

**COMPLETED ACQUISITION BY NEC SOFTWARE SOLUTIONS UK  
LIMITED OF SSS PUBLIC SAFETY LIMITED AND SECURE SOLUTIONS  
USA LLC**

**Final Undertakings given by NEC Software Solutions UK Limited, NPS  
(Holdings) Limited, and SSS Public Safety Limited to the Competition  
and Markets Authority pursuant to section 82 of the Enterprise Act 2002**

**Background**

- A. On 3 January 2022, NEC Software Solutions UK Limited acquired the entire issued share capital of SSS Public Safety Limited<sup>1</sup> (**SSS**) and Secure Solutions USA LLC<sup>2</sup> from Capita Secure Information Solutions Limited and Capita (USA) Holdings Inc. (**Capita**) (the **Merger**). For the purposes of these Final Undertakings, NEC Software Solutions UK Limited and NPS (Holdings) Limited are referred to together as "**NECSWS**".
- B. On 21 December 2021, the Competition and Markets Authority (the **CMA**) made an initial enforcement order (**IEO**) pursuant to section 72(2) of the Enterprise Act 2002 (the **Act**) for the purpose of preventing pre-emptive action in accordance with that section. On 30 May 2022, the CMA issued directions under the IEO for the appointment of a monitoring trustee (the **Monitoring Trustee**) in order to monitor and ensure compliance with the IEO.
- C. On 12 May 2022, the CMA, in accordance with section 22(1) of the Act, referred the Merger to a group of CMA panel members to determine, pursuant to section 35 of the Act:
- (i) whether a relevant merger situation has been created; and
  - (ii) if so, whether the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition (**SLC**) in any market or markets in the United Kingdom (**UK**) for goods or services.
- D. On 2 December 2022, the CMA published a final report pursuant to section 38 of the Act (the **Report**) which concluded that:
- (i) the Merger has created a relevant merger situation;
  - (ii) the creation of that situation has resulted in, or may be expected to result in, an SLC in relation to the supply of Integrated Communication and Control Services software (**ICCS**) in the UK and an SLC in relation

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<sup>1</sup> Formerly Capita (SSS) Limited.

<sup>2</sup> Formerly Capita Software (US) LLC.

to the supply of Duties Management Systems software to police forces (**Duties**) in the UK; and

- (iii) the CMA should take action to remedy the SLCs and any adverse effects resulting from them.

E. The CMA, having regard to its findings in the Report, requires:

- (i) a divestiture of the business for the supply of ICCS in the UK carried on by NECSWS (consisting of the **ICCS Divestiture Business**) to an Approved Purchaser; and
- (ii) a divestiture of either the business for the supply of Duties in the UK carried on by NECSWS or the business for the supply of Duties in the UK carried on by SSS (the **Duties Divestiture Business**) to an Approved Purchaser

(together the **Remedies**).

F. The implementation of the Remedies will be subject to the following safeguards:

- (a) NECSWS will be subject to regular reporting requirements;
- (b) the Monitoring Trustee will monitor compliance with these Final Undertakings, including the progress of the implementation of the Remedies;
- (c) the purchaser for each of the Remedies must be an Approved Purchaser in accordance with the Purchaser Approval Criteria in Annex 1 and
- (d) provisions enabling the CMA to direct the appointment of a Divestiture Trustee to effect the final disposal of the ICCS Divestiture Business and/or the Duties Divestiture Business in accordance with the conditions set out in paragraph 10.

G. The IEO ceases to be in force on the date of acceptance by the CMA, pursuant to section 82 of the Act, of these Final Undertakings. Any derogations already granted by the CMA pursuant to the IEO shall remain applicable.

H. Now therefore each of **NECSWS** and **SSS** give to the CMA on behalf of itself and, where relevant, its Subsidiaries and Affiliates, the following Final Undertakings pursuant to section 82 of the Act for the purpose of remedying, mitigating or preventing the SLC identified in the Report and any adverse effects resulting from it.

## 1. Interpretation

- 1.1. The purpose of these Final Undertakings is to give effect to the Remedies identified in the Report and they shall be construed in accordance with the Report.
- 1.2. Any word or expression used in these Final Undertakings or the recitals to these Final Undertakings shall, unless otherwise defined herein and/or the context otherwise requires, have the same meaning as in the Act or the Report (as appropriate).

- 1.3. The headings used in these Final Undertakings are for convenience and shall have no legal effect.
- 1.4. References to any statute or statutory provision shall be construed as references to that statute or statutory provision as amended, re-enacted or modified whether by statute or otherwise stated.
- 1.5. References to recitals, paragraphs, subparagraphs and annexes are references to the recitals, paragraphs and subparagraphs of, and annexes to, these Final Undertakings unless otherwise stated.
- 1.6. Unless the context requires otherwise, the singular shall include the plural and vice versa and references to persons includes bodies of persons whether corporate or incorporate. Any reference to person or position includes its or their successor in title.
- 1.7. The Annexes form part of these Final Undertakings.
- 1.8. The Interpretation Act 1978 shall apply to these Final Undertakings as it does to Acts of Parliament.
- 1.9. Further, in these Final Undertakings:

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| the Act                        | means the Enterprise Act 2002;   |
| Affiliate                      | means a person who is an affiliate of another person if they or their respective enterprises are to be regarded as being under common control for the purposes of section 26 of the Act; |
| Approved Purchaser             | means any purchaser approved by the CMA pursuant to paragraph 3.5 as meeting the Purchaser Approval Criteria set out in Annex 1;   |
| Approved Timetable             | means the divestment timetable approved by the CMA in accordance with paragraph 3.2;   |
| Associated Person              | means a person who is an associated person within the meaning of section 127 of the Act;   |
| Asset Maintenance Undertakings | means those undertakings set out in paragraph 5;   |
| Business                       | has the meaning given by section 129(1) and (3) of the Act;  |
| [✂]                            | [✂]  |
| Capita                         | means Capita Secure Information Solutions Limited and Capita (USA) Holdings Inc.;  |
| [✂]                            | [✂]  |

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| Clause                      | means a numbered section of an Annex to these Final Undertakings;   |
| CMA                         | means the Competition and Markets Authority;  |
| Commencement Date           | means the date on which these Final Undertakings are accepted by the CMA in accordance with section 82(2)(a) of the Act;  |
| Completion Date             | means the date on which the Final Disposal is implemented;  |
| Confidential Information    | means business secrets, know-how, commercially sensitive information, intellectual property or any other information of a confidential or proprietary nature;   |
| Control                     | includes the ability directly or indirectly to control or materially to influence the policy of a body corporate or the policy of any person in carrying on an enterprise, as defined in section 26 of the Act; |
| Directions                  | means written directions given by the CMA as set out in paragraph 7;  |
| Divestiture Business        | means either the ICCS Divestiture Business or the Duties Divestiture Business;  |
| Divestiture Businesses      | means the ICCS Divestiture Business and the Duties Divestiture Business;  |
| Divestiture Period          | means the period beginning on the Commencement Date and ending 6 months after the Commencement Date, or such longer period as the CMA may approve in accordance with paragraph 12.1;                            |
| Divestiture Trustee         | means a person appointed in accordance with paragraph 10;   |
| Divestiture Undertakings    | means those undertakings set out in paragraph 3;  |
| Duties                      | Duties Management Systems software;   |
| Duties Divestiture Business | means either NECSWS's Duties business or SSS's Duties business, as set out in Annex 2.  |
| Final Disposal              | means completion of the divestiture of each Divestiture Business in accordance with the Final Undertakings to an Approved Purchaser;  |

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| Final Undertakings          | means these final undertakings given by each of the Parties and accepted by the CMA, including the Annexes hereto, and as may be varied in terms of paragraph 12;  |
| ICCS                        | means Integrated Communication and Control Services software;  |
| ICCS Divestiture Business   | means NECSWS's ICCS business, as set out in Annex 2;   |
| IEO                         | means the initial enforcement order made by the CMA on 21 December 2021;   |
| Key Staff                   | means those staff who are in positions of executive or managerial responsibility and/or whose performance affect the viability of the relevant business;   |
| Merged Entity               | means NEC Software Solutions UK Limited and SSS Public Safety Limited and Secure Solutions USA LLC together;   |
| Merger                      | means the completed acquisition by NECSWS of SSS;  |
| Monitoring Trustee          | means a person appointed or retained in accordance with paragraph 9;   |
| NECSWS                      | means NEC Software Solutions UK Limited and NPS (Holdings) Limited;  |
| NECSWS business             | means the business of NECSWS and its Subsidiaries carried on as at the Commencement Date;  |
| ordinary course of business | means matters connected with the day-to-day supply of goods and services by the SSS business or the NECSWS business but does not include matters involving significant changes to the organisational structure of or related to the post-merger integration of SSS and NECSWS; |
| Purchaser Approval Criteria | means the criteria set out in Annex 1;   |
| Paragraph                   | means a numbered section of these Final Undertakings;  |
| Parties                     | means NECSWS and SSS;  |
| Related Person              | means any Subsidiary, Affiliate or Associated Person;  |
| Relevant Market             | means either the supply of ICCS to emergency service and transport customers   |

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|                            | in the UK or the supply of Duties to police forces in the UK;   |
| Relevant Markets           | means (i) the supply of ICCS to emergency service and transport customers in the UK and (ii) the supply of Duties to police forces in the UK;   |
| Remedies                   | means the divestiture by NECSWS of the ICCS Divestiture Business and the Duties Divestiture Business;   |
| Report                     | means the report entitled 'Completed acquisition by NEC Software Solutions UK Limited of SSS Public Safety Limited and Secure Solutions USA LLC – Final Report' published by the CMA on 2 December 2022;                                      |
| SLC                        | means a substantial lessening of competition and adverse effects identified by the CMA in the Report;   |
| Specified Period           | means the period beginning on the Commencement Date and terminating on the Completion Date;   |
| SSS                        | means SSS Public Safety Limited;  |
| SSS business               | means the business of SSS and its Subsidiaries carried on as at the Commencement Date;  |
| Subsidiary                 | unless otherwise expressly stated has the meaning given by section 1159 of the Companies Act 2006;  |
| Transaction Agreements     | means the sale agreement and all other agreements to be concluded between NECSWS and/or SSS and any Approved Purchaser(s) which are necessary in order to effect the Final Disposal;  |
| Trustee Divestiture Period | means a period as the CMA may direct for the Divestiture Trustee to meet the Trustee Obligation commencing from the date of appointment of the Divestiture Trustee;   |
| Trustee Obligation         | means bringing about the Final Disposal, and includes the performance of all ancillary tasks as are necessary or desirable for the purpose of effecting the Final Disposal promptly and, in any event, within the Trustee Divestiture Period; |

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| UK              | means the United Kingdom of Great Britain and Northern Ireland;                |
| Working Day     | means a day that is not a Saturday or Sunday or a bank holiday in England; and |
| Written consent | means a consent given in writing, including by email.                          |

## **2. Commencement**

- 2.1 These Final Undertakings will come into force on the Commencement Date in accordance with section 82(2) of the Act.

## **3. Divestiture Undertakings**

- 3.1. The Parties each give the following undertakings:

- (a) to give effect to and implement the Final Disposal within the Divestiture Period in compliance with these Final Undertakings, having due regard to the findings in the Report;
- (b) to procure that their Subsidiaries do all things necessary to ensure the Parties are able to comply with these Final Undertakings;
- (c) that for a period of ten years from the Final Disposal, they will not, and shall procure that any Related Person will not, bring under common ownership or control in whole or in part the Divestiture Businesses without the prior written consent of the CMA, and;
- (d) the Parties each undertake to cooperate with the CMA in good faith and to promptly provide to the CMA such information as the CMA may reasonably require for the purpose of performing any of its functions under these Final Undertakings or under sections 82, 83, 93(6) and 94 of the Act.

- 3.2. NECSWS undertakes to:

- (a) submit for approval by the CMA, within three Working Days following the commencement of the Divestiture Period, or such other period as may be agreed by the CMA, a proposed timetable setting out the key milestones to ensure completion of the Final Disposal within the Divestiture Period;
- (b) to notify the CMA as soon as reasonably practicable of any material changes or amendments to the Approved Timetable. The CMA will as soon as reasonably practicable either approve this timetable as proposed or require reasonable amendments to it and will notify NECSWS of the Approved Timetable;
- (c) submit for approval by the CMA, in accordance with the Approved Timetable, a list of potential purchasers of the relevant Divestiture Business, and to provide the CMA with information to demonstrate that a potential purchaser meets the Purchaser Approval Criteria and with

such information reasonably required by the CMA within any deadline set by the CMA;

- (d) submit for approval by the CMA, in accordance with the Approved Timetable and prior to entering into any transaction agreement with an Approved Purchaser, the final terms of the divestiture, and provide all draft transaction agreements or other information the CMA may require within any deadline set by the CMA;
  - (e) to inform the CMA as soon as practicable, and in any event within two Working Days of the date when: (i) NECSWS has agreed heads of terms (if applicable); (ii) the Transaction Agreements have been agreed; and (iii) the Final Disposal has been completed; and,
  - (f) submit for information to the CMA, in accordance with the Approved Timetable and before distributing, any key divestiture marketing materials (such as an information memoranda or process letter) or other similar documentation it intends to distribute to potential bidders, these being the key materials based on which NECSWS will market the divestiture of the Divestiture Businesses;
- 3.3. NECSWS undertakes to complete all steps set out in paragraph 3.2(a)-(f) for each of the Divestiture Businesses.
- 3.4. Wherever these Final Undertakings require the Parties to “transfer” an asset, they shall not be in breach of such obligation if, and to the extent that, prior to the Final Disposal, they have used all reasonable endeavours to secure: (i) a new contract, novation or assignment to the Approved Purchaser, or to an appropriate entity containing the relevant asset, those of the material contracts for third-party vendor services required by the Approved Purchaser; and (ii) the consent of the counterparty to such contracts for third-party vendor services, to the change in control of the relevant entity (insofar as such consent is required). Where the Parties are unable to secure a novation or assignment of a material contract, NECSWS undertakes to provide directly or indirectly equivalent services at cost until the Approved Purchaser is able to enter into a contract for those services, provided that the Approved Purchaser at all times and at its cost uses reasonable endeavours to enter such contract as soon as practicable.
- 3.5. The CMA shall:
- (a) engage with the potential purchasers submitted pursuant to paragraph 3.2 and, as soon as reasonably practicable from the time the CMA concludes it has received sufficient information about the potential purchaser, confirm to NECSWS which, if any, of the potential purchasers are Approved Purchasers;
  - (b) following further engagement with the relevant Approved Purchaser of each Divestiture Business, if necessary, assess the terms of the Final Disposal and any draft transaction agreement submitted by NECSWS, and approve a transaction agreement which it considers would effectively remedy the relevant SLC identified in the Report. To the extent there are any material revisions to an approved transaction



agreement, the CMA will also consider approval of these as soon as reasonably practicable; and

- (c) promptly inform NECSWS where it considers it has received insufficient information about a potential purchaser or about the terms of the Final Disposal.

3.6. [REDACTED]:

- (a) [REDACTED]
- (b) [REDACTED]
- (c) [REDACTED]
- (d) [REDACTED].

3.7. [REDACTED].

3.8. [REDACTED]:

- (a) [REDACTED];
- (b) [REDACTED]; and
- (c) [REDACTED].

#### **4. Divestiture Reporting Obligations**

4.1. NECSWS undertakes to provide a written report to the CMA every two weeks from the commencement of the Divestiture Period, or such other interval as agreed with the CMA, until Final Disposal. With the consent of the CMA, the reports may be provided through the Monitoring Trustee. The report shall outline the progress NECSWS has made towards the Final Disposal, and the steps that have otherwise been taken to comply with these Final Undertakings and shall in particular report on:

- (a) the progress that has been made against the Approved Timetable;
- (b) details of the steps that have been taken by NECSWS and its financial advisers to solicit purchasers for the Divestiture Businesses;
- (c) the status of any discussions that have been held with potential purchasers of the Divestiture Businesses, including all potential purchasers that have either sent or received contact with NECSWS regarding purchase of the Divestiture Businesses;
- (d) the total number of persons who have lodged a formal bid with NECSWS for the acquisition of the Divestiture Businesses since the publication of the Report;
- (e) the name of each person who has lodged a formal bid with NECSWS since the publication of the Report;
- (f) the steps that have been taken towards reaching transaction agreements (including progress made towards agreeing heads of terms,

if applicable) and the persons to whom any draft agreements have been distributed; and

(g) such other matters as may be directed by the CMA from time to time.

4.2. In addition to the report provided pursuant to paragraph 4.1, NECSWS undertakes:

(a) in the event that it does not meet or is unlikely to meet a step as set out in the Approved Timetable or is otherwise delayed in implementing the Final Disposal, to inform the CMA promptly in writing of the occurrence, the reasons for the failure and any remedial steps, but not later than three Working Days from becoming aware that a step in the Approved Timetable has not been or is unlikely to be met; and

(b) to inform the CMA as soon as practicable, and in any event within three Working Days of becoming aware, if it will not, or believes it is unlikely to, achieve the Final Disposal within the Divestiture Period.

## **5. Asset Maintenance Undertakings**

5.1. Except with the prior written consent of the CMA (which includes any previous derogations granted pursuant to the IEO, which will remain applicable during the Specified Period), the Parties undertake not to take any action and to procure that their Subsidiaries do not take any action during the Specified Period which might:

(a) lead to the integration of the SSS business with the NECSWS business;

(b) transfer the ownership or control of all or any part of the SSS business or any of its Subsidiaries except in the course of complying with these Final Undertakings; or

(c) otherwise impair the ability of the SSS business and the NECSWS business to compete independently in any of the markets affected by the Merger.

5.2. Further and without prejudice to the generality of paragraph 5.1, the Parties undertake during the Specified Period to procure that, except with the prior written consent of the CMA (which includes any previous derogations granted pursuant to the IEO, which will remain applicable during the Specified Period):

(a) the SSS business is carried on separately from the NECSWS business and the SSS business' separate sales or brand identity is maintained;

(b) the SSS business and the NECSWS business are each maintained as a going concern and sufficient resources are made available for the development of the SSS business and the NECSWS business to enable them to continue to compete independently in any of the markets affected by the Merger;

(c) except in the ordinary course of business or for the purpose of complying with these Final Undertakings, no substantive changes are made to the organisational structure of, or the management responsibilities within, the SSS business or the NECSWS business;

- (d) the nature, description, range and quality of goods and/or services supplied in the UK by each of the SSS business and the NECSWS business are maintained and preserved;
- (e) except in the ordinary course of business or for the purposes of complying with the Final Undertakings:
  - i. all of the assets of the SSS business and the NECSWS business are maintained and preserved, including facilities and goodwill;
  - ii. none of the assets of the SSS business and the NECSWS business are disposed of; and
  - iii. no interest in the assets of the SSS business and the NECSWS business is created or disposed of;
- (f) there is no integration of the information technology of the SSS and NECSWS businesses, and the software and hardware platforms of the SSS business shall remain essentially unchanged, except for routine changes and maintenance, except where strictly necessary to comply with these Final Undertakings;
- (g) the customer and supplier lists of the SSS business and the NECSWS business shall be operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the SSS business will be carried out by SSS alone and, for the avoidance of doubt, the NECSWS business will not negotiate on behalf of the SSS business;
- (h) all existing contracts of the SSS business and the NECSWS business continue to be serviced by the business to which they were awarded;
- (i) no changes are made to the Key Staff of the SSS business or the NECSWS business;
- (j) no Key Staff are transferred between SSS or its Subsidiaries and NECSWS or its Subsidiaries or Related Parties;
- (k) all reasonable steps are taken to encourage all Key Staff to remain with the SSS business and the NECSWS business, including the retention packages currently in place in respect of the SSS business and introducing appropriate retention packages for Key Staff of NECSWS's Divestiture Businesses as required under paragraph 5.3; and
- (l) no Confidential Information shall pass, directly or indirectly, from the SSS business (or any of its employees, directors, agents or Related Persons) to NECSWS (or any of its employees, directors, agents, or Related Persons), or vice versa, except where strictly necessary in the ordinary course of business (for example, where required for compliance with external regulatory and/or accounting obligations).

5.3. Further, within five working days of the Commencement Date, NECSWS undertakes to offer an appropriate retention package to each key staff member of the ICCS Divestiture Business and the NECSWS Duties Divestiture Business

which shall apply at least up to the point of Final Disposal. SSS will ensure that retention packages currently in place in respect of the SSS Duties Divestiture Business are maintained.

- 5.4. The Parties each undertake that until the Final Disposal, they will actively keep the CMA updated of any material developments (and, with the consent of the CMA, such updates may be provided through the Monitoring Trustee) relating to the SSS business or the NECSWS business, which include but are not limited to:
- (a) details of Key Staff who leave or join the SSS business or the NECSWS business;
  - (b) any interruption of the SSS or NECSWS business (including, without limitation, procurement, processing, logistics, sales and employee relations arrangements) that has prevented it from operating in the ordinary course of business for more than 24 hours;
  - (c) all substantial customer volumes won or lost for the SSS or NECSWS business including any substantial changes in customers' demand;
  - (d) substantial changes in the SSS or NECSWS business' contractual arrangements or relationships with key suppliers; and
  - (e) substantial adverse changes in any material litigation or regulatory enforcement action which may impact on the Divestiture Businesses;
  - (f) the initiation, defence, progress and resolution of any material litigation or regulatory enforcement action which may impact on to the Divestiture Businesses; and
  - (g) the financial position and/or performance of the SSS business.
- 5.5. The Parties each undertake that within a period of two weeks from the Commencement Date, they will provide written compliance statements to the CMA in the form set out in Annex 5 to these Final Undertakings, confirming compliance with their respective obligations under paragraph 5 of these Final Undertakings (subject to any granted derogations). Each Party shall set out any details of material developments for the purposes of paragraph 5.4 of which they are aware. Thereafter, each of the Parties will provide similar compliance statements to the CMA (or, with the consent of the CMA, such statements may be provided through the Monitoring Trustee) every two weeks until the Completion Date.
- 5.6. Any derogations already granted by the CMA pursuant to the IEO, and not cancelled or revoked by the CMA, shall continue in effect under these Final Undertakings and apply to the obligations set out in this paragraph 5 during the Specified Period, except that:
- (a) references to paragraphs of the Initial IEO shall be replaced with references to the equivalent or nearest equivalent paragraphs of these Final Undertakings; and
  - (b) 'Order' or 'Initial Order' shall mean these Final Undertakings.

- 5.7. All terms of the derogations given continuing effect under paragraph 5.6 shall be interpreted in accordance with the purpose for which the particular derogation was granted by the CMA and strictly within the limits of such purpose.
- 5.8. To the extent that there remains any uncertainty regarding the interpretation of any of the terms of the derogations as applicable under these Final Undertakings, the CMA reserves its rights to determine the meaning of the derogations in all such circumstances.
- 5.9. To the extent any of the derogations given continuing effect under paragraph 5.6 is varied or revoked in future, such variation or revocation will apply in respect of these Final Undertakings.

## **6. General obligations to cooperate in good faith and provide information to the CMA**

- 6.1. The Parties each undertake to cooperate with the CMA in good faith and to promptly provide to the CMA such information as the CMA may reasonably require for the purpose of performing any of its functions under these Final Undertakings or under sections 82, 83, 93(6) and 94 of the Act.
- 6.2. The Parties each undertake that should they at any time be in breach of any provision of these Final Undertakings, the relevant party will notify the CMA within three Working Days, starting with the date it becomes aware of the breach or relevant circumstances of that breach.
- 6.3. Where any person, including a Monitoring Trustee or a Divestiture Trustee, must provide information to the CMA under or in connection with these Final Undertakings, whether in the form of any notice, application, report or otherwise, the Parties each undertake that they will take reasonable steps within their respective power to procure that that person shall hold all information provided to it as confidential and shall not disclose any business-sensitive information of the Parties to any person other than to the CMA, without the prior written consent of both the CMA and the relevant party.
- 6.4. The Parties each undertake to keep and produce those records specified in writing by the CMA that relate to the operation of any provisions of these Final Undertakings.

## **7. Directions**

- 7.1. The Parties each undertake to comply with any Directions given by the CMA under these Final Undertakings, in particular the appointment of a Divestiture Trustee, and to procure that any holder of a specified office within the Parties including their Subsidiaries also comply, and to promptly take such steps as may be specified or described in the Directions for complying with these Final Undertakings, including by doing, or refraining from doing, anything so described which they have undertaken to do or refrain from doing under these Final Undertakings.
- 7.2. The Parties each acknowledges that:

(a) the CMA may choose not to issue Directions immediately upon becoming entitled to do so, and recognise that any delay by the CMA in making a written Direction shall not affect its obligations at such time as the CMA makes any written Direction; and

(b) the CMA may vary or revoke any direction so given.

## **8. Procedure for consent and notification**

8.1. Where the consent or approval of the CMA is required (however that requirement is expressed in these Final Undertakings), the Parties each undertake to seek the consent or approval in writing.

8.2. The Parties each undertake that any application by it for the CMA's consent or approval shall make full disclosure of every material fact and matter within its knowledge that it believes is relevant to the CMA's decision. Where the CMA considers that full disclosure has not been provided, it shall inform the relevant party and the relevant party must promptly provide such additional information as the CMA requires.

8.3. The Parties each recognise that where the CMA grants consent or approval on the basis of misleading or incomplete information and such information materially affects its consent or approval, the consent or approval is voidable at the election of the CMA.

8.4. In the event that NECSWS or SSS discovers that an application for consent or approval has been made in accordance with paragraph 8.1 without full disclosure to the CMA, the relevant party undertakes to:

(a) inform the CMA in writing, identifying the information that it omitted to include in the application for consent within two Working Days of becoming aware that the relevant information is misleading or incomplete; and

(b) at the same time or not later than two Working Days starting with the date on which it has informed the CMA of the omission in accordance with paragraph 8.4(a) above, provide to the CMA an application for consent that includes the missing information.

8.5. NECSWS and SSS shall use all reasonable endeavours to make each application or to procure that each application for consent or approval is made so that it is received by the CMA at least ten Working Days, or such lesser period as the CMA may allow, before the day on which the CMA's consent or approval is necessary to avoid a breach of these Final Undertakings.

## **9. Monitoring Trustee**

9.1. NECSWS undertakes to secure the appointment or retention of an independent Monitoring Trustee to perform the functions set out in Annex 3 on behalf of the CMA. Provided that the other conditions set out in Annex 3 are complied with, the Monitoring Trustee may be the same as already appointed pursuant to the written directions made by the CMA on 30 May 2022 under the IEO.

- 9.2. In the event that NECSWS proposes to retain the current monitoring trustee, appointed pursuant to the IEO, NECSWS shall provide the CMA with a copy of the updated agreed terms and conditions of appointment and the revised mandate that reflect these Final Undertakings no later than five Working Days after the Commencement Date.

## **10. Divestiture Trustee**

- 10.1. The Parties recognise and acknowledge that the CMA may direct the appointment of a Divestiture Trustee following the expiration of the Divestiture Period if the Parties fail to achieve the Final Disposal within the Divestiture Period, or prior to the expiry of the Divestiture Period including where:
- (a) the CMA reasonably believes that there is a risk that the Final Disposal would be delayed or fail to be completed within the Divestiture Period; or
  - (b) the CMA reasonably believes after raising its concerns with the Parties that the Parties are not engaging constructively with each of their respective obligations under these Final Undertakings or that either of the Parties has otherwise failed to comply with each of their respective obligations under these Final Undertakings; or
  - (c) the CMA reasonably believes there is a material deterioration in one or more of the Divestiture Businesses during the divestiture process.
- 10.2. In the event that the CMA directs the appointment of a Divestiture Trustee in accordance with Paragraph 10.1, NECSWS undertakes to appoint a Divestiture Trustee in accordance with Annex 4 and to carry out the functions set out in Annex 4 and enter into a Divestiture Trustee Mandate with the Divestiture Trustee in accordance with Annex 4.

## **11. Variations to these Final Undertakings**

- 11.1. The terms of these Final Undertakings may be varied with the prior written consent of the CMA in accordance with sections 82(2) and 82(5) of the Act.
- 11.2. Where a request for consent to vary these Final Undertakings is made to the CMA, the CMA will consider any such request in light of the Report and will respond in writing as soon as is reasonably practicable having regard to the nature of the request and to its statutory duties.
- 11.3. The consent of the CMA shall not be unreasonably withheld or delayed.

## **12. Extension of time limits**

- 12.1 The Parties recognise and acknowledge that the CMA may, where it considers it appropriate, in response to a written request from either of the Parties showing good cause, or otherwise at its own discretion, grant an extension of any period specified in these Final Undertakings within which the Parties, the Monitoring Trustee or the Divestiture Trustee (as the case may be) must take action. The grant of any such extension shall not be unreasonably withheld or delayed.

### **13. Acceptance of service**

- 13.1 NECSWS hereby authorises its legal representatives, Susan Black Veronica Roberts, Natalia Rodriguez, Suzy Campbell, Christon Shenolikar, Alexander Rickets and Danielle Secher of Herbert Smith Freehills LLP, whose address for service is c/o Exchange House, Primrose Street, London EC2A 2EG, to accept service of all documents, orders, requests, notifications or other communications connected with these Final Undertakings (including any such document which falls to be served on or sent to NECSWS or its Subsidiaries or Affiliates in connection with proceedings in court in the UK).
- 13.2 SSS hereby authorises its legal representatives, Peter Harper, Julia Woodward-Carlton, Claire Morgan, Pawel Chmiel and Jack Wray of Eversheds Sutherland (International) LLP, whose address for service is c/o One Wood Street, London EC2V 7WS to accept service of all documents, orders, requests, notifications or other communications connected with these Final Undertakings (including any such document which falls to be served on or sent to SSS or its Subsidiaries or Affiliates in connection with proceedings in court in the UK).
- 13.3 Unless NECSWS or SSS informs the CMA that their legal representatives have ceased to have authority and have informed the CMA of an alternative to accept and acknowledge service on their behalf, any document, written directions, order, request, notification or other communication connected with these Final Undertakings shall be deemed to have been validly served, as applicable, on NECSWS or SSS, if it is served on their applicable respective legal representatives, and service or receipt shall be deemed to be acknowledged by email from NECSWS's and SSS's legal representatives to the CMA.
- 13.4 Paragraphs 13.1 and 13.2 have effect irrespective of whether, as between NECSWS and its legal representatives, or SSS and its legal representatives, their respective legal representatives have or continue to have any authority to accept and acknowledge service on their behalf (unless they inform the CMA that NECSWS's or SSS's legal representatives have ceased to have authority to accept and acknowledge service on their behalf), and no failure or mistake by NECSWS's or SSS's legal representatives (including a failure to notify, as applicable, NECSWS or SSS, of the service of any document, order, request, notification or other communication) shall invalidate any action taken in respect of these Final Undertakings, including any proceeding or judgment pursuant to these Final Undertakings.

### **14. Effect of invalidity**

- 14.1 The Parties undertake that should any provision of these Final Undertakings be contrary to law or invalid for any reason, they shall continue to observe the remaining provisions.

### **15. Undertakings given jointly and severally**

- 15.1 Where undertakings in these Final Undertakings are given by NECSWS and SSS, they are given jointly and severally.



**16. Governing law**

- 16.1 These Final Undertakings shall be governed by and construed in all respects in accordance with English law.
- 16.2 Disputes arising concerning these Final Undertakings shall be subject to the jurisdiction of the courts of England and Wales.

FOR AND ON BEHALF OF NEC SOFTWARE SOLUTIONS UK LIMITED

.....  
Signed

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Name

.....  
Title

.....  
Date

FOR AND ON BEHALF OF NPS (HOLDINGS) LIMITED

.....  
Signed

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Name

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Title

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Date

FOR AND ON BEHALF OF SSS PUBLIC SAFETY LIMITED

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Signed

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Name

.....

Title

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Date

## **Annex 1**

### **Purchaser Approval Criteria**

These Purchaser Approval Criteria are to be construed in a manner that is consistent with, and for the purpose of giving effect to, the Report in the Relevant Markets.

The CMA shall on reasonable request give NECSWS guidance on the interpretation of specific aspects of these Purchaser Approval Criteria, so as to enable NECSWS to ensure that its selected purchaser for the Divestiture Business will meet the requirements of this Annex 1.

#### **1. Independence**

1.1 An Approved Purchaser should not have any connection (for example financial, management, shared directorships, equity interests, reciprocal commercial arrangements) to NECSWS and/or SSS that could reasonably be expected to compromise the Approved Purchaser's ability or incentives to compete with the Merged Entity after the Final Disposal.

#### **2. Capability**

2.1 An Approved Purchaser should have access to or be able to secure appropriate financial resources, expertise (including managerial, operational and technical capability) and assets to enable the relevant Divestiture Business to be an effective competitor. This access should be sufficient to enable the Divestiture Business to continue to develop as an effective competitor.

#### **3. Commitment to the Relevant Market**

3.1 An Approved Purchaser should demonstrate to the satisfaction of the CMA that it is committed to and has credible plans for competing in the Relevant Market of the relevant Divestiture Business. This should be evidenced by:

- (a) a robust business plan demonstrating how the purchaser will maintain and operate the relevant Divestiture Business as a viable business actively competing in the Relevant Market; and
- (b) managerial, operational and technical capability to support such a business plan.

#### **4. Absence of competitive concern**

4.1 An Approved Purchaser should not give rise to a realistic prospect of an SLC in the Relevant Market.

## Annex 2

### Matters included with the divestment of the Divestiture Business

**A. The Parties undertake to dispose of the ICCS Divestiture Business in accordance with the following terms:**

**1.** Upon the Completion Date, and in accordance with the Report, NECSWS shall:

**1.1** Transfer to an Approved Purchaser the entirety of NECSWS's ICCS business, which consists of:

- (a) the products, relevant customer contracts,<sup>3</sup> IP and resources formerly associated with NECSWS's APD subsidiary<sup>4</sup> including but not limited to its ICCS Cortex product, Aspire CRM product, and Artemis telematic and fleet management system, which includes all planned, ongoing or completed product development projects;
- (b) Stream;
- (c) all UK staff members in post as at the Completion Date of the relevant transaction that are assigned to the ICCS Divestiture Business, [X] product development, [X] product management, [X];
- (d) at the discretion of the purchaser, either:
  - (i) all staff members [X] in post as at the Completion Date of the relevant transaction that are allocated to support the ongoing and planned development of the ICCS Divestiture Business, [X] product development [X], or
  - (ii) a transitional services agreement to provide the purchaser access to all members of staff [X] in post as at the Completion Date of the relevant transaction that are allocated to support the ongoing and planned development of the ICCS Divestiture Business for (at the purchaser's discretion, up to) 24 months;
- (e) all relevant IP associated with the Cortex, Aspire, Artemis, TfL Connect and Stream products;
- (f) assignment of the lease to NECSWS's office [X] (at the discretion of the purchaser);
- (g) the CallTouch Business.

**B. The Parties undertake to dispose of the Duties Divestiture Business in accordance with the following terms:**

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<sup>3</sup> The relevant customer contracts are currently [X]

<sup>4</sup> Defined as the 'APD Business' in the Report, paragraph 11.34.

2. Upon the Completion Date, and in accordance with the Final Report, NECSWS shall:
- 2.1 Transfer either the entirety of NECSWS's Duties business or the entirety of SSS's Duties business to an Approved Purchaser.
- 2.2 The NECSWS Duties business consists of:
- (a) the CARM product;
  - (b) all relevant CARM contracts;
  - (c) all UK staff members in post as at the Completion Date of the relevant transaction that are assigned to the NECSWS Duties business [X] product development, product management [X];
  - (d) at the discretion of the purchaser, either:
    - (i) the transfer of all members of staff [X] in post as at the Completion Date of the relevant transaction that are allocated to support the ongoing and planned development of the NECSWS Duties business; or
    - (ii) access through a transitional services agreement to all members of staff [X] in post as at the Completion Date of the relevant transaction that are allocated to support the ongoing and planned development of the NECSWS Duties business for (at the purchaser's discretion, up to) 24 months;
  - (e) all relevant IP associated with CARM.
- 2.3 The SSS Duties business consists of:
- (a) the Origin product;
  - (b) Origin contracts;<sup>5</sup>
  - (c) All [X] staff members in post as at the Completion Date of the relevant transaction that are assigned to the SSS Duties business including [X] Product / [X] Management, Development [X];
  - (d) at the discretion of the purchaser, and subject to the agreement of Capita, either:
    - (i) transfer of all members of staff [X] in post as at the Completion Date of the relevant transaction that are allocated to support the ongoing and planned development of the SSS Duties business; or
    - (ii) access [X] to [X] members of staff [X] in post as at the Completion Date of the relevant transaction that are allocated to

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<sup>5</sup> [X]

support the ongoing and planned development of the SSS Duties business for (at the purchaser's discretion, up to) 24 months;

- (e) all relevant IP associated with Origin.

## **Annex 3**

### **Appointment and Functions of Monitoring Trustee**

1. The Monitoring Trustee must possess appropriate qualifications and experience to carry out its functions. The Monitoring Trustee must be under an obligation to carry out its functions to the best of its abilities.
2. The Monitoring Trustee must neither have nor become exposed to a conflict of interest that impairs the Monitoring Trustee's objectivity and independence in discharging its duties under these Final Undertakings, unless it can be resolved in a manner and within a time frame acceptable to the CMA.
3. NECSWS shall remunerate and reimburse the Monitoring Trustee for all reasonable costs and professional fees properly incurred in accordance with the terms and conditions of the appointment and in such a way so as not to impede the Monitoring Trustee's independence or ability to effectively and properly carry out its functions.
4. Unless paragraph 9.2 applies:
  - a. the appointment of the Monitoring Trustee and its terms and conditions must be approved by the CMA. NECSWS shall inform the CMA as soon as is reasonably practicable and in any event by no later than two Working Days after the Commencement Date of the identity of the Monitoring Trustee that it proposes to appoint and provide the CMA with draft terms and conditions of appointment. Once the Monitoring Trustee has been approved by the CMA and appointed by NECSWS, NECSWS shall provide the CMA with a copy of the agreed terms and conditions of appointment.
  - b. If the proposed Monitoring Trustee is rejected by the CMA, NECSWS shall submit the names of at least two further persons within five Working Days starting with the date on which it was informed of the rejection, in accordance with the requirements and the procedures set out in clauses 1 to 3 above.
5. The provisions of clause 6 below shall apply if:
  - a. paragraph 9.2 does not apply; and
  - b. NECSWS fails to nominate persons in accordance with clauses 1 or 5; or
  - c. those further persons nominated by NECSWS in accordance with clauses 1 or 5 above are rejected by the CMA; or
  - d. NECSWS is unable for any reason to conclude the appointment of the Monitoring Trustee within the time limit specified by the CMA.
6. The CMA shall nominate one or more persons to act as Monitoring Trustee, and NECSWS shall appoint or cause to be appointed such Monitoring Trustee within two Working Days starting with the date of such nomination under the terms of a Monitoring Trustee mandate approved by the CMA.



7. The Monitoring Trustee's mandate shall specify that the Monitoring Trustee will carry out the functions set out in clauses 10 and 11 below and that the Monitoring Trustee will monitor the compliance of the Parties with their obligations under these Final Undertakings. The mandate shall provide that the Monitoring Trustee shall take such steps as it reasonably considers necessary to carry out its functions effectively and that the Monitoring Trustee must comply with any reasonable requests made by the CMA for the purpose of carrying out its functions under these Final Undertakings.

#### **Monitoring Trustee – replacement, discharge and reappointment**

8. NECSWS acknowledges that if the Monitoring Trustee ceases to perform its duties, or for any other good cause, including the exposure of the Monitoring Trustee to a conflict of interest, the CMA may, after consulting the Monitoring Trustee, require NECSWS to replace the Monitoring Trustee.
9. If the Monitoring Trustee is removed under clause 8 above, the Monitoring Trustee may be required to continue in its post until a new Monitoring Trustee is in place to whom the Monitoring Trustee has effected a full handover of all relevant information. The new Monitoring Trustee shall be appointed in accordance with the procedure contained in clauses 1 to 5 above.

#### **Monitoring Trustee Functions – Divestiture of the Divestiture Business**

10. The Monitoring Trustee's functions as set out in this clause 10 are to monitor and review compliance with these Final Undertakings and progress towards the Final Disposal, and shall in particular include:
  - a. Monitoring on-going compliance with the Divestiture Undertakings set out in paragraph 3 above and the Asset Maintenance Undertakings set out in paragraph 5 above [X]; and
  - b. monitoring the progress made against the Approved Timetable towards the Final Disposal, and the steps that have otherwise been taken to comply with these Final Undertakings including:
    - i. the steps that have been taken towards the preparation of agreements for the transfer of the Divestiture Businesses and the persons to whom such agreements have been distributed;
    - ii. where the Monitoring Trustee reasonably deems necessary, requesting and reviewing copies of communications (save where those communications are subject to legal privilege) between NECSWS and its financial or other advisers and possible purchasers or their financial or other advisers in connection with the disposal process; and
    - iii. in instances where the Monitoring Trustee reasonably considers there to be a material risk that NECSWS or SSS or any of their Subsidiaries will not meet a step in the Approved Timetable, the Monitoring Trustee may attend meetings between NECSWS and possible purchasers in connection with the disposal process.

11. The Monitoring Trustee will promptly inform the CMA of any material developments in connection with these Final Undertakings and will provide a written report to the CMA every four weeks, the first report to be submitted no later than three weeks from the Commencement Date.

## **Annex 4**

### **Appointment and Functions of Divestiture Trustee**

1. NECSWS undertakes that within the period of five Working Days following the day on which the CMA issues a direction pursuant to paragraph 10, NECSWS shall submit to the CMA for approval a list of persons from which it proposes to appoint a Divestiture Trustee with sufficient information for the CMA to verify that each proposed person fulfils the requirements set out in clause 2 below and shall include among other things:
  - a. the full terms of the proposed mandate, which shall include all provisions necessary to enable the Divestiture Trustee to perform its duties; and
  - b. a schedule of the steps to be taken to give effect to the mandate.
2. Each person on the list referred to in clause 1 shall possess the qualifications necessary for the performance of the mandate, shall be independent of and unconnected to the Parties and free of any conflict of interest including any conflict of interest that might arise by virtue of the terms of remuneration, on appointment or thereafter.
3. The CMA may approve or reject any or all of the proposed Divestiture Trustees (such approval not to be unreasonably withheld or delayed) and may approve the proposed mandate subject to any modifications it deems necessary for the Divestiture Trustee to fulfil its duties. If only one name is approved, NECSWS shall use its best endeavours to appoint, or cause to be appointed, the individual or institution concerned as Divestiture Trustee in accordance with the mandate approved by the CMA. If more than one name is approved, NECSWS shall be free to choose among the approved names the Divestiture Trustee to be appointed. NECSWS undertakes to appoint the Divestiture Trustee within three Working Days from the CMA's approval and on the terms of the mandate approved by the CMA.
4. If all the proposed Divestiture Trustees are rejected by the CMA, NECSWS shall submit the names of at least two further persons within five Working Days starting with the date on which it was informed of the rejection, in accordance with the requirements and the procedure set out in clauses 1 to 3 above.
5. The provisions of clause 6 below shall apply only if:
  - (a) NECSWS fails to nominate persons in accordance with clause 1 above;
  - (b) those further persons nominated by NECSWS in accordance with clause 4 above are rejected by the CMA; or
  - (c) NECSWS is unable for any reason to conclude the appointment of the Divestiture Trustee within the time limit specified by the CMA.
6. The CMA shall nominate one or more persons to act as a Divestiture Trustee, and NECSWS shall appoint or cause to be appointed such Divestiture Trustee

within two Working Days starting with the date of such nomination under the terms of a Divestiture Trustee mandate approved by the CMA.

### **Divestiture Trustee – Functions**

7. The Parties undertake to enable the Divestiture Trustee to carry out its duties and to provide such co-operation and resources as the Divestiture Trustee may reasonably require.
8. The Parties recognise and acknowledge that:
  - a. the CMA may, on its own initiative or at the request of the Divestiture Trustee, give written directions or instructions to the Divestiture Trustee in order to assist it in the discharge of its duty to implement the Trustee Obligation;
  - b. for the Duties Divestiture Business, the Divestiture Trustee's duty to implement the Trustee Obligation will be to secure the divestiture of either of the NECSWS's or SSS's Duties business and its choice as to which of these businesses to divest shall be unaffected by the Parties' choice of business to divest prior to the appointment of a Divestiture Trustee;
  - c. in order to implement the Trustee Obligation, the CMA may, on its own initiative or at the request of the Divestiture Trustee, give written directions or instructions to the Divestiture Trustee to amend the scope of the relevant Divestiture Business, where the CMA has reasonable grounds for believing that the divestiture of the Divestiture Business cannot be achieved within the Divestiture Period;
  - d. the Divestiture Trustee may include in such agreements, deeds, instruments of transfer and other instruments and documents as are necessary to implement the Trustee Obligation and such terms and conditions as the CMA considers appropriate; and
  - e. the Divestiture Trustee shall protect the legitimate financial interests of NECSWS subject to the Divestiture Trustee's overriding obligation to implement the Trustee Obligation which may include the Final Disposal of the Divestiture Business at no minimum price.
9. The Parties recognise and acknowledge that the Divestiture Trustee shall take such steps and measures as it considers necessary to implement the Trustee Obligation and to that end, the Divestiture Trustee may give written directions to the Parties. The Parties undertake to comply with such directions or to procure compliance with such directions as are within their respective powers and to take such steps within their respective competence as the Divestiture Trustee may specify.
10. The Parties recognise and acknowledge that in the performance of the Trustee Obligation, the Divestiture Trustee shall act solely on the instructions of the CMA and shall not be bound by any instruction of the Parties. The Parties

undertake that they shall not seek to revise the obligations and duties of the Divestiture Trustee except with the CMA's prior written consent.

11. The Divestiture Trustee shall every two weeks until the date on which Final Disposal takes place, report to the CMA on its progress towards Final Disposal, compliance with paragraph 4 and any other matter specified by the CMA.

#### **Divestiture Trustee – duties and obligations of NECSWS and SSS**

12. The Parties undertake to provide the Divestiture Trustee with such cooperation, assistance and information (including the production of financial or other information, whether or not such information is in existence at the time of the request that is relevant to the divestiture, excluding any material properly the subject of legal privilege) as the Divestiture Trustee may reasonably require in the performance of the Trustee Obligation.
13. The Parties recognise and acknowledge that the Divestiture Trustee shall be entitled, subject to the duty of confidentiality, to full and complete access to the books, records, documents, management or other personnel, facilities, sites and technical information necessary for the fulfilment of the Trustee Obligation (save where material is properly the subject of legal privilege). The Parties also undertake to provide the Divestiture Trustee upon reasonable request with copies of any such items. Upon the reasonable request of the Divestiture Trustee, the Parties undertake to make available to the Divestiture Trustee one or more offices on their respective premises and ensure that the necessary NECSWS and/or SSS personnel are available for meetings in order to provide the Divestiture Trustee with all information reasonably necessary to discharge the Trustee Obligation, subject in each case to the Divestiture Trustee's compliance with the Parties' respective internal policies.
14. The Parties undertake to grant reasonable comprehensive powers of attorney, duly executed, to the Divestiture Trustee to enable it to discharge the Trustee Obligation, including by the appointment of advisers to assist with the disposal process. The Parties undertake that upon the reasonable request of the Divestiture Trustee, they shall execute the documents required to give effect to the Trustee Obligation.
15. The Parties undertake to hold the Divestiture Trustee, its employees, agents or advisers harmless against any liabilities arising out of the proper performance of the duty to divest the Divestiture Business and the Parties recognise and acknowledge that the Divestiture Trustee, its employees, agents or advisers shall have no liability to the Parties or any of its Subsidiaries or Affiliates for any liabilities arising out of the proper performance of the duty to divest the Divestiture Business, except to the extent that such liabilities result from the wilful default, recklessness, negligence or bad faith of the Divestiture Trustee, its employees, agents or advisers.
16. NECSWS shall be entitled to a monthly statement from the Divestiture Trustee of all professional fees and expenses properly incurred by the Divestiture Trustee and its advisers, appointed in accordance with clause 6. Any individual items of costs or expenses in excess of an amount at a level set in advance by

the CMA in consultation with the Divestiture Trustee shall not be properly incurred unless with the prior written consent of the CMA, NECSWS having had prior opportunity to comment to the CMA on both the level to be set in advance and any individual items of cost or expense that exceed that amount, on the condition that NECSWS shall provide such comments to the CMA within a timescale specified by the CMA that shall be reasonable in all the circumstances.

17. NECSWS shall remunerate and reimburse the Divestiture Trustee for all professional fees, expenses and reasonable costs properly incurred in accordance with the terms and conditions of its appointment. This may include all costs, expenses and professional fees of financial or legal advisers appointed to assist with the fulfilment of the Divestiture Trustee Obligation if the Divestiture Trustee reasonably considers the appointment of such advisers necessary or appropriate. Before appointing any such advisers, the Divestiture Trustee will consider using the advisers already appointed by NECSWS. Should NECSWS refuse to approve the advisers proposed by the Divestiture Trustee, the CMA may, after consulting with NECSWS, approve and direct the appointment of such advisers.
18. The Parties undertake to make no objection to the Final Disposal save on the grounds of bad faith, wilful default, recklessness or negligence by the Divestiture Trustee or subject to clause 8.e, failure of the Divestiture Trustee to reasonably protect the legitimate financial and business interests of NECSWS.

#### **Divestiture Trustee – replacement, discharge and reappointment**

19. The Parties acknowledge that if the Divestiture Trustee ceases to perform its duties, or for any other good cause, including the exposure of the Divestiture Trustee to a conflict of interest, the CMA may, after consulting the Divestiture Trustee, require NECSWS to replace the Divestiture Trustee.
20. If the Divestiture Trustee is removed under clause 19 above, the Divestiture Trustee may be required to continue in its post until a new Divestiture Trustee is in place to whom the Divestiture Trustee will have effected a full handover of all relevant information. The new Divestiture Trustee shall be appointed in accordance with the procedure contained in clauses 1 to 6 above.
21. The Parties recognise and acknowledge that, other than in accordance with clause 19 above, the Divestiture Trustee shall cease to act as Divestiture Trustee only after the CMA has discharged it from its duties at a time at which all the obligations with which the Divestiture Trustee has been entrusted have been met.

## **Annex 5**

### **Compliance statement for [NECSWS SOFTWARE SOLUTIONS UK LIMITED ("NECSWS")][NPS (HOLDINGS) LIMITED ("NPS")][OR][SSS PUBLIC SAFETY LIMITED ("SSS")]**

I [insert name] confirm on behalf of [NECSWS][NPS][OR][SSS] that:

#### *Compliance in the Relevant Period*

1. In the period from [insert date] to [insert date] (the Relevant Period):
  - (a) [NECSWS][NPS][OR][SSS] has complied with the Final Undertakings made by the CMA in relation to the divestiture of [relevant Divestment businesses] on [insert date] (the Final Undertakings).
  - (b) [NECSWS][NPS][OR][SSS] subsidiaries have also complied with these Final Undertakings.
2. Except with the prior written consent of the CMA:
  - (a) No action has been taken by [NECSWS][NPS][OR][SSS] or [its][OR][their] Subsidiaries that might prejudice the Final Disposal, the CMA's decisions in the Final Report or otherwise impair the CMA's ability to take such action for the purpose of remedying, mitigating and preventing the SLC or any adverse effect which has resulted from, or may be expected to result from, the SLC finding, including any action which might:
    - (i) lead to the integration of the SSS business with the NECSWS business;
    - (ii) transfer the ownership or control of all or any part of any Divestiture Business except in the course of complying with the Final Undertakings; or
    - (iii) otherwise impair the ability of any Divestiture Business to compete independently in any of the markets affected by the Merger.
  - (b) The SSS business has been carried on separately from the NECSWS business and the SSS business's separate sales or brand identity has been maintained.
  - (c) Each Divestiture Business has been maintained as a going concern and sufficient resources have been made available for the development of each Divestiture Business to enable them to continue to compete independently in any of the markets affected by the Merger.

- (d) No substantive changes have been made to the organisational structure of, or the management responsibilities within, any Divestiture Business, except in the ordinary course of business or except where strictly necessary to comply with the Final Undertakings.
- (e) The nature, description, range and quality of goods and/or services supplied in the UK by each Divestiture Business has been maintained and preserved.
- (f) Except in the ordinary course of business or except where strictly necessary to comply with the Final Undertakings:
  - (i) all of the assets of each Divestiture Business, including facilities and goodwill, have been maintained and preserved;
  - (ii) none of the assets of any Divestiture Business has been disposed of; and
  - (iii) no interest in the assets of any Divestiture Business has been created or disposed of.
- (g) There has been no integration of the information technology of the SSS and NECSWS businesses, and the software and hardware platforms of the SSS business have remained essentially unchanged, except for routine changes and maintenance, except where strictly necessary to comply with these Final Undertakings.
- (h) The customer and supplier lists of the SSS business and the NECSWS business have been operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the SSS business have been carried out by the SSS business alone and, for the avoidance of doubt, the NECSWS business has not negotiated on behalf of the SSS business.
- (i) All existing contracts of the Divestiture Businesses have been serviced by the business to which they were awarded.
- (j) No changes have been made to Key Staff of any Divestiture Business.
- (k) No Key Staff of any Divestment Business have been transferred between SSS or its Subsidiaries and NECSWS or its Subsidiaries or Related Parties.
- (l) All reasonable steps have been taken to encourage all Key Staff of any Divestment Business to remain with each Divestiture Business, including the retention packages currently in place in respect of the SSS business



and introducing appropriate retention packages for Key Staff of NECSWS's Divestiture Businesses as required under paragraph 5.3 of the Final Undertakings.

(m) Except as permitted by these Final Undertakings, no Confidential Information relating to either of the SSS business or the NECSWS business, has passed, directly or indirectly, from the SSS business (or any of its employees, directors, agents or Related Persons) to the NECSWS business (or any of its employees, directors, agents or Related Persons), or vice versa.

(n) Except as listed in paragraph (o) below, there has or have been no:

- (i) Key Staff of any Divestment Business that have left or joined any of the Divestiture Businesses;
- (ii) interruptions of any of the Divestiture Businesses (including without limitation procurement, production, logistics, sales and employee relations arrangements) that have prevented it from operating in the ordinary course of business for more than 24 hours;
- (iii) substantial customer volumes won or lost or substantial changes to the customer contracts for any of the Divestiture Businesses; or
- (iv) substantial changes in any of the Divestiture Business's contractual arrangements or relationships with key suppliers.
- (v) substantial adverse changes in any material litigation or regulatory enforcement action which may impact on the Divestiture Businesses;
- (vi) initiation, defence, progress and resolution of any material litigation or regulatory enforcement action which may impact on the Divestiture Businesses; and
- (vii) substantial adverse changes in the financial position and/or performance of the SSS business.

(o) *[list of material developments]*

3. [NECSWS][NPS][OR][SSS] and its Subsidiaries remain in full compliance with these Final Undertakings and will continue actively to keep the CMA informed of any material developments relating to the SSS or the NECSWS business in accordance with paragraph 5 of these Final Undertakings.

### **Interpretation**

4. Terms defined in the Final Undertakings have the same meaning in this compliance statement.

I understand that:

5. it is a criminal offence under section 117 of the Enterprise Act 2002 for a person recklessly or knowingly to supply to the CMA information which is false or misleading in any material respect. Breach of this provision can result in fines, imprisonment for a term not exceeding two years, or both. (Section 117 of the Enterprise Act 2002.)

FOR AND ON BEHALF OF [NEC SOFTWARE SOLUTIONS UK  
LIMITED][NPS (HOLDINGS) LIMITED][OR][SSS PUBLIC SAFETY LIMITED]

Signature .....

Name .....

Title .....

Date