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Department for Work and Pensions

SCHEDULE 14
PARENT COMPANY GUARANTEE

Parent Company Guarantee for the Performance of a Contract

between

The Minister for the Cabinet Office
as the AUTHORITY

Atos Origin IT Services UK Limited
as the CONTRACTOR

and

Atos Origin S.A.
as the Guarantor

relating to

**Guarantee for the Performance of the UK Government
Gateway Managed Service Provider Agreement**

THIS DEED is dated

and made

BETWEEN:

- (1) **The Minister for the Cabinet Office**, (the “AUTHORITY”), represented by the Cabinet Office’s e-Government Unit, of Stockley House, 130 Wilton Road, Victoria, London, SW1V 1LQ;
- (2) **Atos Origin IT Services UK Limited**, (the “CONTRACTOR”), registered in England and Wales as company number 1245534 and having its registered office at 4 Triton Square, Regent’s Place, London, NW1 3HG; and
- (3) **Atos Origin S.A.**, (the “Guarantor”), a company registered in France as company number 323 623 603 and having its registered office at Tour Les Miroirs, 18, avenue d’Alsace 92400 Courbevoie.

BACKGROUND:

- (A) The AUTHORITY and the CONTRACTOR have entered into an agreement for the provision of managed services and hosting.
- (B) The CONTRACTOR is a wholly owned subsidiary of the Guarantor.
- (C) The Guarantor has agreed to enter into this Guarantee in favour of the AUTHORITY.

NOW THIS DEED WITNESSES as follows:

1. **Definitions and Construction**

1.1 In this Guarantee:

“AUTHORITY” means the Minister for the Cabinet Office as represented by the Cabinet Office’s e-Government Unit;

“Business Day” means a day other than a Saturday or Sunday, on which banks are open for ordinary banking business in London;

“Contract” means the agreement entered into between the AUTHORITY and the CONTRACTOR for the provision of managed services and hosting for the UK Government Gateway dated []2006;

“CONTRACTOR” means Atos Origin IT Services UK Limited, registered in England and Wales as company number 1245534 and having its registered office at 4 Triton Square, Regent’s Place, London, NW1 3HG, a company incorporated under the laws of England and Wales;

“Guarantor” means Atos Origin S.A., a company registered in France as company number 323 623 603 and having its registered office at Tour Les Miroirs – 18, avenue d’Alsace 92400 Courbevoie; and

“VAT” means value added tax as provided for in the Value Added Tax Act 1994 and legislation supplemental thereto or replacing, modifying or consolidating it.

- 1.2 References to any party include its successors and permitted assigns.
- 1.3 Reference to clause(s) are to clauses of and to this Deed.
- 1.4 The headings are inserted for convenience only and shall not affect the construction of this Deed.

2. **Guarantee and Indemnity**

- 2.1 In consideration of the AUTHORITY entering into the Contract with the CONTRACTOR, (as the Guarantor hereby acknowledges), the Guarantor, subject to clause 3, hereby unconditionally and irrevocably guarantees to the AUTHORITY:
 - (A) the due and punctual performance and observance by the CONTRACTOR of all acts, covenants and obligations to be performed or observed by the CONTRACTOR under or pursuant to the Contract; and
 - (B) the due and punctual payment by the CONTRACTOR of all sums payable under or pursuant to the Contract to the AUTHORITY as and when the same fall due (with the intention that subject to the provisions of clauses 2.2 - 2.5 inclusive and clause 4 of this Deed, any amount not recoverable from the Guarantor under this Deed on the basis of a guarantee shall nevertheless be recoverable on the basis of an indemnity).
- 2.2 Subject to clause 2.3 and clause 3 below, the Guarantor hereby undertakes to keep the AUTHORITY fully and effectually indemnified against all losses, damages, costs, claims and expenses whatsoever arising out of or in connection with any failure on the part of the CONTRACTOR to perform or observe all or any of the acts, covenants and obligations as aforesaid or to effect due and punctual payment of any sum as aforesaid.
- 2.3 Notwithstanding the generality of clause 2.2, the Guarantor shall be entitled in any action or proceedings by the AUTHORITY to raise any equivalent rights in defence of liability as the CONTRACTOR would have against the AUTHORITY under the Contract so that except in relation to any costs incurred in enforcing this Guarantee, the liability of the Guarantor shall be no greater than the liability which it would have had if it had been jointly and severally liable with the CONTRACTOR to the AUTHORITY as a party to the Contract and the AUTHORITY shall:
 - (A) not be entitled to recover any loss or expense, which it would be or would have been unable to recover as damages from the CONTRACTOR under the Contract; and
 - (B) carry the same burden of proof as it would have carried in an action for breach of contract under the Contract.
- 2.4 The guarantee contained in this Deed shall be a continuing guarantee and indemnity and shall remain in full force and effect until all monies payable to the AUTHORITY by the CONTRACTOR under or pursuant to the Contract shall have been duly paid and all the CONTRACTOR's obligations under or pursuant to the Contract shall have been duly performed provided always that this Guarantee shall (subject to no bona fide claims being

made prior to the date) cease and have no further effect after a date being two (2) years from the date of termination or expiry of the Contract.

- 2.5 The Guarantor warrants that it is either a company or a body corporate duly incorporated under the laws of France with limited liability and has all power and authority to enter into and perform the obligations contained in this Deed to be performed by it and that this Deed constitutes a legal, valid and binding obligation of the Guarantor.
- 2.6 The CONTRACTOR having requested the execution of this Deed by the Guarantor in this agreed form undertakes to the Guarantor, without limitation of any other rights and remedies of the AUTHORITY or the Guarantor against the CONTRACTOR, to perform and discharge the obligations on its part set out in the Contract.

3. Demand under the Guarantee

The obligations of the Guarantor under or pursuant to this Deed shall be subject to a prior demand being made and action being taken against the CONTRACTOR by the AUTHORITY and a subsequent demand upon, the Guarantor with regard to any Default on the part of the CONTRACTOR.

4. Insolvency of the CONTRACTOR

Where the principal obligations under the Contract are illegal, void or voidable this Deed shall take effect as if the Guarantor was ab initio the principal obligor and not merely a surety.

5. Payments

- 5.1 Each payment to be made by the Guarantor under this Guarantee shall be made to the AUTHORITY, in the appropriate currency in accordance with the terms of the Contract.
- 5.2 All such payments shall be calculated without reference to any set-off or counterclaim and shall be made in full and free and clear of, and without any deduction for or on account of, any set-off or counterclaim.
- 5.3 If any payment received by the AUTHORITY pursuant to the provisions of this Deed or the Contract shall be avoided under any laws relating to insolvency, such payment shall not be considered as having discharged or diminished the liability of the Guarantor hereunder; and the liability of the Guarantor hereunder shall continue to apply as if such payment had at all times remained owing by the CONTRACTOR and the Guarantor shall indemnify the AUTHORITY in respect thereof.
- 5.4 All sums payable by the Guarantor under or pursuant to this Guarantee are exclusive of any VAT.
- 5.5 Any suspension or waiver of payment granted by the AUTHORITY to the CONTRACTOR and/or any settlement agreed between the AUTHORITY and the CONTRACTOR shall apply equally to the Guarantor.
- 5.6 If the Guarantor makes any payment to the AUTHORITY under this Deed, such payment shall discharge the CONTRACTOR from its payment obligation towards the AUTHORITY for the same amount.

5.7 If the Guarantor defaults in the payment when due of any sum payable by it under this Deed, its liability shall be increased to include interest on such sum from the due date until the date of actual payment (both before and after judgement) at that annual rate which is two (2) percentage points above the base rate of Barclays Bank plc from time to time in effect during such period.

6. **Waiver and Variation**

6.1 The rights of the CONTRACTOR and the obligations of the Guarantor under or pursuant to this Deed shall not be prejudiced or affected by any extension of time, indulgence, forbearance or concession given to the CONTRACTOR or by any modification or variation of the provisions of the Contract, or by the administration, receivership, insolvency, liquidation, dissolution, reconstruction, amalgamation or incapacity of the CONTRACTOR.

6.2 The rights of the CONTRACTOR and the obligations of the Guarantor under or pursuant to this Deed shall not be prejudiced or affected by the CONTRACTOR holding or taking any other or further guarantees or securities or by the invalidity of any such guarantees or securities or by the CONTRACTOR varying, releasing, exchanging, enforcing or omitting or neglecting to enforce any such guarantees or securities, or by any other thing which might otherwise wholly or partially discharge the Guarantor from its obligations under this Deed.

6.3 This Deed may be modified only in writing and with the mutual consent of the Guarantor, the CONTRACTOR and the AUTHORITY.

7. **Partial Invalidity**

If any provision of this Deed is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Deed had been executed with the invalid, illegal or unenforceable provision eliminated.

8. **Assignment**

The AUTHORITY may assign the benefit of this Deed at any time without the Guarantor's consent, provided that the Guarantor is notified prior to any such assignment.

9. **Counterparts**

This Deed may be executed in three counterparts, in which case this Deed will be as effective as if all signatures on the counterparts were in a single copy of this Deed.

10. **Third Party Rights**

No person which is not a party to this Deed shall have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed.

11. **Law and Jurisdiction**

11.1 This Deed shall be governed by and construed in all respects in accordance with English law.

11.2 In relation to any legal action or proceedings arising out of or in connection with this Deed ("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 these presents are executed as follows:

Signed by Director and
Director/Company Secretary (delete as applicable)
and thereby executed
by the CONTRACTOR as its Deed

Signed by Director
and Director/Company Secretary (delete as applicable)
and thereby executed
by the Guarantor as its Deed

Signed by
and thereby executed
by the AUTHORITY as its Deed