

Confidentiality Agreement

between

Secretary of State for Work and Pensions

Authority

Atos Origin IT Services UK Limited

Service Provider

and

[]

Schedule 25: Confidentiality

Contract Change Note	Date Signed	Title
CCN013	01/05/2008	Redacted Pursuant to section 43(2) under FOI Act

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THIS CONFIDENTIALITY AGREEMENT is dated the _____ day of _____

BETWEEN:

- (1) **Secretary of State for Work and Pensions** represented by the E-Delivery Team, of Stockley House, Bridgewater Place, Birchwood Park, Birchwood, Warrington, WA3 6XF (the “**Authority**”);
- (2) **Atos Origin IT Services UK Limited**, registered in England and Wales as company number **Redacted Pursuant to section 40 under FOI** Act (the “**Service Provider**”); and
- (3) _____, registered in England and Wales as company number [•] and having its registered office at [•].

BACKGROUND:

- (A) The parties wish to disclose to each other confidential information in respect of the Services Agreement.
- (B) Each Party has agreed to keep confidential and not to disclose any information disclosed to it by the either Party and each Party has agreed to disclose information to the other Party on the terms and conditions set out in this Confidentiality Agreement.

NOW IT IS HEREBY AGREED as follows:

1. Definitions

1.1 In this Confidentiality Agreement unless the context otherwise requires:

“Affiliate” means in relation to a Party, a company which is its subsidiary or holding company or a company which is a subsidiary of that holding company;

“Confidential Information” means the following, whether or not in material form:

- (A) the Services Information; and
- (B) all other information of a confidential nature disclosed by the Disclosing Party to the Recipient or any Affiliate of the Recipient,

and including all notes and other material prepared by the Recipient based on or incorporating any such information together with all copies of any of the foregoing;

“Disclosing Party” means the Party disclosing any particular item of Confidential Information;

“Intellectual Property” means patents, registered or unregistered trade marks or service marks, design rights, applications for any of the foregoing, copyright, database rights, rights in know-how, trade or business names and other similar rights or obligations whether registrable or not in any country

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(including but not limited to the United Kingdom) or in any trans-border system of registration;

“Party” means a party to this Confidentiality Agreement;

“Recipient” means in relation to any particular item of Confidential Information, the Party which receives or otherwise obtains such information;

“Service Provider” means the managed services provider delivering the Services to the Authority under the Services Agreement;

“Services” means the services provided to the Authority by the Service Provider pursuant to the Services Agreement; and

“Services Agreement” means the agreement for the provision of a managed service solution for the Government Gateway entered into between the Authority and the Service Provider dated **[insert]**;

“Services Information” means any and all information relating to the Services Agreement, the Services, the Authority and/or the Service Provider disclosed by or on behalf of the Disclosing Party to the Recipient or any Affiliate of the Recipient.

1.2 Any reference to a “clause” shall be construed as a reference to a clause of this Confidentiality Agreement.

2. Disclosure and use of confidential information

2.1 In consideration of the Disclosing Party disclosing the Confidential Information to the Recipient, the Recipient agrees:

- (A) to use the Confidential Information solely to enable the Recipient to carry out its responsibilities in relation to the Services;
- (B) to keep all Confidential Information confidential and not directly or indirectly disclose any of it to any person save as permitted under clauses 2.2 and 2.3 below;
- (C) not to use or allow the use of any Confidential Information in any way to the detriment of the Receiving Party; and
- (D) otherwise to comply with the terms of this Confidentiality Agreement.

2.2 The Recipient may disclose the Confidential Information only to approved subcontractors, officers and employees of the Recipient who:

- (A) have a need to know (and only to the extent that each has a need to know);
- (B) are aware that all Confidential Information must be kept confidential; and

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- (C) have agreed in writing with the Recipient and in terms acceptable to the Disclosing Party to comply with the terms no less onerous than those of this Confidentiality Agreement (a "Secrecy Agreement").
- 2.3 The Recipient may only disclose the Confidential Information to any other person if the Disclosing Party has given its prior written consent to such disclosure. Any such disclosure shall be made in accordance with the procedure set out in clause 2.2.
- 2.4 The Recipient agrees that any failure by the Recipient's officers or employees or by any other person to comply with a Secrecy Agreement will also be deemed to be a breach of this Confidentiality Agreement by the Recipient itself.
- 2.5 The Recipient shall promptly:
 - (A) enforce all Secrecy Agreements at its own expense;
 - (B) comply with any direction issued by the Disclosing Party from time to time regarding enforcement of any Secrecy Agreements (including, but not limited to, starting, conducting and settling enforcement proceedings); and
 - (C) assign any Secrecy Agreement to the Disclosing Party at its request.

3. Security and control

- 3.1 To secure the confidentiality of the Confidential Information, the Recipient shall use no less care than it takes to secure the confidentiality of its own confidential information, and in particular, but without limiting the above obligation, the Recipient shall:
 - (A) keep the Confidential Information and all information generated by the Recipient based thereon, separate from all documents and other information of the Recipient;
 - (B) establish and maintain adequate security measures (including any reasonable security measures proposed by the Disclosing Party from time to time) to safeguard the Confidential Information from unauthorised access or use;
 - (C) keep the Confidential Information under its effective control at its usual place of business in the United Kingdom;
 - (D) not use, reproduce, transfer or store any of the Confidential Information in an externally accessible computer;
 - (E) maintain complete, accurate and up-to-date records of the Recipient's use, copying and disclosure of the Confidential Information and immediately produce these records to the Disclosing Party on request; and

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(F) immediately notify the Disclosing Party of any suspected or actual unauthorised use, copying or disclosure of any Confidential Information.

3.2 The Recipient will provide all assistance reasonably requested by the Disclosing Party in relation to any proceedings the Disclosing Party may take against any person for unauthorised use, copying or disclosure of Confidential Information.

4. Copying

4.1 The Recipient shall not copy or reproduce any Confidential Information other than for the purposes of the Services Agreement without the prior written consent of the Disclosing Party.

4.2 All copies of Confidential Information made by the Recipient must be clearly marked with the name of the Disclosing Party and the word "Confidential".

5. Restrictions on transmission

5.1 Other than in accordance with clause 2.2 above, the Recipient must not transmit, or permit the transmission of any Confidential Information in any form or by any means whatsoever to any person without first obtaining the written consent of the Disclosing Party.

6. Acknowledgement and indemnity

6.1 The Recipient acknowledges that it is aware that any breach of this Confidentiality Agreement may result in the Disclosing Party suffering loss and damage.

6.2 The Recipient shall indemnify the Disclosing Party against all expenses, losses, damages and legal costs (on a solicitor and own client basis) that the Disclosing Party may sustain or incur as a direct result of any breach by the Recipient of this Confidentiality Agreement.

6.3 Without prejudice to any other rights or remedies that the Disclosing Party may have, the Recipient acknowledges and agrees that damages may not be an adequate remedy for any breach by the Receiving Party of the provisions of this Confidentiality Agreement and that accordingly the Disclosing Party shall be entitled, without proof of special damages, to seek an injunction and any other equitable relief or remedy for any threatened or actual breach of the provisions of this Confidentiality Agreement by the Recipient.

7. Intellectual property rights

The parties acknowledge that this Confidentiality Agreement does not grant any rights, except as contained herein, in any Intellectual Property (including, but not limited to, any Intellectual Property rights in the Services Information).

8. Exclusions

8.1 The obligations in clauses 2, 3, 4 and 5 shall not apply to any Confidential Information which:

- (A) the Recipient can prove by documentary evidence produced to the Disclosing Party within 28 days of disclosure was already rightfully in the possession of the Recipient and at its free disposal before the disclosure hereunder to the Recipient;
- (B) becomes available to the Recipient on a non-confidential basis from a source other than the Disclosing Party;
- (C) at the time of its disclosure hereunder was in, or at a later date has come into, the public domain, through no act or default on the part of the Recipient or the Recipient's Affiliates agents or employees, and in this connection information shall not be deemed to be in the public domain by reason only that it is known to only a few of those people to whom it might be of commercial interest, and a combination of two or more portions of any information shall not be deemed to be in the public domain by reason only of each separate portion being so available; or
- (D) the Recipient is compelled to disclose to the extent required by law or the regulation of any recognised stock exchange, or to any governmental or other regulatory authority lawfully requesting the same, including Parliament or any parliamentary committee, or to any court of competent jurisdiction acting in pursuant of its powers or which the Recipient is required to disclose by law.

9. Return of material

9.1 Upon notice in writing from the Disclosing Party, and in any event on expiry of this Confidentiality Agreement, the Recipient's right to use the Confidential Information will cease and the Recipient shall immediately, at the Disclosing Party's option:

- (A) return to the Disclosing Party; or
- (B) destroy and certify in writing to the Disclosing Party the destruction of;
or
- (C) destroy and permit the Disclosing Party to witness the destruction of,

all Confidential Information in the Recipient's possession or control including, for the avoidance of doubt, all Confidential Information disclosed to third parties in accordance with clauses 2.2 and 2.3. Where any Confidential Information is stored on a computer the Recipient shall delete it and shall immediately confirm in writing to the Disclosing Party that it has been deleted.

9.2 The undertakings set out in this Confidentiality Agreement shall continue in full force and effect for a period of three (3) years following expiry or earlier termination of the Services Agreement notwithstanding any notice under

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clause 9.1 and notwithstanding that discussions or arrangements between the parties concerning the Services may have ceased.

10. Provisions of this Confidentiality Agreement

10.1 Assignment

Neither Party shall assign or purport to assign this Confidentiality Agreement or any of its rights or benefits under this Confidentiality Agreement without the prior written consent of the other Party.

10.2 Entire agreement

(A) This Confidentiality Agreement, together with any documents referred to in it, constitutes the whole agreement between the parties relating to its subject matter and supersedes and extinguishes any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature, whether in writing or oral, relating to such subject matter.

(B) Each Party acknowledges that it has not been induced to enter into this Confidentiality Agreement by any representation or warranty, other than those contained in this Confidentiality Agreement and, having negotiated and freely entered into this Confidentiality Agreement, agrees that it shall have no remedy in respect of any other such representation or warranty except in the case of fraud.

(C) No variation of this Confidentiality Agreement shall be effective unless made in writing and signed by each of the parties.

10.3 Rights etc cumulative and other matters

(A) The rights, powers, privileges and remedies provided in this Confidentiality Agreement are cumulative and are not exclusive of any rights, powers, privileges or remedies provided by law or otherwise.

(B) No failure to exercise nor any delay in exercising by any Party to this Confidentiality Agreement of any right, power, privilege or remedy under this Confidentiality Agreement shall impair or operate as a waiver thereof in whole or in part.

(C) No single or partial exercise of any right, power privilege or remedy under this Confidentiality Agreement shall prevent any further or other exercise thereof or the exercise of any other right, powers, privilege or remedy.

11. Waiver

No failure by either Party to exercise, nor any delay by either Party in exercising, any right, power, privilege or remedy under this Confidentiality Agreement shall impair or operate as a waiver thereof.

12. Invalidity

If any provision of this Confidentiality Agreement shall be held to be illegal, void, invalid or unenforceable under the laws of any jurisdiction, the legality, validity and enforceability of the remainder of this Confidentiality Agreement in that jurisdiction shall not be affected, and the legality, validity and enforceability of the whole of this Confidentiality Agreement shall not be affected in any other jurisdiction.

13. Rights of Third Parties

No person who is not a Party to this Confidentiality Agreement shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Confidentiality Agreement.

14. Governing law and jurisdiction

14.1 This Confidentiality Agreement shall be governed by, and construed in accordance with, English law.

14.2 In relation to any legal action or proceedings arising out of or in connection with this Confidentiality Agreement ("Proceedings"), each of the parties irrevocably submits to the exclusive jurisdiction of the English courts and waives any objection to Proceedings in such courts on the grounds of venue or on the grounds that Proceedings have been brought in an inappropriate forum.

IN WITNESS whereof this Confidentiality Agreement has been executed on the day and year written above.

Signed by (print name):

Duly authorised for and on behalf of:

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Signature

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Date

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Signed by (print name):

Duly authorised for and on behalf of:

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Signature

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Date

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Signed by (print name):

Duly authorised for and on behalf of:

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Signature

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Date

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