified herein, DSS may only give notice making time of the essence in relation to timescales specified herein as "contractual milestones".

606.5 Political Risk

Notwithstanding the provisions of Clause 606.3, a change of, or new, Government Regulation:

- (a) shall not excuse DSS from performing its obligations to meet any minimum revenue guarantees applicable under Schedule A6 of the AUTHORITIES' Agreement and, without

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limitation to the foregoing, if the due date for the application of such minimum revenue guarantees (or any agreed extension thereof) is delayed directly as a result of any change in, or new, Governmental Regulation, DSS agrees to meet such minimum revenue guarantees from the date when they would have come into effect but for such change in, or new, Governmental Regulation;

- (b) shall not entitle DSS to terminate the DSS Agreement under Clause 606.3.6, and any such purported termination shall be treated as a termination for convenience in accordance with Clause 902.6; and
- (c) shall not require the CONTRACTOR to perform any additional obligations, or any reduced or modified obligations resulting in increased cost to the CONTRACTOR, without its agreement in accordance with Clause 101.3.

Clause 607. Confidentiality

607.1 Without prejudice to the application of the Official Secrets Acts 1911 to 1989 (where relevant) to any Confidential Information the CONTRACTOR acknowledges that any Confidential Information (other than its own Confidential Information) obtained from or relating to the Crown, or its respective servants or agents, is the property of the Crown.

607.2 The CONTRACTOR hereby agrees that (other than as required by law):

607.2.1 the CONTRACTOR (and any person employed or engaged by the CONTRACTOR in connection with the DSS Agreement in the course of such employment or engagement) shall only use Confidential Information of DSS for the purposes of the DSS Agreement;

607.2.2 the CONTRACTOR (and any person employed or engaged by the CONTRACTOR in connection with the DSS Agreement in the course of such employment or engagement) shall not disclose any Confidential Information of DSS to any third party (except its approved sub-contractors as listed in Schedule A8) without the prior written consent of DSS (DSS shall from time to time notify the CONTRACTOR of items of DSS information which are not to be treated as Confidential Information in relation to POCL);

607.2.3 the CONTRACTOR shall take all necessary precautions to ensure that all Confidential Information of DSS is treated as confidential and

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not disclosed (save as aforesaid) or used other than for the purposes of the DSS Agreement by the CONTRACTOR's employees, servants, agents or sub-contractors including, without limitation, obtaining from any such agent or sub-contractor a signed confidentiality undertaking on substantially the same terms as are contained in this Clause; and

607.2.4 without prejudice to the generality of the foregoing neither the CONTRACTOR nor any person engaged by the CONTRACTOR whether as a servant or a consultant or otherwise shall use the Confidential Information of DSS for the solicitation of business from any third party by the CONTRACTOR or by such servant or consultant or by any third party.

607.3 DSS (other than as required by law):

607.3.1 shall treat as confidential all Confidential Information, obtained from the CONTRACTOR, including but not limited to the Source Code of the Specially Written Software (other than Specially Written Software in which ownership of the Intellectual Property Rights vests in DSS, pursuant to Clause 502); and

607.3.2 shall not, subject to Clause 607.5, disclose to any third party without the prior written consent of the CONTRACTOR any Confidential Information obtained from the CONTRACTOR.

607.4 The provisions of Clauses 607.1, 607.2 and 607.3 shall not apply to any information which:

607.4.1 is or becomes public knowledge other than by breach of this Clause 607; or

607.4.2 is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party.

607.4.3 is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure.

607.4.4 is independently developed without access to the Confidential Information.

607.5 Nothing in this Clause shall be deemed or construed to prevent DSS from disclosing any Confidential Information relating to the DSS Agreement obtained from the CONTRACTOR to the extent necessary for purposes connected with the Related Agreements:

607.5.1 to any other department, office or agency of Her Majesty's Government, provided that DSS has

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required that such information is treated as confidential by such departments, offices and agencies, and their servants or agents, including requiring servants or agents to enter into a confidentiality undertaking where appropriate; and

607.5.2 to any third party (in which case DSS shall notify the CONTRACTOR of such disclosure), provided that DSS shall have taken reasonable steps to ensure that the third party shall observe substantially the same terms as are contained in this Clause, including without limitation, obtaining a signed confidentiality undertaking between the third party and DSS or the CONTRACTOR.

607.6 Nothing in this Clause 607 shall prevent the CONTRACTOR or DSS from using data processing techniques, ideas and know-how gained during the performance of the DSS Agreement in the furtherance of its normal business, to the extent that this does not relate to a disclosure of Confidential Information or an infringement by DSS or the CONTRACTOR of any Intellectual Property Right.

Clause 608. Health and Safety Hazards

608.1 The CONTRACTOR shall notify DSS of any health and safety hazards in relation to DSS Premises owned by or leased to DSS which may arise in connection with the performance of the DSS Agreement.

608.2 DSS shall notify the CONTRACTOR of any known health and safety hazards which may exist or arise at the DSS Premises owned by or leased to DSS and which may affect the CONTRACTOR. The CONTRACTOR shall draw these hazards to the attention of its employees and sub-contractors or any persons engaged by the CONTRACTOR in the performance of the DSS Agreement at such DSS Premises.

608.3 The CONTRACTOR shall inform all persons engaged in the performance of the DSS Agreement at the DSS Premises owned by or leased to DSS of all such hazards and shall instruct such persons in connection with any necessary associated safety measures.

Clause 609. Protection of Personal Data and Social Security Administration Act

609.1 The CONTRACTOR's attention is hereby drawn to the Data Protection Act 1984.

609.2 Both parties warrant that they will duly observe all their obligations under the Data Protection Act which arise in connection with the DSS Agreement.

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609.3 Section 123 of the Social Security Administration Act 1992 shall apply to this DSS Agreement. It is an offence for any person to disclose any information obtained while carrying out administrative work where that information relates to a particular person. Both parties warrant that they will duly observe all their obligations under the Social Security Administration Act 1992 which arise in connection with the DSS Agreement.

Clause 610. Publicity

610.1 Except with the written consent of DSS (which shall not be unreasonably withheld or delayed), the CONTRACTOR, shall not make any press announcements about or publicise the DSS Agreement in any way. DSS shall consult the CONTRACTOR before making any press announcement about or publicising the DSS Agreement, other than pursuant to any legal obligation or in any internal publication of DSS.

610.2 The CONTRACTOR shall take all reasonable steps to ensure the observance of the provisions of Clause 610.1 by all its servants, employees, agents, consultants and sub-contractors.

610.3 The CONTRACTOR shall have no right to use the brand or logo of any part of DSS without DSS's prior written consent. The CONTRACTOR shall do nothing to injure such logos and brands or the reputation of DSS and, if it uses such brands or logos, it shall take all reasonable steps to enable DSS to protect such logos and brands and the reputation of DSS but in no event less than the steps it would take in relation to its own logos, brands and reputation.

610.4 DSS shall have no right to use the brand or logo of the CONTRACTOR or its subcontractors without the CONTRACTOR's prior written consent. DSS shall do nothing to injure such logos and brands or the reputation of the CONTRACTOR or its subcontractors and, if it uses such brands or logos, it shall take all reasonable steps to enable the CONTRACTOR and its sub-contractors to protect such logos and brands and the reputation of the CONTRACTOR and its sub-contractors but in no event less than the steps it would take in relation to its own logos, brands and reputation.

Clause 611. CONTRACTOR's Personnel

611.1 DSS reserves the right under the DSS Agreement to refuse to admit to any premises occupied by or on behalf of the Crown (which expression shall in this Clause 611 include all persons employed or engaged by the Crown and

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all persons other than the CONTRACTOR and its sub-contractors providing services to the Crown) any person employed or engaged by the CONTRACTOR, or by a sub-contractor, whose admission would be, in the reasonable opinion of DSS, undesirable.

611.2 If and when directed by DSS, the CONTRACTOR shall provide a list of the names and addresses of all persons who it is expected may require admission in connection with the performance of the DSS Agreement to any premises occupied by or on behalf of the Crown, specifying the capacities in which they are concerned with the DSS Agreement and giving such other particulars as DSS may reasonably require. The CONTRACTOR shall comply with any reasonable directions issued by the designated representative of DSS as to which persons may be admitted to such premises and at what times.

611.3 If and when directed by DSS, the CONTRACTOR shall secure that any person employed or engaged by the CONTRACTOR or by a sub-contractor, who is specified in the direction or is one of a class of persons who may be so specified, shall sign a statement that he understands that the Official Secrets Acts 1911 to 1989 apply to him both during the term of and after the expiry or termination of the Related Agreements.

611.4 The CONTRACTOR's representatives, engaged within the boundaries of a Crown establishment, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at that establishment and when outside that establishment.

611.5 The decision of DSS as to whether any person is to be refused admission to any premises occupied by or on behalf of the Crown shall be final and conclusive.

Clause 612. Waiver

612.1 The failure of either party to insist upon strict performance of any provision of the DSS Agreement, or the failure of either party to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by the DSS Agreement.

612.2 A waiver of any Default shall not constitute a waiver of any subsequent Default.

612.3 No waiver of any of the provisions of the DSS Agreement shall be effective unless it is expressly stated

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to be a waiver and communicated to the other parties in writing in accordance with the provisions of Clause 603.

Clause 613. Access to DSS Premises

613.1 Any land or DSS Premises (including temporary buildings) made available to the CONTRACTOR by DSS in connection with the DSS Agreement shall be made available to the CONTRACTOR on such terms and conditions as may be agreed between the CONTRACTOR and DSS. The CONTRACTOR shall have the use of such land or DSS Premises as licensee and shall vacate the same upon the termination or expiry of the DSS Agreement or at such earlier date as DSS may reasonably determine.

613.2 DSS shall be responsible for maintaining the security of such land or DSS Premises in accordance with its standard security requirements. The CONTRACTOR shall comply with all reasonable security requirements of DSS while on the DSS Premises, and shall procure that all of its employees, agents and subcontractors shall likewise comply with such requirements. DSS shall provide the CONTRACTOR upon request copies of its written security procedures and shall afford the CONTRACTOR upon request with an opportunity to inspect its physical security arrangements.

Clause 614. Security Requirements

The CONTRACTOR shall comply with the security requirements as set out in Schedule A2.

Clause 615. CONTRACTOR's Key Personnel

The parties acknowledge that the CONTRACTOR's key personnel specified in Schedule A14 are essential to the fulfilment of its obligations hereunder. The CONTRACTOR undertakes to use all reasonable endeavours to ensure that such key personnel are not removed or replaced during the term hereof. However, in the event that any of its key personnel becomes unavailable for any reason (including without limitation death, injury, sickness promotion or resignation), the CONTRACTOR shall have the right upon giving thirty (30) days' notice in writing (or such shorter period of notice as may be reasonably practicable) to DSS to replace such an individual with another individual whose abilities and qualifications are appropriate for the services to be performed by such individual.

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PART 7 : WARRANTIES AND STANDARDS

Clause 701. Authority and Approval

The CONTRACTOR warrants and represents that it has full capacity and authority and all necessary consents (including but not limited to, where its procedures so require, the consent of its Parent Company) to enter into and to perform the DSS Agreement and that the DSS Agreement is executed by a duly authorised representative of the CONTRACTOR.

Clause 702. Performance of DSS Services

The CONTRACTOR warrants and represents that:

702.1 the DSS Services shall be supplied and rendered by appropriately experienced, qualified and trained personnel with all reasonable skill, care and diligence;

702.2 the CONTRACTOR shall discharge its obligations under the DSS Agreement with all reasonable skill, care and diligence including but not limited to good industry practice and (without limiting the generality of this Clause) in accordance with the best of its own established internal procedures;

702.3 the DSS Services shall be performed in compliance with all applicable laws, enactments, orders, regulations, and other similar instruments;

702.4 the DSS Services shall be performed in accordance with all applicable service levels in the DSS Agreement;

702.5 the DSS Services shall be fully integrated within the DSS Service Architecture and the Service Infrastructure;

702.6 the DSS Services shall be performed in accordance with all applicable provisions of the DSS Service Architecture Design Document or the Service Architecture Design Document;

702.7 the DSS Services shall be compatible with the DSS Service Environment as at the date hereof, as set out in Schedule 1;

702.8 the DSS Services shall be performed in such a way as to cause a minimum of disruption to the business of DSS.

Clause 703. Performance of Products

The CONTRACTOR warrants and represents that:

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703.1 at the DSS Operational Trial Acceptance Date, the DSS Operational Trial System shall meet the DSS Operational Trial Criteria and the regulations and standards specified in Schedule A2;

703.2 during the term of the DSS Agreement all components of the DSS Service Infrastructure shall operate in accordance with their respective technical specifications, except that, for the avoidance of doubt, it is agreed that DSS shall have no remedy for breach of this warranty in relation to errors or interruptions to DSS Services covered by paragraph 4.1(a) of Schedule A6);

703.3 DSS shall acquire title to the Products in which it is to acquire title under Clauses 501, 502 and 503 free from all encumbrances and DSS shall have the right to quiet possession of such Products supplied hereunder;

703.4 the Basic Products will be compatible with the DSS Service Environment as at the date hereof, as specified in Schedule 1 and the Service Environment; and

703.5 all Optional and Additional Products and DSS Consumables shall be compatible with the DSS Service Infrastructure, the Service Infrastructure and the DSS Service Environment.

Clause 704. Intellectual Property Rights

The CONTRACTOR warrants and represents that:

704.1 DSS's use and operation of the Products and the DSS Service Architecture and the provision of the DSS Services shall not infringe any Intellectual Property Rights of any third party;

704.2 the CONTRACTOR has the full capacity and authority to grant the licences referred to in Clause 507;

704.3 it can comply with Clauses 904.1.3, 904.1.4, 905.1.3 and 905.1.4.

Clause 705. Technical Standards

The CONTRACTOR warrants and represents that:

705.1 the DSS Services shall comply with, and be provided in accordance with, the policies and standards specified in Schedule A2 and all components and equipment used in the course of the provision of the DSS Services shall operate in accordance with their technical specifications;

705.2 the provision of the DSS Services shall not cause electrical interference beyond the limits laid down in the relevant standard specified in Schedule A2, provided that

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for the purpose of this Clause 705.2 the DSS Services shall be deemed to include the operation of any testing and monitoring instruments used in connection with the provision of the DSS Services.

Clause 706. Statements and Representations

The CONTRACTOR warrants and represents that all statements and representations made to DSS in connection with tendering for and entering into the DSS Agreement are, to the best of its knowledge, information and belief, true and accurate at the time of making such statements and representations and that, from the date of execution hereof, it will advise DSS of any fact, matter or circumstance of which it may become aware which would render any such statement or representation to be false or misleading.

Clause 707. Disclaimer of Implied Terms

Except as expressly stated in the DSS Agreement, all terms, warranties and conditions, whether express or implied by statute, common law or otherwise (including but not limited to satisfactory quality and fitness for purpose) are hereby excluded to the extent permitted by law.

PART 8 : REMEDIES

Clause 801. Audit

801.1 The CONTRACTOR shall keep or cause to be kept the Records.

801.2 The CONTRACTOR shall grant or procure the grant to DSS, any statutory or regulatory auditors of DSS and their respective authorised agents the right of reasonable access to the Records and shall provide all reasonable assistance at all times for six (6) years after the creation of the relevant Records for the purposes of carrying out an audit of the CONTRACTOR's compliance with the DSS Agreement including all activities, Charges, performance, security and integrity in connection therewith. Each party shall bear its own expenses incurred pursuant to this Clause. On termination, the CONTRACTOR shall within a reasonable time to be agreed by the parties transfer the Records to DSS or a replacement contractor, as instructed by DSS. The CONTRACTOR shall thereafter be excused from any further liability under this Clause in relation to such Records.

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801.3 Without prejudice to the foregoing, in the event of an investigation into suspected fraudulent activity or other impropriety by the CONTRACTOR or any third party the DSS reserves for itself, any statutory or regulatory auditors of DSS and their respective authorised agents or any Crown body the right of immediate access to the Records described in Clause 801.1 and Clause 801.2 above and the CONTRACTOR agrees to render all necessary assistance to the conduct of such investigation at all times during the currency of the DSS Agreement or at any time thereafter.

801.4 Whenever DSS requires it, and solely for the purposes of enabling DSS's accounting officer to meet his obligations under the Exchequer and Audit Departments Act 1866, the CONTRACTOR:

801.4.1 shall disclose to DSS whatever information DSS requires concerning the prices DSS has paid or may have to pay under the DSS Agreement; and

801.4.2 shall produce whatever evidence DSS requires in support of the information provided under Clause 801.4.1 above.

For the avoidance of doubt, such information shall not include information concerning prices paid by the CONTRACTOR to its sub-contractors or suppliers).

801.5 In connection with the DSS Agreement, the CONTRACTOR must not enter into any other contract or agreement with any person unless that contract or agreement contains a provision equivalent to Clause 801.4 allowing DSS to obtain price information and evidence (as described in Clause 801.4) from that person. This Clause 801.5 does not apply if the CONTRACTOR has entered into a contract or agreement following a competitive tendering exercise in which the CONTRACTOR accepted the tender with the lowest price.

801.6 DSS must use information provided under Clauses 801.4 and 801.5 for the purposes of the Exchequer and Audit Departments Act 1866 and for no other purpose.

801.7 The CONTRACTOR shall provide DSS at no additional cost with copies of the annual and interim audited accounts of the CONTRACTOR and its approved sub-contractors within fourteen (14) days of such accounts having been lodged at Companies House or its local equivalent to Companies House.

801.8 Without in any way limiting the application of the other Clauses of this DSS Agreement, the CONTRACTOR acknowledges that for the purpose of examining and

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certifying DSS's accounts or for examining (pursuant to Section 6(1) of the National Audit Act 1983) the economy, efficiency and effectiveness with which DSS has used its resources, the Comptroller and Auditor General may examine such documents as he may reasonably require which are owned, held or are otherwise within the control of the CONTRACTOR and may require the CONTRACTOR to produce such oral and written explanations as he considers necessary.

801.9 The CONTRACTOR shall ensure that the terms of its contracts with its sub-contractors require the sub-contractors to permit examination by, and provide explanation to, the Comptroller and Auditor General in the manner described in Clause 801.8.

801.10 All information obtained by DSS pursuant to this Clause or Schedule A3 shall be treated as Confidential Information.

801.11 The parties shall comply with the provisions of Schedule A3.

Clause 802. Service Credits and Delay

802.1 In the event that:

802.1.1 the CONTRACTOR fails to make available the DSS Operational Trial System or any part thereof for the DSS Operational Trial; or

802.1.2 the DSS Operational Trial is not recorded as successful pursuant to the relevant provisions of the DSS Agreement, and DSS elects to extend the relevant testing period in accordance with the relevant provisions hereof,

the CONTRACTOR shall, without prejudice to any other rights and remedies of DSS, at the option of DSS either credit against the Charges or pay to DSS liquidated damages calculated in accordance with Schedule F5. Unless DSS exercises its option to recover such liquidated damages as a payment to it, DSS shall be deemed to have exercised its option to recover such liquidated damages as a credit against the Charges.

802.2 In the event that the DSS Services fail to meet the Service Levels contained in Schedules D8 and E8, the CONTRACTOR shall at the option of DSS either (i) as an adjustment to the Charges, credit DSS with Service Credits calculated in accordance with Schedules D8 and E8 respectively or (ii) pay DSS liquidated damages calculated in accordance with Schedules D8 and E8 respectively. Unless DSS exercises its option to recover liquidated damages as a payment to it, DSS shall be deemed to have

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exercised its option to recover Service Credits as a credit to it.

802.3 The CONTRACTOR shall credit DSS with the Service Credits or pay DSS the liquidated damages within thirty (30) days of receipt of a valid claim by DSS.

802.4 The parties acknowledge that the liquidated damages and Service Credits specified in the relevant Schedules referred to in this Clause are a genuine pre-estimate of the loss likely to be suffered by DSS and that the figures therein are reasonable.

802.5 The liquidated damages and Service Credits specified in this Clause are without prejudice to any other rights and remedies of DSS, except where they are specified in Schedules A6 and F5 to be DSS's exclusive remedy in damages, in which case such credit or payment of the relevant liquidated damages or Service Credits shall be in full and final settlement of the CONTRACTOR's liability in respect of the Default to which they relate. Except in accordance with Schedules A6 and F5, DSS shall have no right of termination in relation to any such Default.

Clause 803. Additional Resources

In the event that the DSS Services are not provided in accordance with all applicable provisions hereof as a result of the Default of the CONTRACTOR, the CONTRACTOR shall, at the request of DSS and without prejudice to DSS's other rights and remedies, arrange all such additional resources as are reasonably necessary to correct the said failure as early as practicable thereafter and at no additional charge to DSS.

Clause 804. Recovery of Sums Due

If any sum of money shall be due from the CONTRACTOR, the same may be deducted from any sum then due or which at any time thereafter may become due to the CONTRACTOR under the Related Agreements or under any other agreement between the CONTRACTOR and DSS or with any department, office or agency of the Crown.

Clause 805. Intellectual Property Rights Indemnity

805.1 Subject always to DSS's proper observance of its obligations under this Clause, the CONTRACTOR shall indemnify DSS against all claims, demands, actions, costs, expenses (including but not limited to legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any

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infringement or alleged infringement (including but not limited to the defence of such alleged infringement) in the United Kingdom of any Intellectual Property Right by the use or possession of the Products, DSS Services by or on behalf of DSS or in connection with the DSS Services.

805.2 The CONTRACTOR shall promptly notify DSS if any claim or demand is made or action brought against the CONTRACTOR to which this Clause applies.

805.3 DSS shall promptly notify the CONTRACTOR if any claim or demand is made or action brought against DSS to which Clause 805.1 may apply. The CONTRACTOR shall at its own expense conduct any litigation arising therefrom and all negotiations in connection therewith and DSS hereby agrees to grant to the CONTRACTOR exclusive control of any such litigation and such negotiations. The CONTRACTOR shall consult with and pay due regard to the interests (including the public interest) and views of DSS in the conduct of any defence to any claim or demand hereunder, and shall, where it is reasonable to do so, comply with such interests and views.

805.4 DSS shall at the request of the CONTRACTOR afford to the CONTRACTOR all reasonable assistance for the purpose of contesting any claim or demand made or action brought against DSS to which Clause 805.1 may apply or any claim or demand made or action brought against the CONTRACTOR to which Clause 805.2 may apply. The CONTRACTOR shall reimburse DSS for all costs and expenses (including but not limited to legal costs and disbursements on a solicitor and client basis) incurred in so doing.

805.5 DSS shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right to which Clause 805.1 may apply or any claim or demand made or action brought against the CONTRACTOR to which Clause 805.2 may apply.

805.6 If a claim or demand is made or action brought to which Clause 805.1 may apply or in the reasonable opinion of the CONTRACTOR is likely to be made or brought, the CONTRACTOR may at its own expense either:

805.6.1 modify any or all of the Products or the DSS Services without reducing the performance and functionality of the same, or substitute alternative products, or services of equivalent performance and functionality for any or all of the Products or the DSS Services, so as to avoid the infringement or the alleged infringement but without disrupting the performance of the DSS Services, provided that the

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terms herein shall apply mutatis mutandis to such modified or substituted items or services and such modified or substituted items shall be acceptable to DSS (whether by passing any form of acceptance testing or otherwise), such acceptance not to be unreasonably withheld or delayed, and shall reimburse DSS all reasonable costs directly incurred by them; or

805.6.2 procure a licence to use the Products and DSS Services on terms which afford to DSS no more extensive rights than those originally applicable here under and which are acceptable to DSS, and shall reimburse DSS all reasonable costs directly incurred by it.

805.7 The foregoing provisions of this Clause 805 shall not apply insofar as any such claim or demand or action is in respect of:

805.7.1 any use by or on behalf of DSS of the Products or DSS Services in combination with any item not supplied or approved (such approval not to be unreasonably withheld or delayed) by the CONTRACTOR where such use of the Products or DSS Services directly gives rise to the claim, demand or action; or

805.7.2 any modification carried out by or on behalf of DSS to any item supplied by the CONTRACTOR under the DSS Agreement if such modification is not authorised by the CONTRACTOR in writing; or

805.7.3 any use by DSS of the Products or DSS Services in a manner not reasonably to be inferred from the specification or requirements of DSS.

805.8 If the CONTRACTOR has availed itself of its rights to modify the Products or the DSS Services or to supply substitute products or services pursuant to Clause 805.6.1 (or DSS has unreasonably withheld its acceptance of such substitute products or services) or to procure a licence under Clause 805.6.2 and such exercise of the said rights has avoided any claim, demand or action for infringement or alleged infringement, or if DSS has unreasonably withheld its acceptance of any items modified or substituted by the CONTRACTOR in accordance with Clause 805.6, then the CONTRACTOR shall have no further liability thereafter under this Clause 805 in respect of the said claim, demand or action.

805.9 If a modification or substitution in accordance with Clause 805.6.1 above is not possible so as to avoid the infringement and the CONTRACTOR has been unable to procure

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a licence in accordance with Clause 805.6.2, Clause 805.1 shall apply.

805.10 DSS hereby warrants and represents that any instructions given in relation to the CONTRACTOR's use of any third party item supplied directly or indirectly by DSS shall not cause the CONTRACTOR to infringe any third party's Intellectual Property Rights in such item. DSS shall, to the extent reasonably possible, assign to the CONTRACTOR any indemnity in DSS's favour in relation to the Intellectual Property Rights in such third party items.

805.11 The foregoing states the entire liability of the CONTRACTOR with regard to the infringement of any Intellectual Property Right by the use or possession of the Products by or on behalf of DSS or in connection with the receipt of the DSS Services.

Clause 806. Remedies Cumulative

Except as otherwise expressly provided in the DSS Agreement, all remedies available to the CONTRACTOR or to DSS for breach of the DSS Agreement are cumulative and may be exercised concurrently or separately and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

Clause 807. Alternative Dispute Resolution Procedure

807.1 All disputes between DSS and the CONTRACTOR arising out of or relating to the DSS Agreement shall be referred, by either party involved in the dispute, to the Contract Administration Group (as specified in Schedule A4) for resolution.

807.2 If any dispute cannot be resolved pursuant to Clause 807.1 within a maximum of fourteen (14) days after it has been referred under Clause 807.1, that dispute shall be referred to the Contracts Steering Group (as specified in Schedule A4 of the AUTHORITIES' Agreement) for resolution.

807.3 If the dispute cannot be resolved by the parties' representatives nominated under Clause 807.2 within a maximum of fourteen (14) days after it has been referred under Clause 807.2 the dispute may be referred:

807.3.1 if the dispute is of a technical nature or is expressed by the DSS Agreement to be subject to expert determination, by agreement between the parties it may be referred for final determination to an expert (the "Expert") who shall be deemed to act as expert and not as arbitrator; and

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807.3.2 in all other aspects it shall be determined pursuant to Clause 104.1.

807.4 The Expert shall be selected by mutual agreement or, failing agreement, within fourteen (14) days after a request by one party to the other, shall be chosen at the request of any party by the President for the time being of the Institution of Electrical Engineers who shall be requested to choose a suitably qualified and experienced Expert for the dispute in question.

807.5 Fourteen (14) days after the Expert has accepted the appointment the parties shall submit a written report on the dispute to the Expert and to each other and seven (7) days thereafter shall submit any written replies they wish to make to the Expert and to each other.

807.6 The parties will then afford the Expert all necessary assistance which the Expert requires to consider the dispute including but not limited to full access to the DSS Service Environment and any documentation or correspondence relating to the DSS Service Environment.

807.7 The Expert shall be instructed to deliver his determination to the parties within fourteen (14) days or such other period as may be agreed between the parties after the submission of the written reports pursuant to Clause 807.5.

807.8 Decisions of the Expert shall be final and binding and not subject to appeal.

807.9 The Expert shall have the same powers to require any party to produce any documents or information to him and the other party as an arbitrator and each party shall in any event supply to him such information which it has and is material to the matter to be resolved and which it could be required to produce on discovery.

807.10 The fees of the Expert shall be borne by the parties in the proportions determined by the Expert having regard (amongst other things) to the conduct of the parties in relation to the dispute in question.

807.11 Work and activity to be carried out under the DSS Agreement shall not cease or be delayed by this alternative dispute resolution procedure. However, during the currency of any alternative dispute resolution procedure, DSS shall not be entitled to exercise any right of termination which would otherwise arise in respect of the dispute which forms the subject matter of such procedure.

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Clause 808. Injury to Persons; Loss of Property

808.1 Subject always to DSS's proper performance of its obligations under this Clause, the CONTRACTOR shall fully indemnify DSS in respect of any personal injury or loss of or damage to Property incurred by DSS or its respective employees and authorised agents to the extent that such personal injury or loss of Property is directly caused by any Default of the CONTRACTOR, its employees or agents in connection with the performance or purported performance of the DSS Agreement.

808.2 In the event of any claim or demand being made or action brought to which Clause 808.1 applies, the CONTRACTOR shall be promptly notified thereof and the CONTRACTOR shall at its own expense conduct all negotiations for settlement of the same and any legal proceedings that may arise therefrom. The CONTRACTOR shall consult with and pay due regard to the interests (including the public interest) and views of DSS in the conduct of any defence to any claim or demand hereunder, and shall, where it is reasonable to do so, comply with such interests and views. DSS, its employees and agents, shall at the request of the CONTRACTOR afford all reasonable assistance for the purpose of contesting any such claim or demand or action and shall be repaid any reasonable expense incurred in so doing and shall not make any admissions which may be prejudicial to the defence of such claim or demand or action.

Clause 809. Liability

809.1 Except as otherwise specified in Schedule B10 in relation to benefit payment, the CONTRACTOR shall be liable for all losses and shall indemnify DSS against all costs, expenses, losses and damages incurred (including any legal costs) as a result of:

- (a) use of copied, altered or forged Cards;
- (b) any unauthorised third party access to the DSS Service Architecture;
- (c) any impersonation of Card holders which successfully defeats extended validation procedures;
- (d) any "hacking" into the systems used by the CONTRACTOR to provide the DSS Services (whether or not constituting an offence under the Computer Misuse Act 1990)

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(e) drawing of any benefit payments by Card holders or their proxies where at the time of payment notification had been given by DSS to the CONTRACTOR to withhold payment or cancel a proxy authorisation;

(f) any other form of fraud (in relation to any of the DSS Services).

809.2 Except as otherwise specified in Schedule B10 in relation to benefit payment, Clause 809.1 shall not apply if and to the extent that any of the matters referred to therein have been caused by DSS's non-performance of any obligation under the DSS Agreement upon the performance of which the CONTRACTOR's obligations under the DSS Agreement in respect of risk for fraud are expressed to depend. The foregoing is in place of the general rule stated in Clause 101.5.

809.3 In any case where DSS incurs any costs, expenses, losses or damages as referred to in Clause 809.1, Clause 809.1 shall be presumed to apply unless the CONTRACTOR proves that Clause 809.2 applies.

809.4 In relation to benefit payment only, the responsibilities of the parties for the investigation of fraudulent losses and the agreed apportionment of costs under this DSS Agreement are defined in Schedule B10.

Clause 810. Limitation of Liability

810.1 Neither party hereto excludes or limits its liability to any other party for death or personal injury or any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.

810.2 Subject always to Clause 810.1, the liability of each party for Defaults shall be subject to the financial limits set out in this Clause 810.2.

810.2.1 The aggregate liability for all Defaults resulting in direct loss of or damage to the Property of any other party under the DSS Agreement shall in no event exceed:

810.2.1.1 nine hundred thousand pounds (£900,000), in the case of DSS; and

810.2.1.2 fifty million pounds (£50,000,000), in the case of the CONTRACTOR.

810.2.2 The aggregate liability per Year under the DSS Agreement of DSS for all Defaults (other than a Default governed by Clause 810.2.1) arising during

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that Year shall in no event exceed four million five hundred thousand pounds (£4,500,000), in the case of DSS.

810.2.3 The aggregate liability under the DSS Agreement of the CONTRACTOR for all Defaults (other than a Default governed by Clause 810.2.1) shall in no event exceed two hundred million pounds (£200,000,000).

810.2.4 Subject to Clause 810.2.5, the financial limits specified in Clause 810.2 apply to all claims for monetary relief which either party may have against the other either under the DSS Agreement or otherwise in relation to the subject matter of the DSS Agreement, including all claims for liquidated damages and Service Credits pursuant to Clause 802, all claims to be indemnified pursuant to Clauses 805 and 808 and all other claims or costs which are compensable in money or money's worth.

810.2.5 The financial limits applicable to DSS under Clause 810.2 shall be exclusive of and additional to any liability of DSS to pay any Charges, any Termination Charge or any Transfer Payment which may become properly due and payable to the CONTRACTOR in accordance with the provisions hereof or any sum by way of interest thereon that a court may award.

810.3 Subject always to Clause 810.1, in no event shall any party be liable to any other party for indirect or consequential loss or damage. For the avoidance of doubt, this Clause shall not be deemed or construed to affect the CONTRACTOR's liability under Clause 809.

810.4 The provisions of Clause 810.3 shall not be taken as limiting the right of DSS to claim from the CONTRACTOR for:

810.4.1 additional operational and administrative costs and expenses; and/or

810.4.2 expenditure or charges rendered unnecessary as a result of any Default by the CONTRACTOR.

810.5 The parties expressly agree that should any limitation or provision contained in this Clause be held to be invalid under any applicable statute or rule of law it shall to that extent be deemed omitted but if any party thereby becomes liable for loss or damage which would otherwise have been excluded such liability shall be subject to the other limitations and provisions set out herein.

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810.6 For the avoidance of doubt, it is acknowledged that nothing in the DSS Agreement shall be deemed or construed to relieve either party of its common law duty to the other party against which a claim may be made to mitigate any loss which is the subject of such claim.

PART 9 : TERM AND TERMINATION

Clause 901. Term

The term of the DSS Agreement shall, unless terminated earlier in accordance with the provisions of Clause 902, be for a period commencing on the date hereof and ending five (5) years from the Roll-Out Completion Date.

Clause 902. Termination of DSS Agreement

902.1 DSS may at any time by notice in writing terminate the DSS Agreement with effect from the date of service of such notice or such later date as may be specified therein if:

902.1.1 there is a change of control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, in the CONTRACTOR or the GUARANTOR; or

902.1.2 the CONTRACTOR or the GUARANTOR, being an individual, or where the CONTRACTOR or the GUARANTOR is a firm, any partner or partners in that firm who together are able to exercise direct or indirect control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, shall at any time become bankrupt or shall have a receiving order or administration order made against him or shall make any composition or arrangement with or for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors, or shall purport to do so, or appears unable to pay or to have no reasonable prospect of being able to pay a debt within the meaning of Section 268 of the Insolvency Act 1986 or he shall become apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985 as amended by the Bankruptcy (Scotland) Act 1993 or any application shall be made under any bankruptcy or insolvency act for the time being in force for sequestration of his estate, or a trust deed shall be granted by him for behoof of his creditors; or any similar event occurs under the law of any other jurisdiction; or

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902.1.3 the CONTRACTOR, being a company, passes a resolution, or the Court makes an order that the CONTRACTOR or the GUARANTOR be wound up otherwise than for the purpose of a bona fide reconstruction or amalgamation, or a receiver, manager or administrator on behalf of a creditor is appointed in respect of the business or any part thereof (which for the avoidance of doubt shall not include any subsidiary company of the CONTRACTOR or of the GUARANTOR) of the CONTRACTOR or the GUARANTOR, or circumstances arise which entitle the Court or a creditor to appoint a receiver, manager or administrator or which entitle the Court otherwise than for the purpose of a bona fide reconstruction or amalgamation to make a winding-up order, or the CONTRACTOR or the GUARANTOR is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or any similar event occurs under the law of any other jurisdiction; or

902.1.4 if notice of termination of the AUTHORITIES' Agreement is given pursuant to Clause 902 of the AUTHORITIES' Agreement in the previous six (6) months (provided that if such notice is given pursuant to Clause 902.6 of the AUTHORITIES' Agreement, or is treated as having been so given by virtue of Clause 902.10 of the AUTHORITIES' Agreement, termination pursuant to this sub-Clause shall be treated as termination for convenience in accordance with Clause 902.6); or

902.1.5 any provisions hereof other than Clause 902, or any provision of the AUTHORITIES' Agreement other than Clause 902 thereof expressly entitles DSS to terminate the DSS Agreement; or

902.1.6 the circumstances in Clause 606.3.6 arise and either the obligation in question is not capable of being performed again, or, if it is so capable, is not so performed again within thirty (30) days of written notice to the CONTRACTOR specifying the obligation in question and requiring it to be performed or within such other period as may be requested by the CONTRACTOR and agreed by the DSS, such agreement not to be reasonably withheld or delayed; or

902.1.7 the circumstances in Clause 201.8 of the AUTHORITIES' Agreement arise.

902.2 DSS may at any time by notice in writing terminate the DSS Agreement with effect from the date of service of

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such notice or such later date as may be specified in such notice, if the CONTRACTOR is in Default of any obligation under the DSS Agreement and:

902.2.1 the Default is capable of remedy and the CONTRACTOR shall have failed to remedy the Default within thirty (30) days of written notice to the CONTRACTOR specifying the Default and requiring its remedy or within such other period as may be requested by the CONTRACTOR and agreed by DSS, such agreement not to be unreasonably withheld or delayed;

902.2.2 the Default is not capable of remedy (and for the purposes of this Clause, failure to comply with a timescale shall not of itself be considered a Default not capable of remedy except pursuant to Clause 606.1); or

902.2.3 notice has been served pursuant to Clause 606.4 making time of the essence and all or any of the obligations specified in the notice have not been performed by the time limit stated in the notice.

902.3 [Not used]

902.4 In the event of any termination of the DSS Agreement pursuant to Clause 902.1 or Clause 902.2, DSS shall return the DSS Service Infrastructure or any part thereof (other than any part in relation to which either or both of the AUTHORITIES has exercised an option to purchase under the Related Agreements), in which case the CONTRACTOR shall at no additional cost to DSS remove such parts of the DSS Service Infrastructure and shall make good any damage to the DSS Premises occasioned by such removal.

902.5 DSS shall only be permitted to exercise its rights pursuant to Clause 902.1.1 for three (3) months after each such change of control and shall not be permitted to exercise such rights where DSS has agreed in advance in writing to the particular change of control and such change of control takes place as proposed. The CONTRACTOR shall notify DSS in advance of any change of control taking place, if legally possible, or if not so possible as soon as reasonably practicable, and in any event no later than one (1) month after such change of control taking place.

902.6

902.6.1 DSS may terminate the DSS Agreement by giving the CONTRACTOR not less than twelve (12) months' notice.

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902.6.2 [Not used]

902.6.3 In the event of such notice being given, DSS shall on termination hereof pay the CONTRACTOR the Termination Charge (calculated in accordance with Schedule A7).

902.6.4 [Not used]

902.6.5 [Not used]

902.7 Termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either party.

902.8 The provisions of Clauses 101, 102, 104, 507, 607, 609, 610, 801, 804, 805, 810, 902, 903, 904, 905 and 906 and the provisions of Schedules A1, A3, A7, D6 and E6 shall survive the termination of this DSS Agreement by DSS.

902.9 The CONTRACTOR may terminate the DSS Agreement by notice in writing in accordance with Clause 201.8.2 of the AUTHORITIES' Agreement.

Clause 903. Termination of DSS Services

903.1 DSS may at any time by notice in writing terminate any or all of the DSS Services with effect from the date of service of such notice or such later date as may be specified therein if:

903.1.1 there is a change of control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, in the CONTRACTOR or the GUARANTOR; or

903.1.2 the CONTRACTOR or the GUARANTOR, being an individual, or where the CONTRACTOR or the GUARANTOR is a firm, any partner or partners in that firm who together are able to exercise direct or indirect control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, shall at any time become bankrupt or shall have a receiving order or administration order made against him or shall make any composition or arrangement with or for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors, or shall purport to do so, or appears unable to pay or to have no reasonable prospect of being able to pay a debt within the meaning of Section 268 of the Insolvency Act 1986 or he shall become apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985 as amended by the Bankruptcy (Scotland) Act 1993 or any application

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shall be made under any bankruptcy or insolvency act for the time being in force for sequestration of his estate, or a trust deed shall be granted by him for behoof of his creditors; or any similar event occurs under the law of any other jurisdiction; or

903.1.3 the CONTRACTOR, being a company, passes a resolution, or the Court makes an order that the CONTRACTOR or the GUARANTOR be wound up otherwise than for the purpose of a bona fide reconstruction or amalgamation, or a receiver, manager or administrator on behalf of a creditor is appointed in respect of the business or any part thereof (which for the avoidance of doubt shall not include any subsidiary company of the CONTRACTOR or of the GUARANTOR) of the CONTRACTOR or the GUARANTOR, or circumstances arise which entitle the Court or a creditor to appoint a receiver, manager or administrator or which entitle the Court otherwise than for the purpose of a bona fide reconstruction or amalgamation to make a winding-up order, or the CONTRACTOR or the GUARANTOR is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or any similar event occurs under the law of any other jurisdiction.

903.1.4 if notice of termination of the AUTHORITIES' Agreement is given pursuant to Clause 902 of the AUTHORITIES' Agreement in the previous six (6) months; or

903.1.5 any provision hereof other than Clauses 902 or 903 or any provision of the AUTHORITIES' Agreement other than Clause 902 thereof expressly entitles DSS to terminate the DSS Agreement or any DSS Service; or

903.1.6 the circumstances in Clause 606.3.6 arise and either the obligation in question is not capable of being performed again, or, if it is so capable, is not so performed again within thirty (30) days of written notice to the CONTRACTOR specifying the obligation in question and requiring it to be performed or within such other period as may be requested by the CONTRACTOR and agreed by DSS, such agreement not to be unreasonably withheld or delayed.

903.2 DSS may at any time by notice in writing terminate any or all of the DSS Services, with effect from the date of service of such notice or such later date as may be

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specified therein if the CONTRACTOR is in Default of any obligation under the DSS Agreement and:

903.2.1 the Default is capable of remedy and the CONTRACTOR shall have failed to remedy the Default within thirty (30) days of written notice to the CONTRACTOR specifying the Default and requiring its remedy or within such other period as may be requested by the CONTRACTOR and agreed by DSS, such agreement not to be unreasonably withheld or delayed; or

903.2.2 the Default is not capable of remedy (and for the purposes of this Clause, failure to comply with a timescale shall not of itself be considered a Default not capable of remedy except pursuant to Clause 606.4); or

903.2.3 notice has been served pursuant to Clause 606.4 making time of the essence and all or any of the obligations specified in the notice have not been performed by the time limit specified in the notice.

903.3 [Not used]

903.4 DSS shall only be permitted to exercise its rights pursuant to Clause 902.1.1 for three (3) months after each such change of control and shall not be permitted to exercise such rights where DSS has agreed in advance in writing to the particular change of control and such change of control takes place as proposed.

903.5

903.5.1 DSS may terminate any or all of the DSS Services by giving the CONTRACTOR not less than twelve (12) months notice.

903.5.2 [Not used]

903.5.3 In the event of such notice being given, DSS shall on termination of the DSS Service pay the CONTRACTOR the Termination Charge (calculated in accordance with Schedule D6 or E6 as appropriate).

903.5.4 [Not used]

903.5.5 [Not used]

903.6 [Not used]

903.7 Termination of DSS Services shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either party.

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903.8 If DSS shall terminate all DSS Services, it shall have no further rights or obligations under the DSS Agreement other than pursuant to the provisions of Clauses 101, 102, 104, 507, 607, 609, 610, 801, 804, 805, 810, 902, 903, 904, 905 and 906, Schedules A1, A3, A7, D6 and E6.

903.9 In the event of the termination of any DSS Services or POCL Services, or of any Related Agreement, the parties shall negotiate in good faith to make any necessary consequential amendments to the DSS Agreement in accordance with Clause 101.3. Until such consequential amendments have been made, the CONTRACTOR shall not be liable for any delay or failure in the performance of its obligations under the DSS Agreement which is directly caused by the termination of any DSS Services, POCL Services or Related Agreement.

Clause 904. Rights on Termination of DSS Agreement

904.1 In the event of termination hereunder, in circumstances where DSS does not intend inviting the CONTRACTOR to continue to provide the DSS Services or to provide services equivalent to the DSS Services, DSS shall, without prejudice to DSS's other rights and remedies, have the option, exercisable at any time within four (4) months after notice of termination:

904.1.1 to purchase from the CONTRACTOR, or to require the CONTRACTOR to permit a replacement contractor to purchase from it, any or all of the hardware comprised within the DSS Service Infrastructure and/or used in connection with the performance of the DSS Services (other than where such hardware is not owned by the CONTRACTOR);

904.1.2 to acquire from the CONTRACTOR a non-exclusive licence to use (or authorise a replacement contractor to use) for the continuation of services equivalent to the DSS Services in respect of any necessary Intellectual Property Rights which are owned by the CONTRACTOR and used in connection with the performance of the DSS Agreement. Such licence shall:

904.1.2.1 not be subject to payment other than pursuant to Clause 904.1.6; and

904.1.2.2 be perpetual and irrevocable (subject to Clause 507.11).

904.1.2.3 [Not used]

904.1.2.4 [Not used]

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904.1.2.5 [Not used]

904.1.3 to require that the CONTRACTOR shall assign or novate, or (if assignment or novation is not possible) arrange for the benefit thereof to be transferred, in favour of DSS or to any person as may be designated for the purpose by DSS any sub-contracts, equipment rental or lease agreements and all other (non-employment) agreements entered into by the CONTRACTOR which are necessary to the performance of the DSS Services as DSS may designate;

904.1.4 to require that the CONTRACTOR shall at no cost to DSS (or a replacement contractor) forthwith release to DSS (or a replacement contractor) a copy of all the Software and all other software, data, tools, utilities, documentation and any other item necessary to provide the DSS Service hereunder. Such software (other than any in respect of which DSS has exercised its option under Clause 904.1.2) shall be subject to any applicable licence terms, provided that such terms shall not detract from DSS's or a replacement contractor's ability to perform services equivalent to the DSS Services.

904.1.5 Notwithstanding the generality of Clauses 904.1.1 to Clause 904.1.4 DSS agrees only to exercise their rights under such Clauses when and only to the extent that it is necessary for DSS either to fulfil the purposes of the DSS Agreement itself or to engage a third party so to do.

904.1.6 In the event that DSS exercises any of the options in Clause 904.1, DSS shall pay to the CONTRACTOR the Transfer Payment (calculated in accordance with Schedule A7).

904.1.7 If the DSS Agreement expires and DSS does not re-compete the DSS Services, DSS shall be obliged to exercise all of the options in this Clause in relation to any DSS Services not so re-competed, unless the CONTRACTOR elects to relieve DSS of this obligation in whole or in part.

904.2 In the event that the DSS Agreement is terminated as provided for herein:

904.2.1 the CONTRACTOR shall repay forthwith to DSS all monies paid in relation to DSS Services up to and including such date of termination other than monies in respect of any DSS Services or part thereof properly performed in accordance with the DSS Agreement;

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904.2.2 the CONTRACTOR shall return to DSS all Property of DSS in its possession;

904.2.3 the CONTRACTOR shall render all practicable assistance to DSS, if requested, to the extent necessary to effect an orderly assumption by DSS or a replacement contractor of the services theretofore performed by the CONTRACTOR under the DSS Agreement and DSS shall reimburse the CONTRACTOR for such assistance at the rates then prevailing for customers of the CONTRACTOR for the same or similar services;

904.2.4 DSS shall be entitled on termination to offer any employee or sub-contractor (being an individual) of the CONTRACTOR who has during the six (6) months prior to such offer been involved for at least seventy-five (75%) of his contracted working time in performing the CONTRACTOR's obligations under the DSS Agreement employment or an agreement for services with DSS and the CONTRACTOR agrees that if such person accepts such offer the CONTRACTOR shall release such person from any breach of contract with it (other than in relation to such person's obligations of confidentiality and notice of termination) which such acceptance may otherwise involve; and

904.2.5 (a) as soon as possible following any notice of termination being given (in the case of an early termination of the DSS Agreement) and no later than three (3) months prior to the expiry of the DSS Agreement (in the case of the termination of the DSS Agreement through the effluxion of time) the CONTRACTOR shall at the request of DSS provide to DSS or to a replacement contractor nominated by DSS details of the terms of employment of all CONTRACTOR personnel who are then employed in the performance of the DSS Services as reasonably required by DSS in order to permit compliance with the Transfer of Undertakings (Protection of Employment) Regulations 1981 by DSS or a replacement contractor.

(b) subject always to DSS's proper observance of their obligations under Clause 904.2.5(c), the CONTRACTOR shall fully indemnify DSS from and against any

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and all liabilities which DSS may incur in connection with or as a result of any claim or demand whatsoever by any employee or former employee of the CONTRACTOR or of any of the CONTRACTOR's sub-contractors or agents in respect of his employment with the CONTRACTOR or such sub-contractor or agent (or, pursuant to the application of the Transfer of Undertakings (Protection of Employment) Regulations 1981, with DSS or any replacement contractor) and/or its termination save to the extent such claim or demand both (i) is made by an employee identified within the relevant employment details referred to in Clause 904.2.5(a) as transferring pursuant to the Regulations and (ii) relates to employer's obligations accruing after the said transfer of employment which are clearly identified within the relevant employment details.

- (c) in the event of any claim or demand being made or action brought to which Clause 904.2.5(b) applies, the CONTRACTOR shall be promptly notified thereof and the CONTRACTOR shall at its own expense conduct all negotiations for settlement of the same and any legal proceedings that may rise therefrom. DSS, its sub-contractors, agents and employees shall at the request of the CONTRACTOR afford all reasonable assistance for the purpose of contesting any such claim or demand or action and shall be repaid any reasonable expense incurred in so doing and shall not make any admissions which may be prejudicial to the defence of any such claim or demand or action.

904.3 DSS shall only be entitled to examine the options in Clause 904.1 and 904.2.4 to the extent that such exercise does not affect the CONTRACTOR's ability to perform any surviving Services.

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Clause 905. Rights on Termination of DSS Services

905.1 In the event of termination of any DSS Service hereunder, in circumstances where DSS does not intend inviting the CONTRACTOR to continue to provide the DSS Services or to provide services equivalent to the DSS Services, DSS shall, without prejudice to DSS's other rights and remedies, have the option, exercisable at any time within four (4) months after notice of termination

905.1.1 to purchase from the CONTRACTOR, or to require the CONTRACTOR to permit a replacement contractor to purchase from it, any or all of the hardware comprised within the DSS Service Infrastructure and/or used in connection with the performance of the relevant DSS Services (other than where such hardware is not owned by the CONTRACTOR);

905.1.2 to acquire from the CONTRACTOR a non-exclusive licence to use (or authorise a replacement contractor to use) for the continuation of services equivalent to the relevant DSS Service in respect of any necessary Intellectual Property Rights which are owned by the CONTRACTOR and used in connection with the performance of the DSS Agreement. Such licence shall:

905.1.2.1 not be subject to payment other than pursuant to Clause 905.1.6; and

905.1.2.2 be perpetual and irrevocable (subject to Clause 507.11).

905.1.2.3 [Not used]

905.1.2.4 [Not used].

905.1.2.5 [Not used].

905.1.3 to require that the CONTRACTOR shall assign or novate, or (if assignment or novation is not possible) arrange for the benefit thereof to be transferred, in favour of DSS or to any person as may be designated for the purpose by DSS any sub-contracts, equipment rental or lease agreements and all other (non-employment) agreements entered into by the CONTRACTOR which are necessary to the performance of the relevant DSS Services as DSS may designate;

905.1.4 to require that the CONTRACTOR shall at no cost to DSS (or to a replacement contractor) forthwith release to DSS (or to a replacement contractor) a copy of all the Software and (subject to any necessary consents of third parties) all

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other software, data, tools, utilities, documentation and any other item necessary to provide the relevant DSS Service hereunder. Such software (other than any in respect of which DSS has exercised its options under Clause 905.1.2) shall be subject to any applicable licence terms, provided that such terms shall not detract from DSS's or a replacement contractor's ability to perform services equivalent to the relevant DSS Service.

905.1.5 Notwithstanding the generality of Clauses 905.1.1 to Clause 905.1.4 DSS agrees only to exercise its rights under such Clauses when and only to the extent that it is necessary for DSS either to fulfil the purposes of the DSS Agreement itself or to engage a third party so to do.

905.1.6 In the event that DSS exercises any of the options in Clause 905.1, DSS shall pay to the CONTRACTOR the relevant Transfer Payment.

905.2 In the event that any DSS Service is terminated as provided for herein:

905.2.1 the CONTRACTOR shall repay forthwith to DSS all monies paid up to and including such date of termination in respect of the relevant DSS Service other than monies in respect of any such DSS Service or part thereof properly performed in accordance with the DSS Agreement;

905.2.2 the CONTRACTOR shall render all practicable assistance to DSS, if requested, to the extent necessary to effect an orderly assumption by DSS or a replacement contractor of the services theretofore performed by the CONTRACTOR under the DSS Agreement and DSS shall reimburse the CONTRACTOR for such assistance at the rates then prevailing for customers of the CONTRACTOR for the same or similar services;

905.2.3 shall be entitled on termination of the relevant DSS Service to offer any employee or sub-contractor (being an individual) of the CONTRACTOR who has during the six (6) months prior to such offer been involved for at least seventy-five per cent (75%) of his contracted working time in performing the CONTRACTOR's obligations under the DSS Agreement in relation to the relevant DSS Service employment or an agreement for services with DSS and the CONTRACTOR agrees that if such person accepts such offer the CONTRACTOR shall release such person from any breach of contract with it (other

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than in relation to such person's obligations of confidentiality and notice of termination) which such acceptance may otherwise involve; and

905.2.4 (a) as soon as possible following any notice of termination being given (in the case of an early termination of the relevant DSS Service) the CONTRACTOR shall at the request of DSS provide to DSS or to a replacement contractor nominated by DSS details of the terms of employment of all CONTRACTOR personnel who are then employed in the performance of the relevant DSS Services as reasonably required by DSS in order to permit compliance with the Transfer of Undertakings (Protection of Employment) Regulations 1981 by DSS or a replacement contractor.

(b) subject always to DSS's proper observance of their obligations under Clause 905.2.4(c), the CONTRACTOR shall fully indemnify DSS from and against any and all liabilities which DSS may incur in connection with or as a result of any claim or demand whatsoever by any employee or former employee of the CONTRACTOR or of any of the CONTRACTOR's sub-contractors or agents in respect of his employment with the CONTRACTOR or such sub-contractor or agent (or, pursuant to the application of the Transfer of Undertakings (Protection of Employment) Regulations 1981, with DSS or any replacement contractor) and/or its termination save to the extent such claim or demand both (i) is made by an employee identified within the relevant employment details referred to in Clause 905.2.4(a) as transferring pursuant to the Regulations and (ii) relates to employer's obligations accruing after the said transfer of employment which are clearly identified within the relevant employment details.

(c) in the event of any claim or demand being made or action brought to which Clause 905.2.4(b) applies, the

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CONTRACTOR shall be promptly notified thereof and the CONTRACTOR shall at its own expense conduct all negotiations for settlement of the same and any legal proceedings that may rise therefrom. DSS, its sub-contractors, agents and employees shall at the request of the CONTRACTOR afford all reasonable assistance for the purpose of contesting any such claim or demand or action and shall be repaid any reasonable expense incurred in so doing and shall not make any admissions which may be prejudicial to the defence of any such claim or demand or action.

905.3 DSS shall only be entitled to exercise the options in Clause 905.1 and 905.2.3 to the extent that such exercise does not affect the CONTRACTOR's ability to perform any surviving Services.

Clause 906. Transfer Services

906.1 In the event of termination of the DSS Agreement or the Card Management Service, the CONTRACTOR shall perform the Transfer Services as set out in Schedule E6.

906.2 In the event of termination of the DSS Agreement or the Payment Authorisation Service, the CONTRACTOR shall perform the Transfer Services as set out in Schedule D6.

906.3 In the event of termination of the DSS Agreement, the CONTRACTOR shall perform the Transfer Services specified in Schedule A7.

PART 10 : MISCELLANEOUS

Clause 1001. Corrupt Gifts and Payments of Commission

1001.1 The CONTRACTOR shall neither:

1001.1.1 offer or give or agree to give any person on Her Majesty's Service (which term shall include all persons employed or engaged by the Crown and all persons providing services to the Crown) any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or performance of the DSS Agreement or any other agreement with Her Majesty's Service or for showing or forbearing to show favour or disfavour to any person in relation to the DSS Agreement; nor

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1001.1.2 enter into the DSS Agreement if in connection with it commission has been paid or agreed to be paid to any person on Her Majesty's Service by the CONTRACTOR or on the CONTRACTOR's behalf or to the CONTRACTOR's knowledge, unless before the DSS Agreement is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to DSS.

1001.2 In the event of any breach of this Clause 1001 by the CONTRACTOR or by anyone employed by the CONTRACTOR or acting on the CONTRACTOR's behalf (whether with or without the knowledge of the CONTRACTOR) or the commission of any offence by the CONTRACTOR or by anyone employed by the CONTRACTOR or acting on behalf of the CONTRACTOR under the Prevention of Corruption Acts, 1889 to 1916 in relation to this or any other contract with for Her Majesty's Service, DSS may summarily terminate the DSS Agreement by notice in writing to the CONTRACTOR pursuant to Clause 902.1.5. Provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to DSS and provided always that DSS may recover from the CONTRACTOR the amount or value of any such gift, consideration or commission.

1001.3 The decision of DSS shall be final and conclusive in any dispute, difference or question arising in respect of:

1001.3.1 the interpretation of this Clause (except so far as the same may relate to the amount recoverable from the CONTRACTOR under Clause 1001.2 in respect of any loss resulting from such termination of the DSS Agreement); or

1001.3.2 the right of DSS under this Clause 1001 to terminate the DSS Agreement; or

1001.3.3 the amount or value of any such gift, consideration or commission.

Clause 1002. Discrimination

1002.1 The CONTRACTOR shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, regulation or other similar instrument relating to discrimination (whether in relation to race, gender, religion or otherwise) in employment.

1002.2 The CONTRACTOR shall take all reasonable steps to ensure the observance of the provisions of Clause 1002.1 by all servants, employees, agents and consultants of the CONTRACTOR and all sub-contractors.

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Clause 1003. Export of Products

For the purpose of the Related Agreements only, DSS confirm that neither the Products nor their direct product(s) will be exported by DSS unless in accordance with any appropriate UK Government export licensing controls.

Clause 1004. Guarantee

The CONTRACTOR shall procure that the GUARANTOR shall within thirty (30) days after the date hereof enter into and maintain a guarantee in the form set out in Schedule A13. Breach of this Clause shall constitute a Default not capable of remedy.

Clause 1005. Insurance

The CONTRACTOR shall to the extent reasonably possible insure or make provision for self-insurance against all losses and damages which are the result of its fault or negligence in performing the DSS Services, including workman's compensation, public liability, product liability, property damage and professional indemnity. The CONTRACTOR will, if requested in writing by DSS, produce to DSS a certificate of insurance showing the applicable coverage currently in force, and will also give DSS prior written notice of (where possible), or written notice no later than thirty (30) days after, alteration or cancellation of such insurance.

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IN WITNESS WHEREOF this Agreement has been executed on behalf of the parties as follows:

Signed for and on behalf of Secretary of State for Social Security

By:.....

Name: PETER MATHISON

Title: Chief Executive, Benefits Agency

Date:.....

Signed for and on behalf of the CONTRACTOR

By:.....

Name: JOHN H. BENNETT

Title: Managing Director, Pathway Group Limited

Date.....