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Department for Work and Pensions

Contract Change Note	CCN002
Sequential Number	GGC549
Title	Microsoft Specially Written Software
Number of pages attached	4 in total

WHEREAS the AUTHORITY entered into an agreement relating to the provision of managed services and hosting for the Government Gateway with reference 10a/06/003 (the "Agreement"), the AUTHORITY and the CONTRACTOR now wish to amend the Agreement as follows:

IT IS AGREED that:

With effect from **11 September 2006**, the Agreement shall be amended in accordance with this Contract Change Note.

Save as herein amended, all other terms and conditions of the Agreement shall remain in full force and effect.

Defined terms used in this Contract Change Note shall have the meanings given in the Agreement unless otherwise stated:

1. Clause 13.11 shall be deleted in its entirety and replaced with the following:

"13.11 The CONTRACTOR hereby agrees to assign to the AUTHORITY all present and future Intellectual Property Rights (including, without limitation thereto, future copyright as defined by section 91 of the Copyright, Designs and Patents Act 1988) in the Specially Written Software and Documentation (with the exception of the Microsoft Specially Written Software and the Microsoft Specially Written Documentation)."

2. Clause 13.13(A) shall be deleted in its entirety and replaced with the following:

"(A) warrants that (with the exception of the Microsoft Specially Written Software and the Microsoft Specially Written Documentation) the Specially Written Software and the Documentation are original works and that it has all rights, powers and entitlements to assign the Intellectual Property Rights subsisting in the Specially Written Software and the Documentation (excluding the Microsoft Specially Written Software and the Microsoft Specially Written Documentation) in accordance with clause 13.11;"

3. Clause 13.13(C) shall be deleted in its entirety and replaced with the following:

"(C) warrants that (with the exception of the Microsoft Specially Written Software and the Microsoft Specially Written Documentation) the authors of the Specially Written Software and the Documentation unconditionally and irrevocably waive all moral rights subsisting in the Specially Written Software and the Documentation (excluding the Microsoft Specially Written Software and the Microsoft Specially Written Documentation) and that this waiver shall extend to the AUTHORITY's permitted licensees under this clause 13;"

4. The following new clauses 13.13(D) to (G) (inclusive) shall be added to the Agreement:

- “(D) warrants that the Specially Written Software will be compatible with and will not adversely affect the operation of any equipment, used or provided by the CONTRACTOR or the CONTRACTOR Personnel in relation to the Government Gateway, on which the Specially Written Software is installed;*
- (E) warrants that the CONTRACTOR will, using the most up-to-date software available, test for (and delete) all commonly known Viruses and all Viruses known to the CONTRACTOR in the Specially Written Software. For the purposes of this clause 13.13(F) a “Virus” shall mean any thing or device which may impair or otherwise adversely affect the operation of any computer, prevent or hinder access to any program or data or impair the operation of any program or the reliability of any data (whether by re-arranging within the computer or any storage medium or device, altering or erasing the program or data in whole or part or otherwise);*
- (F) warrants that the Specially Written Software is and will be compliant with all legal requirements and regulations currently in place or hereafter applicable in the UK. (The Parties agree and acknowledge that any changes to the Specially Written Software to ensure compliance with legal requirements and regulations in the UK will be agreed in accordance with the Change Control Procedure); and*
- (G) warrants that the performance or functionality of the Specially Written Software will not be affected or malfunction as a result of the introduction of the Euro and that all currency-reliant and currency-related functions (including all calculations concerning financial data, rounding and currency conversion) of any relevant items can be performed in any number of currencies and/or in Euros. (The Parties agree and acknowledge that any changes to the Specially Written Software required to allow all currency-reliant and currency-related functions of any relevant items to perform in any number of currencies and/or in Euros will be agreed in accordance with the Change Control Procedure).”*

5. Clause 15.2 shall be deleted in its entirety and replaced by the following:

“15.2 The AUTHORITY warrants that:

- (A) it has all necessary rights in the AUTHORITY Third Party Software and the AUTHORITY Software (other than AUTHORITY Software originally developed as Specially Written Software) or any other item necessary for the provision of the Services to grant to the CONTRACTOR (and its Subcontractors) a right to use such AUTHORITY Third Party Software and AUTHORITY Software (other than AUTHORITY Software originally developed as Specially Written Software) for the performance of the CONTRACTOR’s obligations under this Agreement; and*
- (B) so far as the AUTHORITY is aware, the use by the CONTRACTOR of the AUTHORITY Third Party Software and AUTHORITY Software (other than AUTHORITY Software originally developed as Specially Written Software) in the delivery of the Services shall not infringe any Intellectual Property Rights of any third party.”*

6. Clause 36.4 shall be deleted in its entirety and replaced by the following:

“36.4 Except as expressly stated in this clause 36 and clause 15.2, all warranties with respect to the AUTHORITY Software (other than AUTHORITY Software originally developed as Specially Written Software), whether express or implied by statute, common law or otherwise (including, but not limited to, fitness for purpose) are hereby excluded to the extent permitted by law.”

7. The following new clause 57.7 shall be added to the Agreement:

“57.7 The CONTRACTOR shall meet, and shall continue to meet for the duration of the Term, its payment obligations under any Subcontract, such payment obligations to be subject to the terms of any such Subcontract.”

8. The definitions of “Specially Written Documentation” and “Specially Written Software” in Schedule 1 (Definitions) of the Agreement shall be deleted in their entirety and replaced by the following:

“Specially Written Documentation” means any documentation written by or on behalf of the CONTRACTOR for use by the CONTRACTOR specifically in the provision of the Services (including any modifications, enhancements or updates made to such documentation) and includes, without limitation, the Microsoft Specially Written Documentation;”

“Specially Written Software” means any software written by or on behalf of the CONTRACTOR for use by the CONTRACTOR specifically in the provision of the Services (including any modifications, enhancements or updates to such software) and includes, without limitation, the Microsoft Specially Written Software;”

9. The following new definitions for “Microsoft Specially Written Documentation” and “Microsoft Specially Written Software” shall be added to Schedule 1 (Definitions) of the Agreement:

“Microsoft Specially Written Documentation” means any documentation relating to any software developed by Microsoft Limited (“Microsoft”) for the CONTRACTOR under the terms of a separate agreement between Microsoft and the CONTRACTOR effective as of 11 November 2006 (as amended) (or any other agreement between Microsoft and the CONTRACTOR relating to the development of software for the Gateway);”

“Microsoft Specially Written Software” means any software developed by Microsoft for the CONTRACTOR under the terms of a separate agreement between Microsoft and the CONTRACTOR effective as of 11 November 2006 (as amended) (or any other agreement between Microsoft and the CONTRACTOR relating to the development of software for the Gateway);”

The Parties hereby agree to the changes to the Agreement set out herein which shall, notwithstanding any other provisions of the Agreement, be deemed to be a valid variation to the Agreement.

Signed for and on behalf of the CONTRACTOR
By
Name
Title
Date

Signed for and on behalf of the AUTHORITY
By
Name
Title
Date