

504 6877

**Hive Down Agreement relating to the Business of the
Agency Division of Transco plc**

Dated 1 May 2005

Transco plc
Seller

xoserve Limited
Purchaser

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Hive Down Agreement

Dated 1st May 2005

Between

- (1) **Transco plc (Seller)** registered in England with number 2006000 whose registered office is at 1-3 Strand London WC2N 5EH; and
- (2) **xoserve Limited (Purchaser)** registered in England with number 5046877 whose registered office is at 1-3 Strand, London WC2N 5EH.

Recitals

The Seller has agreed to sell (or procure to be sold) and the Purchaser has agreed to purchase the Business (as hereinafter defined) as a going concern on and subject to the terms and conditions of this Agreement.

It is agreed:

1 Definitions and interpretation

In this Agreement:

1.1 Defined terms

Affiliate means in relation to any body corporate (i) its parent undertaking; or (ii) any subsidiary undertaking of such body corporate or of its parent undertaking;

Agency Services Contract means an agreement pursuant to which the Company undertakes to supply certain services to a given Network Operator including without limitation the provision of information, data processing, invoicing and supply point administration services in relation to the transmission and distribution of gas via the Network Area which that Network Operator operates and **Agency Services Contracts** means all Agency Services Contracts subsisting at a given moment;

Agreement means (subject to sub-clause 21.1) this agreement, including the Recital and the Schedules;

Ancillary IP Agreements means the software licence and copyright and know-how Licence to be entered into between the Seller and the Purchaser pursuant to the Intellectual Property arrangements provided in the Agency Services Contract and in relation to pre-existing Intellectual Property;

A Shares means the convertible redeemable ordinary A shares of £1 each in the capital of the Purchaser having the rights set out in the articles of association of the Purchaser;

Assets

- (a) means the Fixed Assets, the Loose Plant, the benefit (subject to the burden) of the Contracts, the Business Intellectual Property, the Business Information, the Business Records and the other property, rights and assets of the Seller used exclusively in connection with the Business; and
- (b) **Asset** means anything comprised in any category of Assets; but
- (c) no reference to the Assets or any Asset includes any of the Excluded Assets or the Excluded Contracts;

Assumed Liabilities has the meaning given thereto in sub-clause 11.2 and Assumed Liability shall be construed accordingly;

Authority means the Gas and Electricity Markets Authority established under section 1 of the Utilities Act 2000;

A Voting Share means an A Share which has not been converted pursuant to the articles of association of the Purchaser;

B Shares means the convertible redeemable ordinary B Shares of £10 each in the capital of the Purchaser having the rights set out in the articles of association of the Purchaser;

B Voting Share means a B Share which has not been converted pursuant to the articles of association of the Purchaser;

Business means the business of that division of the Seller which immediately prior to the Effective Time provides services in relation to the Seller's business of a nature similar to the Services, the assets and liabilities of which comprise the Assets and the Assumed Liabilities together with all income deriving therefrom after the Effective Time;

Business Day means a day (other than a Saturday or Sunday) when banks are open for business in the City of London;

Business Information means all know how and techniques which are proprietary to any member of the Seller's Group (whether or not confidential) and used exclusively for the purposes of the Business but excluding any General Services Information;

Business Intellectual Property means the Intellectual Property owned by any member of the Seller's Group which is exclusively used in the Business but for the avoidance of doubt excluding any Mark and any General Services Intellectual Property;

Business Objects Agreement means the agreement in the agreed form between the Purchaser and Business Objects Limited relating to the business objects reports for those Regional Networks in respect of which the Seller is to enter into a Regional Network Transfer Agreement;

Business Records means all books and records owned by the Seller or any member of the Seller's Group which relate exclusively to the Business (including, without limitation, all documents and other material whether stored in hard copy or electronic format) but excludes any records which do not relate exclusively to the Business, any Taxation Records and any books or records which relate to the General Services Information or any records which any

member of the Seller's Group is required to retain by either Regulatory Requirements or by codes or statements of practice issued by the Information Commissioner pursuant to the Data Protection Act 1998;

CA85 means the Companies Act 1985;

Competent Authority means (i) any person (whether autonomous or not) having legal and/or regulatory authority and/or enforcement powers including without limitation the Authority; (ii) any court of law or tribunal in any jurisdiction; and/or (iii) any authority competent to impose, collect or administer any liability to Tax;

Completion means completion of the sale and purchase of the Business pursuant to this Agreement;

Conditions means collectively the conditions to Completion set out in sub-clause 4.1;

Consideration has the meaning given to it in sub-clause 3.1;

Contracts means those contracts to be assigned or transferred to the Purchaser and listed in Schedule 5;

Creditors means all book, trade and other debts or sums (including credit notes granted) due, owing, accrued or payable by any member of the Seller's Group in respect of the Assets or the Business (whether or not then invoiced and whether or not then due and payable) but excluding (i) all liabilities relating to Taxation; and (ii) all overdrafts, bank borrowings and intra-group borrowings in each case as determined in accordance with the Seller's accounting policies and practices as at Completion;

Debtors means all book, trade and other debts or sums (including suppliers' credit notes) due, owing, accrued or payable to any member of the Seller's Group in respect of the Business or the Assets (whether or not then invoiced and whether or not then due and payable) but excluding all amounts relating to Taxation in each case as determined in accordance with the Seller's accounting policies and practices as at Completion;

Effective Time means 6.00am on the day of Completion;

Employees those persons who as at 1 April 2005 are employed in the Business by any member of the Seller's Group details of whom are set out in Schedule 2 other than the Excluded Employees and those who object to becoming employed by the Purchaser pursuant to regulation 5(4)A of the Transfer Regulations, and excluding any person who ceases between 1 April 2005 and the Effective Time to be so employed but including (in addition) any person who between 1 April 2005 and the Effective Time commences employment with any member of the Seller's Group and is assigned to the Business and any person employed by any member of the Seller's Group who is assigned to the Business between 1 April 2005 and the Effective Time;

Excluded Assets means:

- (a) cash in hand or at the bank used in the Business and held at the Effective Time;
- (b) the benefit of any loans due from any member of the Seller's Group;

- (c) amounts recoverable in respect of Taxation relating to the Business attributable to periods ended on or before, or transactions occurring on or before, Completion;
- (d) any right, title or interest in any Intellectual Property owned by any member of the Seller's Group other than the Business Intellectual Property;
- (e) the information technology hardware that is the subject of the Hardware Lease;
- (f) the assets specified in Schedule 4; and
- (g) the Seller's Debtors;

Excluded Contracts means the IT Contracts, the Ancillary IP Agreements, the Services Agreements and the contracts, undertakings, agreements and arrangements specified in the, the ODC Agreements, and other Seller's Group Agreements ;

Excluded Employees means each of Ed Bannock, Kim Salmon, Clive Nicholas, Steve Coomber, Paul Hastings, and David Howitt;

Excluded Liabilities means all liabilities of each member of the Seller's Group set out in sub-clause 11.3 and **Excluded Liability** shall be construed accordingly;

Fixed Assets means all plant, machinery and equipment which, as of the Effective Time, is physically attached to the Property and owned or used by any member of the Seller's Group exclusively in connection with the Business;

Gas Act means the Gas Act 1986;

General Services Agreement means the general services agreement to be entered into (pursuant to the Hive Down Agreement) between the Seller and the Purchaser in accordance with which the Seller will, inter alia, undertake to procure or provide certain services including but not limited to IT Services, human resource, finance, procurement and back office system support requirements of the Company, and the grant by the Seller of a licence to use certain of the Seller's software on the terms set out therein;

General Services Information means any data which relates in part to the Business and which is owned by the Seller's Group pursuant to the General Services Agreement;

General Services Intellectual Property means the Intellectual Property which is owned by the Seller's Group in accordance with the terms of the General Services Agreement;

GT Licence means a gas transporter's licence issued pursuant to the Gas Act;

Hardware Lease means the hardware lease in the agreed form to be entered into between the Purchaser and the Seller pursuant to Clause 2.3 in accordance with which the Seller will grant the Purchaser the right to use certain information technology hardware;

Intellectual Property means patents, trade marks, service marks, trade names, domain names, rights in designs, semiconductor topography rights, database rights of unfair extraction and reutilisation, copyrights (including rights in computer software), rights in know-how and other intellectual or industrial property rights (whether registered or unregistered and including applications for the registration of any of the foregoing) and all rights or forms of protection

having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world;

Interest means interest on the amount to be paid calculated at a rate equal to two per cent. per annum above the base lending rate from time to time of Barclays Bank plc and on the basis of the actual number of days elapsed and a 365 day year;

IT Contracts means any agreement between any member of the Seller's Group and a third party relating to any one or more of the following matters: (i) the supply, leasing and/or hire of information technology hardware or any telecommunications equipment or services; (ii) the licensing of software; (iii) the maintenance, support, development, customisation or upgrade of any information technology hardware or software or the maintenance or support of any telecommunications equipment or services; or (iv) the provision of services or temporary personnel in connection with the use or development of information technology systems, or any telecommunications equipment or services, used or proposed to be used by the Seller and/or any member of the Seller's Group, other than the Contracts;

Lease means the lease of part dated 6 March 2000 and made between Paragon Group of Companies plc and the Seller in respect of the Property;

Loose Plant means loose plant, machinery, tools, equipment, furniture, motor vehicles, computer, telecommunications and network equipment and other things as of the Effective Time owned by any member of the Seller's Group and exclusively used in connection with the Business as of the Effective Time but does not include those things which are subject to any lease, hire, hire purchase, credit sale or conditional purchase agreement;

Losses and Expenses means actions, proceedings, losses, damages, liabilities, claims, demands, costs and expenses, including fines, penalties, clean-up costs and reasonable legal and other professional fees properly incurred and any VAT payable in relation to any such matter, circumstance or item (except to the extent that the Party claiming Losses and Expenses obtains credit for such VAT as input tax);

Mark means any mark, trademark, house mark, company, business or trading name or logo owned by a member of the Seller's Group including without limitation the names Transco, National Grid, Fulcrum, Onstream, TMS, UMS, GridCom, SecondSite, Lattice, Advantica, NGT and National Grid Transco;

Network Operator means an entity which from time to time holds a current and valid GT Licence enabling it to operate a given Regional Network;

NGT Group Company means any of National Grid Transco plc and its subsidiaries from time to time, any holding company of National Grid Transco plc and all other subsidiaries of any such holding company from time to time.

NGT Group Loan Agreement means the loan facility agreement on arm's length commercial terms in the agreed form to be entered into between an NGT Group Company and the Purchaser pursuant to Clause 2.3 in accordance with which the relevant NGT Group Company will agree to lend the sum of £10,000,000 to the Purchaser and the Purchaser will lend to such NGT Group Company, subject to availability, a sum of up to £10,000,000;

North Region means the two regions known as the Northern and North East LDZs as shown in the Ten Year Statement;

North West Region means the region known as the North West LDZ as shown in the Ten Year Statement;

NTS means the national gas transmission system owned and operated by the Seller;

ODC Agreements means the agreements in the agreed form to be entered into between each of the Offshore Development Centres and the Purchaser pursuant to Clause 2.3 in respect of the provision of application software support and development services by the Offshore Development Centres to the Purchaser;

Offshore Development Centres means each of (a) Tata Sons Limited, through its division Tata Consultancy Services a company resident in Mumbai, India and (b) Wipro Limited, a company resident in Bangalore, India;

Parties means the Purchaser and the Seller (and **Party** means either one of them);

Permitted Encumbrances means liens arising in the ordinary course of business by operation of law, security interests arising under sales contracts with title retention provisions entered into in the ordinary course of business and equipment leases with third parties entered into in the ordinary course of business and security interests for Taxation and other government charges which are not due and payable or which may thereafter be paid without penalty;

Proceedings means any proceeding, suit or action (including arbitration) arising out of or in connection with this Agreement;

Property means the property details of which are set out at Schedule 3;

Purchaser's Group means the Purchaser and its subsidiaries from time to time;

Region means any one of the Scotland Region, the North Region, the North West Region, the Wales and West Region or the South Region;

Regional Network means all those assets which together constitute the gas distribution network in respect of a given Region owned and operated by the Seller prior to transfer to a Network Operator pursuant to a Regional Network Transfer Agreement;

Regional Network Transfer Agreement means a hive-down agreement pursuant to which the Seller will sell a Regional Network to a Network Operator;

Regulatory Requirements means any applicable requirement of law or of any competent Authority;

Scotland Region means the region known as the Scotland LDZ as shown in the Ten Year Statement;

Secondment Agreements means the secondment agreements to be entered into in respect of each Excluded Employee between the Purchaser and the Seller pursuant to Clause 2.3;

Secretary of State means the Secretary of State for Trade and Industry from time to time;

Seller's Debtors means those Debtors allocated to the Seller in accordance with Clause 8;

Seller's Group means the Seller and its subsidiaries from time to time, any holding company of the Seller and all other subsidiaries of any such holding company from time to time (other than the Purchaser or any member of the Purchaser's Group);

Seller's Pension Scheme means the Lattice Group Pension Scheme, which was established with effect from 1 April 1982 and which is approved under Chapter I Part XIV of the Income and Corporation Taxes Act 1988;

Services means the services to be provided under the Agency Services Contract;

Services Agreements means the General Services Agreement and the Hardware Lease;

South Region means the two regions known as the Southern and South East LDZs as shown in the Ten Year Statement;

SSAP means a statement of standard accounting practice in force at the date of this Agreement as adopted by the Accounting Standards Board Limited;

Structuring and Shareholders Agreement means the agreement to be entered into between the Seller (1), the Purchaser (2) and Network Operators and Network Shareholders (as such terms are defined therein) (3) regulating the relationship of the parties thereto as shareholders in the Purchaser;

Sub-Lease means the sub-lease in the agreed form;

Taxation or **Tax** includes (without limitation) all taxes, levies, duties, imposts, charges and withholdings of any nature whatsoever, whether of the United Kingdom or elsewhere, together with all penalties, charges and interest relating to any of them or to any failure to file any return required for the purposes of any of them;

Taxation Records means all books and records owned by the Seller or by any member of the Seller's Group which relate exclusively to the Taxation position of the Business or the Purchaser or which contain information relating exclusively to the Taxation position of the Business or the Purchaser (including, without limitation, all documents or other material whether stored in hard copy or electronic format) but excludes any records which any member of the Seller's Group is permitted to retain in accordance with sub-clause 14.4 and excludes any books or records which any member of the Seller's Group is required to retain by either Regulatory Requirements or by codes of practice issued by the Information Commissioner pursuant to the Data Protection Act 1998;

Ten Year Statement means the document prevailing at the date of this Agreement and prepared from time to time by the Seller pursuant to the Amendment to Standard Condition 25 of the Transco Licence;

Third Party Asset means any Asset where the consent or agreement of any third party is required to transfer such Asset to the Purchaser in the form held by the Seller (other than in relation to the Sub-Lease and the transfer of any Contract);

Third Party Consent means all consents, approvals, authorisations or waivers required from third parties for the assignment or novation of any Contract (or the relevant part thereof) in favour of the Purchaser, or the agreement of any other arrangement in relation to any Contract;

TMS Agreement means the agreement to be entered into between Transco Metering Services Limited and the Purchaser pursuant to which the Purchaser will provide information exchange (IX) network services together with various miscellaneous services as requested by Transco Metering Services Limited;

Transco Licence means the gas transporter licence under which the Seller is authorised to transport gas which is treated as granted under section 7 of the Gas Act;

Transco Network Code means the network code prepared by the Seller, as modified from time to time, pursuant to the Transco Licence;

Transfer Regulations means the Transfer of Undertakings (Protection of Employment) Regulations 1981 and Council Directive 77/187/EEC;

Uniform Network Code means the terms that are (in whole or in part) incorporated into the business network code relating to each Region in respect of which a part of the Transco Licence is transferred or in respect of which a new gas transporter's licence is issued and into the Transco Network Code;

VAT means value added tax;

VATA means the Value Added Tax Act 1994;

Wales and the West Region means the three regions known as the Wales North, Wales South and South West LDZs as shown in the Ten Year Statement; and

Working Hours means 9.30am to 5.30pm on a Business Day.

- 1.2 Reference to any document as being "in the agreed form" means that it is in the form agreed between the Seller and the Purchaser and signed for the purposes of identification by or on behalf of the Seller and the Purchaser.
- 1.3 The table of contents and headings and sub-headings are for convenience only and shall not affect the construction of this Agreement.
- 1.4 Unless the context otherwise requires, words denoting the singular shall include the plural and vice versa and references to any gender shall include all other genders. References to any person (which for the purposes of this Agreement shall include bodies corporate, unincorporated associations, partnerships, governments, governmental agencies and departments, statutory bodies or other entities, in each case whether or not having a separate legal personality) shall include the person's successors.
- 1.5 The words "**other**", "**include**", and "**including**" do not connote limitation in any way.
- 1.6 References to Recitals, Schedules, clauses and sub-clauses are to (respectively) recitals to, schedules to, and clauses and sub-clauses of, this Agreement (unless otherwise specified) and references within a Schedule to paragraphs are to paragraphs of that Schedule (unless otherwise specified).
- 1.7 References in this Agreement to any statute, statutory provision, directive of the Council of the European Union (whether issued jointly with any other person or under any other name) or other legislation include a reference to that statute, statutory provision, directive or legislation as amended, extended, consolidated or replaced from time to time (whether before or after the

date of this Agreement) and include any order, regulation, instrument or other subordinate legislation made under the relevant statute, statutory provision, directive or legislation provided always that the liability of any Party shall not be increased or altered by any such amendment, extension, re-enactment, consolidation or replacement made after the date of this Agreement.

- 1.8 References to any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, organisation, body, official or any legal concept, state of affairs or thing shall in respect of any jurisdiction other than England be deemed to include that which most nearly approximates in that jurisdiction to the English legal term.
- 1.9 Any reference to "**writing**" or "**written**" includes faxes and any legible reproduction of words delivered in permanent and tangible form (but does not include e-mail).
- 1.10 References to times of the day are (unless otherwise expressly provided) to London time and references to a day are to a period of 24 hours running from midnight on the previous day.
- 1.11 The expressions "**subsidiary**", "**holding company**", "**body corporate**", "**parent undertaking**", and "**subsidiary undertaking**" bear the same meanings in this Agreement as they respectively bear in CA85.

2 Sale and purchase

2.1 Obligation to sell and purchase

Subject to the terms of this Agreement, the Seller agrees to sell to the Purchaser, and the Purchaser agrees to purchase from the Seller the Business, which shall be sold as a going concern and including such right, title and interest as the Seller and any member of the Seller's Group has in the Assets but excluding:

- (a) the Excluded Assets; and
- (b) the Excluded Contracts,

as and with effect from the Effective Time.

2.2 Assignment of Business Intellectual Property

Sub-clause 2.1 shall operate as an assignment of such of the Business Intellectual Property as is owned by the Seller and is not the subject of a registration or an application for registration with effect from the Effective Time.

2.3 Execution of Agreements

Forthwith following the execution of this Agreement the Purchaser and the Seller shall (or the Seller shall procure that the relevant member of the Seller's Group and/or NGT Group Company shall) execute the Agency Services Contract, the General Services Agreement, the Hardware Lease, the NGT Group Loan Agreement, the TMS Agreement (or, failing that a letter of intention to enter into the TMS Agreement (hereinafter the **TMS Letter of Intent**)), the Secondment Agreements and the Structuring and Shareholders' Agreement. The Purchaser shall in addition, enter into the the ODC Agreements, or failing that letters of intention to enter into the ODC Agreements (each hereinafter an **ODC Letter of Intent**) with each of the

Offshore Development Centres in respect of which an ODC Agreement has not been entered into and the Purchaser shall use all reasonable endeavours to enter into and the Seller shall use all reasonable endeavours to assist the Purchaser in entering into the ODC Agreements with each of the Offshore Development Centres as soon as practicable after the Effective Date. The Seller shall also further grant certain rights to the Purchaser to use software and rights to Intellectual Property in the Ancillary IP Agreements.

3 Consideration

3.1 Aggregate Consideration

The Consideration for the sale of the Business and the Assets shall be £100,000 and the assumption of the Assumed Liabilities pursuant to sub-clauses 11.1 and 11.3.

3.2 Payment of Consideration

The Consideration shall be payable in accordance with clause 6.

3.3 Apportionments

All periodical charges and outgoings of the Business (except those relating to the Property, which will be dealt with in accordance with paragraph 8 of Schedule 7 and those relating to the Employees, which will be dealt with in accordance with sub-clause 13.5 and sub-clause 13.6) including but not limited to telephone charges, insurance premiums and all licence fees and royalties shall be apportioned on a time basis so that such part of the relevant charges attributable to the period ended on the Effective Time shall be borne by the Seller and such part of the relevant charges attributable to the period commencing on the Effective Time shall be borne by the Purchaser. Sums due as aforesaid shall be paid by the Seller to or to the order of the Purchaser, or as the case may be, vice versa within 20 Business Days of receipt of the written demand for payment by the party to whom payment is due provided such demand is supported by reasonable supporting evidence that the relevant sum is due to be paid.

4 Conditions

4.1 Conditions to Completion

Completion is subject to and conditional on fulfilment of the conditions set out in this sub-clause:

- (a) receipt from the Authority of such other consents or authorisations and approvals (including variations to existing consents) pursuant to the Transco Licence as the Seller considers necessary;
- (b) the terms of the Agency Services Contracts having been approved, to the extent necessary, by the Authority;
- (c) the Seller having entered into at least one Regional Network Transfer Agreement with a Network Operator in respect of a Regional Network and all conditions to completion of the same having been satisfied other than conditions relating to this Agreement; and

- (d) the Authority not having indicated before the other Conditions set out in this sub-clause 4.1 have been satisfied that it:
- (i) intends to seek modifications to any of the licences held by the Seller or any member of the Seller's Group granted under the Gas Act or, if previously approved, to the Transco Network Code or Uniform Network Code (except on terms satisfactory to the Seller); and/or
 - (ii) intends to seek undertakings or assurances from the Seller or any member of the Seller's Group, other than those already required to be given under the Transco Licence (except on terms satisfactory to the Seller).

4.2 Time limit for satisfaction of Conditions

If the Conditions are not satisfied by 1 July 2005, this Agreement shall automatically terminate save for the provisions of clause 1, clause 17, clause 21, clause 24, clause 25 and clause 26 and all obligations of the Parties under this Agreement shall end save in respect of any antecedent breach of this Agreement.

5 Conduct of business pending Completion

- 5.1 Unless otherwise required by Regulatory Requirements, or otherwise required in order to comply with the terms of the Uniform Network Code, the Transco Licence or the Transco Network Code, the Seller undertakes to the Purchaser that in the period between the date of this Agreement and the date of Completion (both dates inclusive) it shall not in relation to the Business undertake any act which is outside the ordinary course of business and which would be material in the context of the Business as a whole and in particular the Seller shall not in relation to the Business undertake any of the acts or matters specified below without the prior written consent of the Purchaser (such consent not to be unreasonably withheld or delayed):
- 5.1.1 the acquisition or disposal of any interest in real property with a value in excess of £1,000,000;
 - 5.1.2 any disposal (not being a disposal of stock in the ordinary course of business) of any interest in any part of the Business with a value in excess of £1,000,000;
 - 5.1.3 any offer to engage any new employee or consultant at any annual salary or fee per employee or consultant (on the basis of full-time employment or consultancy) in excess of £80,000 per annum;
 - 5.1.4 any dismissal of any Employee receiving an annual salary in excess of £80,000 per annum, other than where such dismissal is for one of the five potentially fair reasons for dismissal under section 98(2) of the Employment Rights Act 1996 or unless not to do so would, in the reasonable opinion of the Seller, damage the Business;
 - 5.1.5 any amendment, including any increase in emoluments (including, without limitation, pension contributions, bonuses, commissions and benefits in kind), to the terms of employment of any category of Employees which would result in a material increase in cost or liability except pursuant to annual pay reviews;
 - 5.1.6 the entering into of any transaction with any member of the Seller's Group other than on arms' length terms and in the ordinary course of business;
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- 5.1.7 the entering into of any contract with a value in excess of £1,500,000 other than the renewal or extension of any contract on substantially the same terms;
- 5.1.8 any creation or any grant of any Encumbrance on, over or affecting the whole or any material part of the Business save for Permitted Encumbrances; and
- 5.1.9 the entering into of any agreement to do any of the foregoing.

6 Completion

6.1 Completion

- 6.1.1 Subject to sub-clause 6.2, Completion shall take place at the offices of CMS Cameron McKenna at, 160 Aldersgate Street, London EC1A 4DD on the earlier of the day on which the Authority stipulates that at least one Regional Network Transfer Agreement will come into effect or the day on which the Authority stipulates that this Agreement will come into effect provided that all the Conditions have been satisfied by such date or, if the Authority does not stipulate any such date (or any of the Conditions have not been satisfied by the relevant date), Completion shall take place on the first day of the month after the date on which the last outstanding Condition is satisfied or at such other place or at such other time as the Seller and the Purchaser shall agree. On Completion the Parties shall perform their respective obligations and deliver or cause to be delivered each of the documents set out in Schedule 1; and
- 6.1.2 the Purchaser shall satisfy the Consideration by allotting and issuing to the Seller, credited as fully paid, 10,000 B Voting Shares and the Seller shall in addition subscribe for 1,000 B Voting Shares at nominal value and 45,569 A Voting Shares at nominal value plus a premium of £9 per A Voting Share. The consideration for such additional B Voting Shares and the A Voting Shares shall, in the event that Completion does not take place on a Business Day, be paid on the first Business Day following Completion.

6.2 Failure to comply

If at Completion the provisions of paragraph 1 and paragraph 2 of Schedule 1 are not complied with the Seller (in the case of non-compliance by the Purchaser) or the Purchaser (in the case of non-compliance by the Seller) will not be obliged to complete this Agreement and the Party not in breach of its obligations set out therein may by written notice:

- (a) defer Completion to the first day of the next following calendar month after the agreed date for Completion in which case the foregoing provisions of this sub-clause 6.2 shall apply to Completion as so deferred;
- (b) proceed to Completion so far as practicable (without limiting its rights under this Agreement);
- (c) treat this Agreement as terminated for breach of condition; or
- (d) waive all or any of the requirements contained in paragraph 1 or paragraph 2 of Schedule 1 at its discretion.

6.3 Risk

Risk in the Assets shall pass to the Purchaser at the Effective Time and the provisions of this Agreement shall remain in full force and effect notwithstanding any damage to or destruction of any Asset. From Completion the Purchaser shall have the benefit of the insurance policies maintained by the Seller's Group to the extent they relate to the Business.

6.4 Pensions

At Completion the Purchaser will execute and the Seller shall procure that Lattice Group plc shall execute, a deed which is substantially in the form set out in Schedule 6. Consequently the Purchaser will become an employer (for the purposes of the Seller's Pension Scheme) with effect from Completion and will participate in the Seller's Pension Scheme on the terms set out in Schedule 6.

6.5 Property

The parties agree to meet their respective obligations as regards the Property contained in Schedule 7.

7 Action after Completion

7.1 Notices to be sent to the Purchaser

The Seller shall use all reasonable endeavours to procure that originals of all notices, correspondence, information, orders or enquiries relating solely to the Business and copies of all notices, correspondence, information, orders or enquiries relating partly to the Business and partly to one or more of the remaining businesses of the Seller's Group which are received by any member of the Seller's Group on or after Completion shall be passed as soon as practicable to the Purchaser.

7.2 Notices to be sent to the Seller's Group

The Purchaser shall use all reasonable endeavours to procure that originals of all notices, correspondence, information, orders or enquiries relating solely to one or more of the remaining businesses of the Seller's Group and copies of all notices, correspondence, information, orders or enquiries relating partly to one or more of the remaining business of the Seller's Group and partly to the Business which are received by any member of the Purchaser's Group on or after Completion shall be passed as soon as practicable to the relevant member of the Seller's Group.

7.3 Monies owed to the Purchaser

The Seller shall, as soon as reasonably practicable after receipt thereof, pay to the Purchaser an amount equal to any monies which any member of the Seller's Group actually receives after Completion to the extent that such monies belong to the Purchaser and were comprised within or were represented by any of the Assets sold at Completion pursuant to this Agreement.

7.4 Monies owed to the Seller's Group

The Purchaser shall, as soon as reasonably practicable after receipt thereof, pay to the relevant member of the Seller's Group an amount equal to any monies which any member of the

Purchaser's Group actually receives after Completion to the extent that such monies belong to that member of the Seller's Group and were excluded from the Assets sold at Completion pursuant to this Agreement.

7.5 Excluded Assets

If on or after Completion there are any Excluded Assets on the Property, the Purchaser will hold these on trust for the Seller and shall permit the Seller to enter the Property to remove them.

7.6 Data Protection Act 1998

The Purchaser shall as soon as practicable after Completion send a fair processing notice in the agreed form to all Employees who are data subjects informing such relevant Employees of the sale of the Business and that from Completion their personal data is being held by a new data controller.

7.7 Claims co-operation

The Purchaser shall procure that the relevant member of the Seller's Group shall as soon as reasonably practicable after delivering a request to the Purchaser be given reasonable access to any of the Employees during Working Hours together with copies of any information reasonably required and in the possession of the Purchaser concerning any actual or potential claim that may arise under any insurance policy of any member of the Seller's Group relating to the Business, or any of the Assets or Employees and the Purchaser shall procure that the relevant Employees provide assistance to enable the relevant member of the Seller's Group to deal with the actual or potential insurance claim.

7.8 Notice of claims under indemnities

If either Party becomes aware of any circumstance, matter or event giving rise to a claim or potential claim under the indemnities contained in this Agreement (a "**Claim**") it shall:

- (a) within 14 days of becoming so aware give notice of such Claim to the other Party and consult with the other Party in respect of such Claim; and
- (b) if so requested by the other Party, take all reasonable steps as the other Party may consider necessary in order to mitigate, avoid, resist, appeal, dispute, contest, remedy, compromise or defend any such Claim and any adjudication in respect thereof subject to it being indemnified by the Party making the request against all reasonable costs and expenses incurred in connection therewith.

8 Creditors and Debtors

8.1 Payment of Creditors

To the extent that Creditors were incurred before the Effective Time and are attributable to any period prior to the Effective Time they shall be borne and shall be paid by the Seller. All Creditors incurred after or attributable to any period after the Effective Time shall be borne and paid by the Purchaser.

8.2 Payment of Debtors

To the extent that Debtors have accrued up to and including the Effective Time they shall belong to the Seller and shall be payable to and be enforceable by the Seller. All Debtors accruing after the Effective Time shall belong to and be payable to and enforceable by the Purchaser.

8.3 Seller's Debtors

The Seller's Debtors are excluded from the sale of the Business and if the Purchaser receives a Seller's Debtor, or an amount which in part represents a Seller's Debtor, it shall hold it, or such part, on trust for the Seller and shall, as soon as reasonably practicable, pay it to the Seller.

8.4 Appropriation of payments

Any sum received by the Seller from any person who is both a debtor of the Business at the Effective Time and a debtor in respect of any subsequent dealing with the Purchaser in the course of the Business may (if not appropriated to the later debt by the debtor) be appropriated by the Seller to such earlier debt or debts.

9 Third party assets

From Completion, the Seller will (to the extent that it can lawfully do so and without breaching the terms of any agreement or arrangement in respect of such Third Party Asset) hold all Third Party Assets on trust for the Purchaser absolutely. The Seller and the Purchaser shall (at the expense of the Purchaser) use their respective reasonable endeavours (both before and after Completion) to obtain any consent or agreement of the relevant third party to the transfer of the Third Party Asset to the Purchaser as soon as practicable. Upon obtaining such consent or agreement, the Seller shall notify the Purchaser and transfer the Third Party Asset to the Purchaser in the manner in which transfer would have been effected at Completion if the consent or agreement had been obtained prior to Completion.

10 Contracts

10.1 Assignment

To the extent that the rights, interest, liabilities or obligations of the Seller and any member of the Seller's Group under any of the Contracts can be assigned or transferred without obtaining a Third Party Consent and subject always to any specific arrangements agreed in writing in relation to a particular Contract between the Seller and/or the relevant member(s) of the Seller's Group, the Purchaser and the parties to such Contract, this Agreement shall constitute an assignment and/or transfer (or, where appropriate, an agreement by the Seller to procure the assignment and/or transfer by the relevant member(s) of the Seller's Group) to the Purchaser of all subsisting rights and benefits and all wholly or partly undischarged or unperformed liabilities or obligations of the Seller and any member of the Seller's Group under all of those Contracts with effect from the Effective Time in place of and to the exclusion of the Seller as if the Purchaser had at all times been a party to those Contracts. Nothing in this Agreement shall be construed as an assignment or transfer of, or an attempt to assign or transfer any, Contract which by its terms is not assignable or transferable without a Third Party Consent or would otherwise constitute a breach of such Contract until an appropriate Third Party Consent has been obtained in respect of such assignment or transfer.

10.2 Indemnity

Subject always to the provisions of sub-clauses 3.3, 8.1, 10.3 and 10.4 the Purchaser shall from the Effective Time perform all the obligations and assume all the liabilities of the relevant member(s) of the Seller's Group under the Contracts to the extent that such obligations and/or liabilities are wholly or partly undischarged or unperformed in place of and to the exclusion of the Seller as if the Purchaser had at all times been a party to those Contracts and the Purchaser shall indemnify the Seller (for itself and as trustee for each member of the Seller's Group) against all Losses and Expenses suffered or incurred by the Seller or any member of the Seller's Group in connection with the Purchaser's performance or non-performance of the obligations of the relevant member(s) of the Seller's Group or the assumption or non-assumption of such liabilities under such Contracts.

10.3 Third Party Consents

Insofar as any Third Party Consent is required to enable the Purchaser to perform any Contract (or the relevant part thereof) after the Effective Time or to enable the relevant member of the Seller's Group to transfer the benefit or burden of any such Contract (or the relevant part thereof) to the Purchaser the following provisions shall apply:

- (a) from the Effective Time, the Seller and the Purchaser shall use their respective reasonable endeavours to procure, in each case where a Third Party Consent is required, that such Third Party Consent is obtained to whatever assignment, transfer, novation or, where applicable, other arrangement is considered necessary by the Seller and the Purchaser (acting reasonably) to enable the Purchaser to perform such Contract (or the relevant part thereof) after the Effective Time or as the case may be to transfer the benefit and burden of such Contract (or the relevant part thereof) to the Purchaser;
- (b) until the Third Party Consent referred to in sub-clause (a) is obtained, the Seller shall procure that the relevant member(s) of the Seller's Group shall (to the extent possible in relation to such Contract) hold the benefit of such Contract (or the relevant part thereof) on trust absolutely for the Purchaser, together with all amounts paid or payable to and/or any benefits receivable by and/or any goods delivered to the Seller's Group under such Contract (or the relevant part thereof) and shall account to the Purchaser for the same as soon as reasonably practicable after such Third Party Consent is obtained; and
- (c) until the relevant Third Party Consent is obtained, the Purchaser shall, unless the relevant Contract prohibits it, perform all the obligations of the relevant member(s) of the Seller's Group under such Contract as agent for, or sub-contractor to, the relevant member(s) of the Seller's Group and the Purchaser shall indemnify the Seller (for itself and as trustee for each member of the Seller's Group) against all Losses and Expenses suffered or incurred by the Seller or any member of the Seller's Group in respect thereof.

10.4 Seller's assistance

If the relevant Contract prohibits the Purchaser from acting as agent or sub-contractor as contemplated by sub-clause 10.3(c), until the relevant Third Party Consent is obtained, the Seller shall or shall procure that an appropriate member of the Seller's Group shall (to the extent lawful) provide the Purchaser (at the Purchaser's request and at the Purchaser's cost) with such assistance (but at no cost to any member of the Seller's Group) as may be

reasonably required by the Purchaser to enable the Contract (or the relevant part thereof) to be duly performed, on such terms as shall give to the Purchaser the benefit, subject to the burden, of the Contract (or the relevant part thereof).

10.5 Failure to obtain consent

If any Third Party Consent as is referred to in this clause 10 is refused or not obtained within 12 months of Completion in respect of any Contract (or the relevant part thereof), the Seller shall be entitled to terminate that Contract (or the relevant part thereof) and the Purchaser shall indemnify the Seller (for itself and as trustee for each member of the Seller's Group) against all Losses and Expenses suffered or incurred by the Seller or any member of the Seller's Group in respect of such termination.

10.6 Notice of Third Party Consents

Following Completion, the Seller and/or the Purchaser (as the case may be) shall promptly inform the other whenever any Third Party Consent has been obtained. On receipt of such notification, the Purchaser shall and the Seller shall procure that relevant member(s) of the Seller's Group shall execute the relevant assignment, transfer or novation, as the case may be, in a form agreed by the Seller and the Purchaser (such agreement not to be unreasonably withheld or delayed by either Party) of the relevant Contract (or the relevant part thereof). The Seller and the Purchaser shall each use their respective reasonable endeavours to procure the execution by any relevant third party of such assignment, transfer or novation and shall deliver to the other any such executed assignment, transfer or novation as soon as reasonably practicable.

11 Assumed Liabilities and Excluded Liabilities

11.1 Assumed Liabilities

The Purchaser agrees with the Seller that it will:

- (a) save as otherwise provided in this Agreement duly and properly perform, assume and pay and discharge when due, and indemnify the Seller (for itself and as trustee for each member of the Seller's Group) against all Losses and Expenses suffered or incurred by the Seller or any member of the Seller's Group in connection with the Assumed Liabilities; and
- (b) indemnify the Seller (for itself and as trustee for each member of the Seller's Group) against all Losses and Expenses suffered or incurred by the Seller or any member of the Seller's Group in connection with or as a result of the conduct of (all or any part of) the Business or the ownership and/or use of any of the Assets by or on behalf of any member of the Purchaser's Group.

11.2 Definition of Assumed Liabilities

In this Agreement "**Assumed Liabilities**" means, subject to sub-clauses 3.3, 8 and 11.3, all past, present and future liabilities and obligations of each member of the Seller's Group (of whatsoever nature) in respect of the Assets and the Business to the extent that they have not been fully satisfied or otherwise fully discharged as of the Effective Time.

11.3 Excluded Liabilities

Notwithstanding sub-clauses 11.1 and 11.2:

- (a) the Assumed Liabilities shall not include any liability or obligation of the Seller in respect of Taxation relating to the Business attributable to periods ended on or before, or transactions occurring on or before the Effective Time;
- (b) the Assumed Liabilities shall not include any liability or obligation of the Seller or any member of the Seller's Group to the extent it relates to the Excluded Assets, the Excluded Contracts or the Excluded Employees;
- (c) the Assumed Liabilities shall not include any liability or obligation of the Seller arising under this Agreement.

11.4 Further assurance in relation to Assumed Liabilities

The Purchaser, for itself and its successors and assigns, covenants that, at any time and from time to time on or after Completion it will execute and deliver all such further instruments of assumption and acknowledgements or take such other action as the Seller may reasonably request in order to effect the release and discharge in full of any Assumed Liability of any member of the Seller's Group and the Purchaser's assumption of the Assumed Liabilities and the substitution of the Purchaser as the primary obligor in respect of the Assumed Liabilities in each case on a non-recourse basis to any member of the Seller's Group.

11.5 Indemnity for Excluded Liabilities

The Seller hereby agrees with the Purchaser that it will duly and properly perform, assume and pay and discharge when due, and indemnify the Purchaser (for itself and as trustee for each member of the Purchaser's Group) against all Losses and Expenses suffered or incurred by the Purchaser or any member of the Purchaser's Group in connection with the Excluded Liabilities.

11.6 Conduct of Proceedings

Subject as provided below, the Purchaser shall be allowed to have the conduct of any proceedings commenced against any member of the Seller's Group on or before the Effective Time in respect of the Assumed Liabilities and to use professional advisers in relation thereto nominated by the Purchaser, subject in each case to the relevant member of the Seller's Group being indemnified by the Purchaser against all reasonable costs and expenses incurred therewith. Accordingly, the Seller shall and shall procure that the relevant member of the Seller's Group shall:

- (a) if so requested by the Purchaser, take all reasonable steps as the Purchaser may consider necessary in order to mitigate, avoid, resist, appeal, dispute, contest, remedy, compromise or defend any such proceedings and any adjudication in respect thereof or enforce against any person the rights of the relevant member of the Seller's Group in relation to the matter the subject of the proceedings subject to the relevant member of

the Seller's Group being indemnified by the Purchaser against all costs and expenses incurred in connection therewith;

- (b) at all reasonable times allow the Purchaser and its agents reasonable access to and to inspect and take copies of all necessary books, correspondence and records of the relevant member of the Seller's Group in relation to such proceedings; and
- (c) save with the Purchaser's prior written consent (not to be unreasonably withheld or delayed), not admit liability in respect of or compromise, or settle any such proceedings as aforesaid,

PROVIDED THAT where the Seller is of the reasonable opinion that the business of the Seller's Group would be materially and adversely affected by the Seller complying with those provisions the Purchaser shall not be allowed to have the conduct of any negotiations, proceedings or appeals and the provisions of this sub-clause 11.6 (**Conduct of Proceedings**) shall not apply.

12 Business records

12.1 Delivery of Business Records

The Seller shall as soon as reasonably practicable following Completion deliver to, or hold to the order of, the Purchaser originals of all the Business Records (excluding those records which any member of the Seller's Group is permitted to retain in accordance with sub-clause 14.4).

12.2 Delivery of Taxation Records

The Seller shall, as soon as reasonably practicable following Completion, deliver to, or hold to the order of, the Purchaser originals of all the Taxation Records.

12.3 Access for Seller

For a period of six years from Completion the Purchaser shall make available to the Seller the Business Records and Taxation Records which are delivered to the Purchaser under this Agreement for inspection and copying by representatives of any member of the Seller's Group and its professional advisers (at the Seller's expense) if reasonably required by the Seller during Working Hours on reasonable advance notice.

12.4 Access for Purchaser

For a period of six years from Completion the Seller shall make available to the Purchaser any Business Records and Taxation Records not delivered to the Purchaser pursuant to sub-clause 12.1 or sub-clause 12.2 or any records excluded from the definition of Business Records (or, if practicable, the relevant parts thereof) which contain information which is reasonably required by the Purchaser for inspection and copying by representatives of the Purchaser (at the Purchaser's expense) during Working Hours on reasonable advance notice.

13 Employees

13.1 Application of Transfer Regulations

The Seller and the Purchaser anticipate that the Transfer Regulations will apply to the sale and purchase of the Business under this Agreement. Accordingly, the contracts of employment of the Employees with any member of the Seller's Group shall have effect after Completion as if originally made between the Employees and the Purchaser. Without prejudice to the aforesaid, at Completion all the rights, powers and liabilities of any member of the Seller's Group under or in connection with the contracts of employment of the Employees (save where an Employee objects to being transferred) shall be transferred to the Purchaser and anything done before Completion by the Seller in relation to those contracts of employment shall be deemed to have been done by the Purchaser. In accordance with its obligations under the Transfer Regulations, the Purchaser shall provide the Seller in writing with such information and at such time as will enable the Seller to carry out its obligations to inform and consult under the Transfer Regulations.

13.2 Effect of non-transfer of Employee

If the contract of employment of any Employee is found or alleged not to have effect after Completion as if originally made with the Purchaser as a consequence of the sale and purchase of the Business under this Agreement other than by virtue of regulation 5(4A) of the Transfer Regulations, the Purchaser agrees that:

- (a) in consultation with the Seller, it will, within seven days of being so requested by any of them (as long as the request is made no later than 14 days after the Seller becomes aware of such finding or allegation), make to that Employee an offer in writing to employ him under a new contract of employment to take effect upon the release referred to below; and
- (b) the offer to be made will be such that none of the terms and conditions of the new contract (other than the identity of the employer) will differ from the corresponding provision of the Employee's contract of employment immediately before Completion.

Upon that offer being made (or at any time after the expiry of the seven days if the offer is not made as requested), the Seller shall release or procure the release of the Employee concerned from his employment in the Business and the Purchaser shall indemnify the Seller (for itself and as trustee for each member of the Seller's Group) against all Losses and Expenses suffered or incurred by the Seller or any member of the Seller's Group arising from the employment of that Employee after Completion until such release or from such release including all Losses and Expenses which arise out of or are connected with the termination of such Employee's employment.

13.3 Indemnity in respect of measures

The Purchaser shall indemnify the Seller (for itself and as trustee for each member of the Seller's Group) against all Losses and Expenses suffered or incurred by the Seller or any member of the Seller's Group as a result of any proceeding, claim or demand to the extent that it arises from any failure by the Purchaser or a member of the Purchaser's Group to provide information to the Seller as to any measures envisaged in relation to the Employees whether envisaged by the Purchaser or a member of the Purchaser's Group (other than those which have been disclosed in writing to the Seller not less than 20 Business Days prior to the date of this Agreement) or from any other failure by the Purchaser or a member of the Purchaser's

Group to comply with regulation 10 of the Transfer Regulations or Article 4(2) of Council Directive 2001/23/EC.

13.4 Post-Completion indemnity

13.4.1 The Purchaser shall indemnify the Seller (for itself and as trustee for each member of the Seller's Group) against all Losses and Expenses suffered or incurred by the Seller or any member of the Seller's Group by reason of any proceeding, claim or demand:

- (a) relating to or arising out of or connected to any act or omission (whenever it occurs) by the Purchaser or a member of the Purchaser's Group (or any other event, matter or occurrence whenever it occurs) in respect of the employment of any Employees on or after Completion, or in respect of any collective agreement covering one or more of the Employees or relating to the terms and conditions of employment or benefits offered or provided to the Employees in connection with their employment on or after Completion including, without limitation, claims relating to the pension or life assurance benefits for or in respect of the Employees, or in relation to the termination of employment of any Employee on or after Completion;
- (b) arising out of or in connection with any breach of contract or anticipatory breach of contract or failure or anticipatory failure by the Purchaser or a member of the Purchaser's Group to comply with any of the Employees' rights under the Transfer Regulations, whether before or after Completion; or
- (c) under regulation 5(5) of the Transfer Regulations.

13.4.2 The Purchaser shall also indemnify the Seller (for itself and as trustee for each member of the Seller's Group) against all Losses and Expenses suffered or incurred by the Seller or any member of the Seller's Group arising from or in connection with the costs for which the Purchaser is responsible pursuant to sub-clause 13.6.

13.5 Responsibility pre-Effective Time

The Seller or the relevant member of the Seller's Group shall be responsible for all financial obligations which are accrued or are properly due and payable to or in respect of the Employees up to the Effective Time (including, but not limited to, PAYE, national insurance contributions, employer pension contributions, reimbursement of expenses, payment of insurance premiums, payment of commission or bonus or profit share or other incentive payment accruing in respect of the period up to the Effective Time). The Purchaser shall settle all such financial obligations (other than PAYE and national insurance contributions) on behalf of the Seller to the extent that the Purchaser is put in funds by the Seller. The Seller shall indemnify the Purchaser against all Losses and Expenses suffered or incurred by the Purchaser from or in connection with the costs for which the Seller is responsible pursuant to this sub-Clause 13.5.

13.6 Responsibility post-Effective Time

The Purchaser shall be responsible for all financial obligations which are accrued or are properly due and payable to or in respect of the Employees on and after the Effective Time (including, but not limited to PAYE, national insurance contributions, employer pension contributions, reimbursement expenses, payment of insurance premiums, payment of commission or bonus or profit share or other incentive payment accruing in respect of the

period on and after the Effective Time and pay in lieu of any holiday accrued but not taken as of the Effective Time and pay in lieu of any holiday accrued on and after the Effective Date.

13.7 Employee loans

The Purchaser shall, on the written demand of the Seller, pay to the Seller or its nominee forthwith a sum equal to any loan made by the Seller, or a member of the Seller's Group, to any Employee where such loan was unpaid as at the Effective Time (except to the extent that such Employee has subsequently repaid the loan to the Seller or a member of the Seller's Group).

13.8 Trade unions

13.8.1 The independent trade unions recognised by the Seller in respect of the Employees shall after the Effective Time be deemed to have been recognised by the Purchaser. Any agreement for recognition may be varied or rescinded accordingly.

13.8.2 For the avoidance of doubt the relevant independent trade unions are Unison and APEX.

13.8.3 Any collective agreements made by or on behalf of the Seller with a recognised trade union in respect of the Employees shall after the Effective Time have effect as if originally made between the trade union and the Purchaser.

14 VAT

14.1 Going concern

The Seller and the Purchaser shall use their respective reasonable endeavours to procure that the sale of the Business under this Agreement is treated by H.M. Customs and Excise as a transfer of the business as a going concern for the purposes of both section 49(1) VATA and article 5 of the Value Added Tax (Special Provisions) Order 1995, except that no member of the Seller's Group shall be required by virtue of this sub-clause to make any appeal to any court against any determination of H.M. Customs and Excise that the sale does not fall to be so treated.

14.2 VAT declarations

14.2.1 The Purchaser undertakes that upon and immediately after Completion it shall use the Business and the Assets to carry on the same kind of business as that carried on by the Seller in relation to the Business before Completion.

14.2.2 The Purchaser hereby notifies the Seller that article 5(2B) of the Value Added Tax (Special Provisions) Order 1995 does not apply to the Purchaser.

14.3 Production of documents

The Purchaser confirms that the undertaking in sub-clause 14.2.1 may be referred to by any member of the Seller's Group in any correspondence with H.M. Customs and Excise regarding the non taxable nature of the sale of the Assets and that, at the request of the Seller, it will produce to the Seller such evidence as the Seller may reasonably require in respect of the matters about which the undertaking is given.

14.4 Excluded documents

The relevant member of the Seller's Group shall retain all the records of the Business which under paragraph 6 of Schedule 11 to VATA are required to be preserved after Completion and shall request the Commissioners of H.M. Customs and Excise to make a decision in accordance with section 49(1)(b) VATA. The Purchaser shall render all reasonable assistance to the relevant member of the Seller's Group in connection with such a request and if H.M. Customs and Excise refuses to so direct the Seller shall preserve those records as agent for the Purchaser for a period of up to six years therefrom.

14.5 Additional sum in respect of VAT

If, notwithstanding the provisions of sub-clause 14.1, H.M. Customs and Excise shall determine that VAT is chargeable in respect of the supply of all or any part of the Assets under this Agreement, the Seller shall notify the Purchaser of that determination within seven days of its being so advised by H.M. Customs and Excise and the Purchaser shall pay to the Seller by way of additional consideration a sum equal to the amount of VAT determined by H.M. Customs and Excise to be so chargeable (together with any interest or penalties that may be due thereon) within seven days of the Seller notifying the Purchaser of that determination (against delivery by the Seller of a valid VAT invoice).

15 Seller's Marks

The Purchaser acknowledges and agrees on behalf of itself and each member of the Purchaser's Group that save as set out below nothing in this Agreement shall transfer nor operate as an agreement to transfer any right, title or interest in any Mark including without limitation:

- (a) "Transco";
- (b) "National Grid";
- (c) "Fulcrum";
- (d) "Onstream"
- (e) "TMS";
- (f) "UMS";
- (g) "GridCom";
- (h) "SecondSite";
- (i) "Lattice";
- (j) "Advantica";
- (k) "NGT"; and
- (l) "National Grid Transco"

or any other Mark in which any of those elements appears or in which any of such words in a translational or a transliteral form appears (all the foregoing together the "Seller's Marks"). From Completion and until the Purchaser ceases to be a subsidiary of the Seller, the Purchaser shall be entitled to use the Seller's marks NGT and/or National Grid Transco to identify itself as a National Grid Transco company or as the Seller may otherwise approve.

16 Further assurance

- 16.1 Except in relation to the Business Intellectual Property and the Property so far as each is reasonably able to do each of the Parties shall co-operate with the other Party and shall from time to time do or procure the doing of all such acts and/or execute or procure the execution of all such documents in a form reasonably satisfactory to the Party concerned as it reasonably considers necessary so as to transfer the Assets or otherwise to give the other Party the full benefit of this Agreement.
- 16.2 The Seller undertakes that after Completion and at the request of the Purchaser it will execute or procure (in so far as it is able) the execution of all such documents as may reasonably be necessary to secure the vesting in the Purchaser or a member of the Purchaser's Group of the Business Intellectual Property provided however that the Purchaser undertakes with the Seller that it will be responsible for preparing all such documents and provided that the Purchaser shall be responsible for:
- (a) all costs reasonably and properly incurred by any member of the Seller's Group; and
 - (b) all other costs and expenses in respect of such vesting.
- 16.3 In relation to the Sub-Lease of the Property the provisions of paragraph 6 of Schedule 7 shall apply.

17 Confidentiality and announcements

17.1 Prohibition on disclosure

Each Party undertakes with the other Party in each case save with the prior written consent of the other Party (not to be unreasonably withheld or delayed) to keep confidential (except as expressly provided in this Agreement) at all times after the date of this Agreement, and not directly or indirectly reveal, report, publish, disclose or transfer or use for its own or any other purposes, any confidential information received or obtained as a result of entering into or performing, or supplied by or on behalf of a Party in the negotiations leading to, this Agreement and which relates to:

- (a) the negotiations relating to this Agreement;
- (b) the subject matter and/or provisions of this Agreement or any document entered into pursuant thereto; or
- (c) (in the Seller's case) the Purchaser or (in the Purchaser's case) the Seller or their respective Affiliates.

PROVIDED that the Seller shall be permitted to disclose the subject matter and/or provisions of this Agreement to any person with which it is in discussions regarding the entry by that person into a Regional Network Transfer Agreement.

17.2 Insolvency of recipient Party

All confidential information disclosed by or on behalf of a Party shall remain the property of the disclosing Party (or of its Affiliate(s), as the case may be). In the event that a court or Competent Authority assumes partial or complete control over the assets of a recipient Party based on the insolvency of that Party, the recipient Party shall promptly notify such court or Competent Authority:

- (a) that confidential information received from or on behalf of the disclosing Party under this Agreement remains the property of the disclosing Party (or of its Affiliate(s), as the case may be); and
- (b) of the confidentiality obligations under this Agreement,

and shall to the extent permitted by law, take all steps necessary or desirable to maintain the confidentiality and security of the disclosing Party's confidential information and to ensure that the court or Competent Authority maintains that confidential information in confidence in accordance with this Agreement.

17.3 Permitted disclosures

The prohibition in sub-clause 17.1 does not apply if:

- (a) the information was in the public domain before it was furnished to the relevant Party or, after it was furnished to that Party, entered the public domain otherwise than as a result of (i) a breach by that Party of this clause or (ii) a breach of a confidentiality obligation by the discloser, where the breach was known to that Party;
- (b) disclosure is necessary in order:
 - (i) to comply with Regulatory Requirements; or
 - (ii) to obtain Tax or other clearances or consents or confirmations from any Taxation Authority; or
 - (iii) to seek professional advice on the provisions of this Agreement and the transactions contemplated thereby.

PROVIDED that any information disclosable pursuant to sub-clause 17.3(b)(i) shall be disclosed only to the extent required by Regulatory Requirements and (unless such consultation is prohibited by Regulatory Requirements) only after consultation with the Purchaser or Seller (as the case may be).

- (c) disclosure is made pursuant to an announcement permitted under sub-clause 17.5.

17.4 Equivalent obligations of confidentiality

Each Party shall procure that all its officers, employees, Affiliates, sub-contractors, agents and professional advisors who have access to such confidential information shall be made aware of

and subject to equivalent obligations of confidentiality and shall use all reasonable endeavours to procure their compliance with such obligations.

17.5 Announcements

No Party shall make any formal press release or other public announcement in connection with any of the transactions contemplated by this Agreement except:

- (a) an announcement in the agreed form or in any other form agreed by the Purchaser and the Seller; or
- (b) any announcement required by any applicable Regulatory Requirements (provided that, unless such consultation is prohibited by Regulatory Requirements, it is made only after consultation with the Purchaser or the Seller (as the case may be)) or if consultation is not practicable, after notice.

18 Assignment

No Party may assign, transfer, charge or deal in any way with the benefit of, or any of their respective rights under, this Agreement except with the prior written consent of the other Party PROVIDED that the Seller shall be entitled to assign the benefit of this Agreement to any member of the Seller's Group. Any purported assignment in contravention of this clause shall be void.

19 Waiver, variation, invalidity

19.1 No waiver by omission, delay or partial exercise

No right, power or remedy provided by law or under this Agreement shall be waived, impaired or precluded by:

- (a) any delay or omission to exercise it; or
- (b) any single or partial exercise of it, or any full or partial release, compounding or compromise on an earlier occasion; or
- (c) any delay, omission to exercise, single or partial exercise, full or partial release, compounding or compromise of any other such right, power or remedy.

19.2 Specific waivers to be in writing

Any waiver of any right, power or remedy under this Agreement must be in writing and may be given subject to any conditions thought fit by the grantor. No waiver will take effect if the person seeking the waiver has failed to disclose to the grantor every material fact or circumstance which (so far as the person seeking the waiver is aware) has a bearing on its subject matter. Unless otherwise expressly stated, any waiver shall be effective only in the instance and only for the purpose for which it is given.

19.3 Variations to be in writing

No variation to this Agreement shall be of any effect unless it is agreed in writing and signed by or on behalf of each Party.

19.4 Invalidity

Each of the provisions of this Agreement is severable. If any such provision is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction:

- (a) that shall not affect or impair the legality, validity or enforceability in that jurisdiction of the other provisions of this Agreement, or of that or any provisions of this Agreement in any other jurisdiction; and
- (b) the Parties will use reasonable endeavours to negotiate in good faith with a view to replacing it with one or more provisions satisfactory to any relevant Competent Authority but differing from the replaced provision as little as possible.

20 Deductions and interest

20.1 No deduction etc.

Except as otherwise expressly provided in this Agreement, all payments to be made under this Agreement shall be made in full without any set-off or counterclaim and free from any deduction or withholding except as may be required by law (in which event such deduction or withholding shall not exceed the minimum amount required by law and the payer will simultaneously pay to the payee whatever additional amount is required for the net amount received to equal what would have been received if no such deduction or withholding had been required).

20.2 Interest on late payment

If a Party fails to pay any sum payable by it under this Agreement on the due date for payment, it shall pay Interest for the period from and including the due date up to the date of actual payment (after as well as before judgment) PROVIDED THAT such Interest shall be payable on demand and shall be compounded monthly in arrears.

21 Entire agreement

21.1 This Agreement

In this clause, references to this Agreement include all written agreements and arrangements between the Parties or any of them that are expressed to be entered into pursuant to this Agreement.

21.2 Entire agreement

This Agreement constitutes the whole and only agreement and understanding between the Parties in relation to its subject matter. Except as provided in sub-clause 21.3, all previous agreements, understandings, undertakings, representations, warranties and arrangements of any nature whatsoever between the Parties or either of them with any bearing on the subject

matter of this Agreement are superseded and extinguished (and all rights and liabilities arising by reason of them, whether accrued or not at the date of this Agreement, are cancelled) to the extent that they have such a bearing.

21.3 Fraud

Nothing in this Agreement shall be read or construed as excluding any liability or remedy in respect of fraud.

21.4 Reliance

The Purchaser acknowledges and declares that in entering into this Agreement it has not relied and is not relying on any warranties, representations, covenants, undertakings, indemnities, promises, forecasts or other statements whatsoever whether written or oral (and whether implied or otherwise) (collectively "**Representations**"), other than those expressly set out in this Agreement and the Purchaser hereby irrevocably and unconditionally waives any right it may have to claim damages for, or to rescind this Agreement by reason of, any Representation not expressly set out in this Agreement unless such Representation was made fraudulently.

22 Counterparts

This Agreement may be executed in counterparts and by the Parties on different counterparts. Each counterpart shall constitute an original of this Agreement but the counterparts shall together constitute one and the same Agreement.

23 Time of the essence

Time shall be of the essence of this Agreement as regards any time, date or period mentioned in it. If any such time, date or period (or variation of any of them) is varied, such varied time, date or period shall be of the essence.

24 Notices

24.1 Form of notices

Any communication to be given in connection with the matters contemplated by this Agreement shall except where expressly provided otherwise be in writing in the English language and shall either be delivered by hand or sent by first class pre-paid post or facsimile transmission. Delivery by courier shall be regarded as delivery by hand.

24.2 Address and facsimile

Such communication shall be sent to the address of the relevant Party referred to in this Agreement or the facsimile number set out below or to such other address or facsimile number as may previously have been communicated to the sending Party in accordance with this clause. Each communication shall be marked for the attention of the relevant person.

Seller - facsimile number 0207 004 3221. For the attention of the Company Secretary.

Purchaser - facsimile number 0207 004 3221. For the attention of the Company Secretary with a copy to the Chief Executive Officer, xoserve Limited, 51 Homer Road, Solihull on fax number 0121 713 5174

24.3 Deemed time of service

A communication shall be deemed to have been served:

- (a) if delivered by hand at the address referred to in sub-clause 24.2 at the time of delivery;
- (b) if sent by first class pre-paid post to the address referred to in that sub-clause, at the expiration of two clear Business Days after the time of posting; and
- (c) if sent by facsimile to the number referred to in that sub-clause, at the time of completion of transmission by the sender.

If a communication would otherwise be deemed to have been delivered outside Working Hours under the preceding provisions of this clause, it shall be deemed to have been delivered at 9.30am on the next Business Day.

24.4 Proof of service

In proving service of the communication, it shall be sufficient to show that delivery by hand was made or that the envelope containing the communication was properly addressed and posted as a first class pre-paid letter or that the facsimile was despatched and a confirmatory transmission report received.

24.5 Change of details

Either Party may notify the other of a change to its name, relevant person, address or facsimile number for the purposes of sub-clause 24.2 provided that such notification shall only be effective on:

- (a) the date specified in the notification as the date on which the change is to take place;
or
- (b) if no date is specified or the date specified is less than five clear Business Days after the date on which notice is deemed to have been served, the date falling five clear Business Days after notice of any such change is deemed to have been given.

24.6 Non-applicability to Proceedings

For the avoidance of doubt, the Parties agree that the provisions of this clause shall not apply in relation to the service of any writ, summons, order, judgment or other document relating to or in connection with any Proceedings.

25 Third party rights

With the exception of sub-clause 11.1 nothing in this Agreement is intended to confer on any person any right to enforce any term of this Agreement which that person would not have had but for the Contracts (Rights of Third Parties) Act 1999.

26 Governing law and jurisdiction

26.1 English law

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

26.2 Courts of England and Wales

The Parties agree that the courts of England shall have exclusive jurisdiction to settle and resolve any Proceedings.

AS WITNESS the hands of the Parties or their duly authorised representatives on the date first appearing at the head of this Agreement.

Schedule 1 -Completion Obligations

1 Completion Obligations of the Seller

1.1 The Seller will be obliged to deliver to the Purchaser (or otherwise make available to the reasonable satisfaction of the Purchaser):

- (a) a copy of the minutes of a meeting of the directors of the Seller authorising the execution by the Seller of this Agreement and all other documents required by this Agreement to be executed by the Seller, and the doing of all such things as are incidental to its implementation;
- (b) vacant possession of the Property
- (c) all the Assets which are capable of transfer by delivery (other than any Business Records and Taxation Records which shall be delivered to the Purchaser in accordance with clause 12) with the intent that title in such Assets shall pass by and upon such delivery;
- (d) an original counterpart of the Business Objects Agreement duly executed by Business Objects Limited;
- (e) an original counterpart of each of the ODC Agreements, or failing that an ODC Letter of Intent, duly executed by each Offshore Development Centre;
- (f) an original counterpart of the TMS Agreement or the TMS Letter of Intent, duly executed by Transco Metering Services Limited;
- (g) a counterpart of the Agency Services Contract duly executed by the Seller;
- (h) a counterpart of the Hardware Lease duly executed by the Seller;
- (i) a counterpart of each of the Ancillary IP Agreements duly executed by the Seller;
- (j) a counterpart of the NGT Group Loan Agreement duly executed by the relevant NGT Group Company;
- (k) a counterpart of the General Services Agreement duly executed by the Seller;
- (l) a counterpart of the Structuring and Shareholders Agreement duly executed by the Seller;
- (m) a counterpart of each Secondment Agreement duly executed by the Seller; and
- (n) a letter of application for 10,000 B Voting Shares in the capital of the Purchaser in satisfaction of the Consideration together with a letter of application for a further 1,000 B Voting Shares and 45,570 A Voting Shares in the capital of the Purchaser for which the Seller shall subscribe in cash.

2 Completion Obligations of the Purchaser

2.1 The obligations of the Purchaser are to:

- (a) pay the Consideration in accordance with sub-clause 6.1.2 including by allotting and issuing to the Seller and delivering to the Seller a share certificate in respect of 11,000 B Voting Shares and 45,570 A Voting Shares;
- (b) deliver to the Seller a copy of the minutes of the board of directors of the Purchaser authorising the execution of this Agreement and all other documents required by this Agreement to be executed by the Purchaser and the doing of all such things as are incidental to its implementation;
- (c) to deliver to the Seller;
 - (i) a counterpart of the Sub-Lease duly executed by the Purchaser;
 - (ii) a counterpart of the Business Objects Agreement duly executed by the Purchaser;
 - (iii) a counterpart of the ODC Agreement, or failing that an ODC Letter of Intent, duly executed by the Purchaser;
 - (iv) an original counterpart of the TMS Agreement or of the TMS Letter of Intent, duly executed by the Purchaser;
 - (v) a counterpart of the Agency Services Contract duly executed by the Purchaser;
 - (vi) a counterpart of the Hardware Lease duly executed by the Purchaser;
 - (vii) a counterpart of each of the Ancillary IP Agreements duly executed by the Purchaser;
 - (viii) a counterpart of the NGT Group Loan Agreement duly executed by the Purchaser;
 - (ix) a counterpart of the General Services Agreement duly executed by the Purchaser;
 - (x) a counterpart of the Structuring and Shareholders Agreement duly executed by the Purchaser; and
 - (xi) a counterpart of each Secondment Agreement duly executed by the Purchaser.

Schedule 2 - The Employees

Department	Grade 1 Manager (TMB, TMA)	Group Staff (TS6, TS4, TS3, TS2)	Total
Finance	4	11	15
Operations	15	191	206
Commercial	8	17	25
IS and Business Support	4	40	44
Total	31	260	291

Schedule 3 – The Property

Basement, ground and first floors at 51 Homer Road, Solihull being the premises demised by the Sub-Lease.

Schedule 4 - Excluded Assets

None

Schedule 5 - The Contracts

xoserve Supplier List

Supplier Name	Description	Start Date	Expiry Date
Orange Personal Communications (Darlington)	Mobile phones, accessories & hands free.	01/07/04	30/06/2007
Pertemps Recruitment	Contract staff (secretarial and clerical)	19/06/02	28/02/10
Office Depot	Stationery	01/09/02	30/06/05
Ernst and Young	Audit for RBD (Reconciliation by Difference)	01/01/04	31/12/2006
Lloyds Register Quality Assurance	Quality Management - certification services	01/07/02	31/10/2005
Private Health Care	Occupational Health services	06/04/03	31/03/2006
Expotel Hotel Reservations Ltd	Provision of Hotel and Conferencing services	01/09/03	31/08/2006
Hogg Robinson Travel Limited	Provision of a travel service	01/09/03	31/08/2006
Turnamms Assessors	Uninsured Loss Recovery	01/01/04	30/06/06
Hertz UK Ltd	Car Rental Services	01/09/03	31/08/2006
Lombard Vehicle Management Ltd	Master Vehicle Lease - Company cars	01/10/02	31/03/06
GB Group	GB Mailing - Postcodes Database/CD Roms	01/04/04	01/04/2007
Astron	Print management services	01/09/04	01/06/09

First Assist	Employee assistance programme	01/04/04	31/03/2007
BP	Fuel cards	01/05/01	30/05/05
Family Matters	Child care vouchers	01/05/05	31/04/08
Royal Mail - Freepost Addresses	Prepaid cards for use in the unconfirmed siteworks process	On-going	On-going
Ewans	Gas consumption data	01/09/99	31/08/05
Financial Training Company	Financial Training	01/12/02	30/11/05
BUPA	Private Health Care	01/06/97	31/05/05
Computer Associates	Advantage GEN software	15/12/03	14/12/06
Tibco Software inc. (previously known as Staffware)	License agreement for core element of conquest query management system	30/03/00	29/03/06

Schedule 6 - Pensions

DATED [1 May] 2005

(1) LATTICE GROUP PLC

(2) XOSERVE LIMITED

DEED OF ACCESSION

Relating to

Lattice Group Pension Scheme

EVERSHEDS

**LATTICE GROUP PENSION SCHEME
DEED OF ACCESSION**

Dated

2004

- (1) **LATTICE GROUP PLC** whose registered office is at 1-3 Strand, London WC2N 5EH and whose company registration number is 3900804 (the **Company**); and
- (2) **XOSERVE LIMITED** whose registered office is at 1-3 Strand, London WC2N 5EH and whose company registration number is 5046877 (the **New Employer**).

BACKGROUND

- A. Pursuant to powers granted by section 36(1) of the Gas Act 1972, the Lattice Group Pension Scheme (the **Scheme**) then known as the British Gas Staff Pension Scheme, was established with effect from 1 April 1982.
- B. The scheme is governed by the **trust deed** and the **rules**, as amended from time to time.
- C. By clause 3.1 of the **trust deed**, the **company** has power to consent to a company or firm participating in the Scheme as an **employer** and by clause 3.2 thereof such participation may be on such terms and for such fixed or otherwise limited period as may have been agreed between that company or firm and the **company** provided that the company or firm is sufficiently associated with the **company** so as not to prejudice **approval** and that it agrees by deed to be bound by the terms of the Scheme.
- D. Pursuant to an agreement dated [1 May] 2005 between Transco plc (**Transco**) and the New Employer (the **Agreement**) by which the gas shippers and gas suppliers services business of Transco was hived down into the New Employer, it was agreed that the employment of the employees would transfer to the New Employer with effect from such hivedown.
- E. Certain of those employees being contributing **members**, and the New Employer being sufficiently associated with the Company for the purposes of clause 3.1 of the **trust deed**, the Company (as the **company** at the present time) wishes to permit the New Employer to participate, and the New Employer wishes to participate, as an **employer** from [1 May] 2005 subject to confirmation from the Board of the Inland Revenue (the **Confirmation**) that the participation of the New Employer as an **employer** will not affect the approval of the Scheme,
- F. The New Employer's participation in the Scheme will be governed by the provisions of this deed and by the **trust deed** and the **rules**.
- G. Words in this deed which are written in bold and which are not defined in this deed will have the same meaning as in the **trust deed** and the **rules**.

EFFECT OF THIS DEED:

1. With the consent of the Company, but conditional upon the receipt of the Confirmation, the New Employer shall, pursuant to clause 3.1 of the **trust deed**, participate as an **employer** with effect from [1 May] 2005 on and subject to the terms of the Scheme affecting an **employer** and will observe and perform all the obligations imposed upon an **employer** (other than those imposed solely upon the **company**) by the **trust deed** and **rules**.
2. For the purposes of **the 1995 act**, the New Employer irrevocably nominates the Company (or any other person specified by the Company for this purpose):
 - (i) as the **appropriate person** to act on its behalf in relation to the member-nominated trustees or directors requirements;
 - (ii) as its representative in the consultation process and the trustees in relation to the written statement of investment principles; and
 - (iii) as its representative to agree with the trustees the matters to be set out in the schedule of contributions,and the New Employer confirms that the Company may take such action on behalf of the New Employer as the Company considers to be appropriate to secure compliance with the provisions of **the 1995 act**.
3. If at any time after the commencement of participation the degree of association of the New Employer with the **company** changes such that its indefinite ongoing participation would affect **approval** of the Scheme then, subject to clause 4 below, with effect from such date as the **company** shall determine, its participation in the Scheme shall cease and, without prejudice to section 75 of the Act, its liability under the Scheme (except in respect of amounts due before the date of cessation) shall terminate so that **approval** shall not be affected. With effect from such date of cessation, the participation of the New Employer in the Scheme shall be treated for the purposes of the **trust deed**, and in particular clause 3.2 thereof, as if it had always been for a fixed or otherwise limited period and on the basis that, with the exception of clauses 15.2(1) and 15.2(2) of the **trust deed**, none of clauses 15.2, 15.3, 18, 19 and 20 of the **trust deed** will apply on it ceasing to participate.
4. Notwithstanding clause 3 above, prior to the date of cessation determined by the **company** thereunder, the **New Employer** and the **company** may enter into a further deed of fixed or otherwise limited period of participation pursuant to clause 3.2 of the **trust deed**, such that there shall be no break in the participation of the New Employer, provided that such further fixed or otherwise limited period of participation shall not affect the **approval** of the Scheme.

5. The parties to this deed do not intend that any term of this deed should be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any person who is not a party to this deed.

EXECUTION:

The parties have shown their agreement to the terms of this deed by executing it as a deed below.

EXECUTED as a DEED)
by **Lattice Group plc**)
acting by:)
)
Director)
)
Director/Secretary)

EXECUTED as a DEED)
by **xoserve Limited**)
acting by:)
)
Director)
)
Director/Secretary)

Schedule 7 - Conditions of Sub-Lease of the Property

1 Definitions

In this Schedule the following definitions apply:

Completion Date means the date five working days (or fewer by agreement between the parties) after the first date on which all of the Conditions have been satisfied;

Conditions means the First Condition and the Second Condition;

First Condition means obtaining Landlord's Consent;

Landlord means the person from time to time entitled to the reversion expectant on the determination of the Lease and includes (where the context admits) any person or persons entitled to the reversion expectant on the determination of any interest superior to the Lease;

Landlord's Consent means the written consent of the Landlord to the grant of the Sub-Lease (satisfying the requirements of the Lease);

Licensed Premises means the Sub-Lease Premises;

Longstop Date means six months after the date of this Agreement;

Second Condition means the service of the appropriate notices and the making of the appropriate declarations so as to exclude the provisions of Sections 24 to 28 of the Landlord and Tenant Act 1954 (as amended) in relation to the Sub-Lease and the tenancy to be created by it;

Standard Commercial Conditions means the Standard Commercial Property Conditions (First Edition) and any reference to a Standard Commercial Condition shall be construed accordingly and have the same meaning as the expression **condition** in the Standard Commercial Conditions; and

Sub-Lease means the sub lease in the form of the draft annexed and the expression **Sub-Lease Premises** shall mean the premises demised by the Sub-Lease.

2 Conditionality

2.1 Conditions

The completion of the Sub-Lease is conditional upon the Conditions being satisfied on or before the Longstop Date and the provisions of this Schedule (save for Paragraphs 2.2, 2.3, 6, 7 and 8 which shall be of immediate effect) shall not come into effect until both of the Conditions have been satisfied.

2.2 Satisfaction of the Conditions

The obligations of the Parties with regard to the satisfaction of the Conditions are set out in

Paragraphs 6 and 7.

2.3 Longstop Date

If the Conditions have not been satisfied on or before the Longstop Date then either the Seller or the Purchaser may serve notice on the other to terminate the obligations of the Seller to grant the Sub-Lease whereupon all of the obligations of the Parties in this Schedule shall cease to have effect but without prejudice to any rights which either of the Parties may have against the other Party in respect of prior breaches of the provisions of this Schedule.

3 Grant of the Sub-Lease

3.1 Completion of the Sub-Lease

The Seller shall grant and the Purchaser shall take the Sub-Lease on the Completion Date.

4 Title

- 4.1 The Seller shall not be required to deduce or prove or supply to the Purchaser an abstract of title or provide information as to its power to grant the Sub-Lease and no objection or requisition shall be raised by the Purchaser.
- 4.2 The Purchaser shall take the Sub-Lease with full knowledge of the Seller's title to the Property and shall raise no requisition nor objection (save for matters not disclosed to the Purchaser before the date of this Agreement which are revealed by pre-completion searches in respect of the Property at the Land Registry or Companies House).
- 4.3 Without prejudice to Standard Commercial Condition 3.1.2 the Property shall be taken to be correctly described and is let subject to (and where applicable with the benefit of) the matters to which the Lease is subject and (where applicable) of which the Lease has the benefit.

5 Representations Acknowledgements and Standard Conditions

- 5.1 No agent adviser or other person acting for the Seller has at any time had the authority of the Seller to make any written oral or implied representation warranty confirmation or statement in relation to the Property whatsoever and the Purchaser confirms that it has not entered into this Agreement in reliance (wholly or in part) upon any such representation.
- 5.2 The Purchaser confirms that it has been provided with all information necessary to assess the state and condition of the Property and that it has had full opportunity to enter the Property to conduct such surveys as it wished.

5.3 Standard Commercial Conditions

- 5.3.1 The Standard Commercial Conditions applicable to the grant of a lease shall be incorporated in this Schedule insofar as they are not inconsistent with the express terms and conditions of this Schedule and in the event of any conflict between the express terms and conditions of this Schedule and the Standard Commercial Conditions the former shall prevail.

- 5.3.2 All references in the Standard Commercial Conditions to the **seller** and the **buyer** shall be deemed to be references to the **Seller** and the **Purchaser** respectively and shall be construed accordingly.
- 5.3.3 All references to the **property** in the Standard Commercial Conditions shall in relation to the Sub-Lease be deemed to be references to the Sub-Lease Premises and shall be construed accordingly.

6 The First Condition – Superior Landlord's Consent

6.1 Seller's Obligations

Subject to the Purchaser complying with paragraph 6.2 the Seller shall:

- (a) apply for the Landlord's Consent as soon as practicable;
- (b) use its reasonable endeavours to obtain the Landlord's Consent; and
- (c) give the Purchaser notice as soon as reasonably practicable once the Landlord's Consent has been obtained.

6.2 Purchaser's Obligations

The Purchaser shall promptly:

- (a) on request supply all references and information as the Landlord may require in connection with the obtaining of the Landlord's Consent;
- (b) respond to all correspondence and approve all draft documentation relating to the application for the Landlord's Consent;
- (c) comply with the Landlord's lawful requirements in relation to the granting of the Landlord's Consent;
- (d) provide such sureties to guarantee performance of the Purchaser's covenants contained in the Sub-Lease and/or rent deposits and/or other arrangements as the Landlord may lawfully stipulate;
- (e) properly execute or procure the execution of the documents constituting the Landlord's Consent (and any other documents lawfully required by the Landlord in relation to the granting of the Landlord's Consent; and
- (f) give the Seller notice as soon as reasonably practicable once the Landlord's Consent has been obtained (should the Landlord's Consent be sent to the Purchaser).

6.3 Costs

The Parties shall jointly pay the costs (including Value Added Tax) and disbursements of the Landlord and all other costs (including Value Added Tax and disbursements) incurred by the Landlord in relation to the application for Landlord's Consent and any other requirement of the Landlord.

6.4 No objections

Neither the Seller nor the Purchaser may object to the Landlord's Consent being given subject to a condition which under section 19(1A) of the Landlord and Tenant Act 1927 is regarded as reasonable or which is lawfully imposed under an express term of the Lease.

6.5 Proceedings

Nothing in this Schedule shall oblige the Seller to take any proceedings against the Landlord in relation to either any delay in granting or refusal to grant the Landlord's Consent or otherwise.

7 The Second Condition – Contracting Out

The Parties agree that they each use their respective reasonable endeavours to procure the satisfaction of the Second Condition.

8 Occupation of the Licensed Premises pending satisfaction of the Conditions

- 8.1 The Purchaser shall (notwithstanding that the Sub-Lease has not been completed) be entitled to take up occupation of and commence trading at the Licensed Premises as from the date of this Agreement upon the terms and conditions of this Schedule.
- 8.2 The Purchaser will not carry out any works (including works of investigation) to the Licensed Premises.
- 8.3 Until the grant of the Sub-Lease the provisions of this Paragraph of this Schedule shall not operate or be deemed to operate as a demise of the Licensed Premises nor shall the Purchaser have or be entitled to any estate right title or interest in the Licensed Premises (other than the licence granted by this Paragraph).
- 8.4 The Purchaser shall pay on demand to the Seller for the period commencing on the date of this Agreement and ending on the day before the Completion Date a daily licence fee in respect of the Purchaser's occupation of the Licensed Premises at a rate equivalent to one 365th of the annual rents reserved by the Sub-Lease subject to an appropriate reduction in such annual rents to reflect the fact the Purchaser is only entitled to occupy the Licensed Premises and not the Sub-Lease Premises.
- 8.5 Any moneys paid as aforesaid shall upon completion of the Sub-Lease be set against any moneys that would otherwise be due under the Sub-Lease in respect of the same period.
- 8.6 The Purchaser shall fully indemnify the Seller against all loss cost damage or expense which may be suffered by the Seller as a result of the grant of this licence.
- 8.7 The Purchaser shall be responsible for all outgoings (including any gas, telephone, electricity, water or drainage charges or rates) which arise in relation to the Licensed Premises.
- 8.8 The Purchaser shall comply with any regulations made by the Seller regarding the use and occupation of the Licensed Premises.
- 8.9 The Purchaser's entry on the Licensed Premises will be entirely at its own risk.

- 8.10 The Purchaser will forthwith make good any damage occasioned to the Licensed Premises as a result of this licence
- 8.11 Any equipment tools goods or items left by the Purchaser or on the Purchaser's behalf at the Licensed Premises are so left entirely at the Purchaser's risk.
- 8.12 The Seller shall be entitled to determine this licence by the service of written notice at any time on the happening of the following:
- (a) any breach by the Purchaser of any of the terms of this licence;
 - (b) determination of this Agreement;
 - (c) the Purchaser failing to complete the Sub-Lease; or
 - (d) the objection by the Landlord to the grant of this Licence in breach of the terms of the Lease,

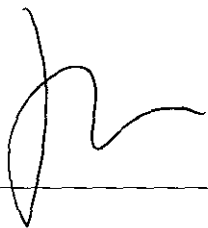
whereupon the Purchaser shall forthwith vacate the Licensed Premises and reinstate the Licensed Premises to its state and condition as at the date of this Agreement.

Schedule 8 - List of documents in the agreed form

- 1 Data Protection Act 1998 fair processing notice pursuant to sub-clause 7.6.
- 2 Agency Services Contract
- 3 Hardware Lease
- 4 NGT Group Loan Agreement
- 5 ODC Agreements, or failing that ODC Letters of Intent with each of the Offshore Development Centres
- 6 Business Objects Agreement
- 7 General Services Agreement
- 8 Structuring and Shareholders Agreement
- 9 Sub-Lease
- 10 Secondment Agreements

Signed by *John McMaster*
duly authorised for and
on behalf of
Transco plc

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)
)
)



Signed by *Vivienne Braiken*
duly authorised for and
on behalf of
xoserve Limited

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