

Date - ____ October 2023

Agreement

Incorporating the NEC3 Term Service Contract

April 2013

Between

**MINISTER FOR THE CABINET OFFICE ACTING FOR AND ON BEHALF OF THE
CABINET OFFICE, BEING PART OF THE CROWN, REPRESENTED BY ITS EXECUTIVE
AGENCY THE GOVERNMENT PROPERTY AGENCY**

and

ISS MEDICLEAN LIMITED

For the provision of Hard and Soft FM Services

CONTENTS

1.	CONTRACT SCHEDULE A - CONTRACT DATA PART ONE – DATA PROVIDED BY THE <i>EMPLOYER</i>	6
2.	CONTRACT SCHEDULE B - OPTION Z: ADDITIONAL CONDITIONS OF CONTRACT	16
3.	CONTRACT SCHEDULE C - CONTRACT DATA PART TWO – DATA PROVIDED BY THE <i>CONTRACTOR</i>	56
4.	CONTRACT SCHEDULE D - THE SERVICE INFORMATION	58
5.	CONTRACT SCHEDULE E - THE <i>PRICE LIST</i>	60
6.	CONTRACT SCHEDULE F – NOT USED	61
7.	CONTRACT SCHEDULE G – NOT USED	62
8.	CONTRACT SCHEDULE H - ARBITRATION PROCEDURE	63
9.	CONTRACT SCHEDULE I - STAFF TRANSFER.....	64
10.	CONTRACT SCHEDULE J - SECURITY PROVISIONS.....	101
11.	CONTRACT SCHEDULE K - MANAGEMENT AND PERFORMANCE INFORMATION	114
12.	CONTRACT SCHEDULE L - OPERATIONAL KEY PERFORMANCE INDICATORS	116
13.	CONTRACT SCHEDULE M – NOT USED	118
14.	CONTRACT SCHEDULE N – PRICES FOR TASK ORDERS.....	119
15.	CONTRACT SCHEDULE O – PAYMENT MECHANISM.....	125
16.	CONTRACT SCHEDULE P – TUPE SURCHARGE	130

THIS AGREEMENT is made the _____ day of October 2023
BETWEEN

- (1) **MINISTER FOR THE CABINET OFFICE ACTING FOR AND ON BEHALF OF THE CABINET OFFICE, BEING PART OF THE CROWN, REPRESENTED BY ITS EXECUTIVE AGENCY THE GOVERNMENT PROPERTY AGENCY** of Floor 9, 23 Stephenson Street, Birmingham, B2 4BH (the "**Employer**"); and
- (2) **ISS MEDICLEAN LIMITED** (Company Number 01659837) whose registered address is at Velocity 1 Brooklands Drive, Brooklands, Weybridge, Surrey, England, KT13 0SL (the "**Contractor**").

BACKGROUND

- (A) The Department for Business, Energy and Industrial Strategy and the *Contractor* entered into an agreement dated 18 December 2017 for the provision of facilities management services, which was subsequently novated to the Employer ("**Prior Agreement**"). The Prior Agreement was entered into in accordance with the call off procedure set out in a framework agreement between the Minister for the Cabinet Office and the *Contractor* dated 28 July 2015 ("**Framework Agreement**").
- (B) The Prior Agreement has expired and the *Employer* requires the *Contractor* to provide the *service*.
- (C) The *Contractor* has agreed to perform the *service* in accordance with this agreement.

IT IS AGREED AS FOLLOWS:

1 Definitions and Interpretation

- 1.1 This agreement (this "contract") incorporates the terms and conditions of the NEC3 Term Service Contract April 2013 which is supplemented and amended in accordance with such information and supplementary provisions as are provided in the Contract Schedules.
- 1.2 The "Contract Schedules" means any one or all of the contract schedules appended to this contract.

2 Entire Agreement

- 2.1 This contract is the entire agreement between the Parties in relation to the *service* and supersedes and extinguishes all prior arrangements, understandings, agreements, statements, representations or warranties (whether written or oral) relating thereto.
- 2.2 Neither party has been given, nor entered into this contract in reliance on any arrangements, understandings, agreements, statements, representations or warranties other than those expressly set out in this contract.
- 2.3 Nothing in this clause 2 shall exclude any liability in respect of misrepresentations made fraudulently.

3. OPERATION OF THIS AGREEMENT

- 3.1 Both parties agree that unless expressly stated elsewhere in this agreement, they will be obliged to operate the agreement as if it were an extension of the Prior Agreement, to include all such obligations and associated rights and remedies.
- 3.2 The Contractor acknowledges and agrees that:
- 3.2.1 it shall take such reasonable steps as appropriate to operate this agreement as though it were an operating an extension to the Prior Agreement, unless expressly stated elsewhere in this agreement. This is in regard to all matters including discharging obligations to continue to deliver the services as it would have done under the Prior Agreement during the service period of this agreement, except as expressly stated in this agreement (in particular, clauses 3.3 to 3.5).
 - 3.2.2 notwithstanding point 3.2.1 it will use reasonable endeavours to comply with the terms of this agreement, but only to the extent that it is practicable to do so and can do so within the service period of this agreement and does not undermine the principle set out in point 3.2.1.
- 3.3 Notwithstanding anything else to the contrary, the Parties acknowledge and agree that at the expiry or termination of this agreement, the list of roles of Contractor Personnel (listed in Contract Schedule Q (List of Roles at Risk of Redundancy) which may be placed at risk of redundancy due to closure or mothballing of the office at [REDACTED] and the maximum cost associated with any such redundancies shall be [REDACTED] ("Redundancy Costs"). For the avoidance of doubt, the Redundancy Costs shall not include PILON costs; provided however that PILON costs will be payable by the Employer to the Contractor if due notice cannot be provided to the Contractor Personnel for reasons outside of the Contractor's control, and subject to the Contractor using reasonable endeavours to mitigate any applicable PILON costs.
- 3.4 Provided that the Contractor discharges its obligations under Clause 3.5, the Employer agrees to reimburse the Contractor for all actual Redundancy Costs incurred (including PILON, if applicable pursuant to Clause 3.3 above) and, for that purpose, the Contractor shall submit an invoice to the Employer for all sums payable in respect of the Redundancy Costs within ten (10) calendar days of these being incurred by the Contractor, and the Employer shall pay such invoice within thirty (30) days of receipt of a valid, undisputed invoice.
- 3.5 The Contractor shall implement a fair redundancy process and shall comply with its legal obligations in respect of the dismissal(s) of any Contractor Personnel. Contractor shall use all reasonable endeavours to mitigate any Redundancy Costs by seeking to redeploy the relevant employees or personnel and offering suitable alternative employment to any affected Contractor Personnel, if reasonably available. If requested by the Employer (and subject to compliance with Data Protection Legislation), the Contractor shall provide reasonable evidence of compliance with its obligations under this clause.

IN WITNESS WHEREOF this contract has been entered into as a Deed on the date first above written.

Signed as a **Deed** (but not until the date hereof) by **MINISTER FOR THE CABINET OFFICE ACTING FOR AND ON BEHALF OF THE CABINET OFFICE, BEING PART OF THE CROWN, REPRESENTED BY ITS EXECUTIVE AGENCY THE GOVERNMENT PROPERTY AGENCY** acting by 2 authorised signatories:

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

Signed as a **Deed for** and on behalf of **ISS MEDICLEAN LIMITED** acting by 2 directors or 1 director and the company secretary:

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

CONTRACT SCHEDULE A

1. CONTRACT SCHEDULE A - CONTRACT DATA PART ONE – DATA PROVIDED BY THE *EMPLOYER*

Statements given in all contracts

- General

The *conditions of contract* are the core clauses of the NEC3 Term Service Contract April 2013, together with:-

- main Option: A

- secondary Options:

dispute resolution Option W2

X2 Changes in the law

X18 Limitation of liability

X19 Task Order

X20 Key Performance Indicators

X21 Clustering

Y(UK)2 The Housing Grants, Construction and Regeneration Act 1996

Y(UK)3 The Contracts (Rights of Third Parties) Act 1999

- Option Z: *Additional conditions of contract*.

SECTION 1

Z2 Identified and defined terms

Z3 Assignment and novation

Z4 Admittance to Affected Property

Z5 Prevention of fraud and bribery

Z6	Good Industry Practice
Z7	Official secrets
Z8	The Transfer of Undertakings (Protection of Employment) Regulation 2006
Z9	Retention of documents and Audit
Z10	Freedom of Information
Z11	Employer Data
Z12	Protection of Personal Data
Z13	Confidentiality
Z14	Security Requirements
Z15	Malicious Software
Z16	Tax Compliance
Z17	Change of Control
Z18	Conflicts of Interest
Z19	Extension to service period
Z20	Assessing the amount due
Z21	Payment
Z22	Fair payment
Z23	Contractual right of set off
Z24	Compensation Events
Z25	Assessing Compensation events
Z26	Staff Transfer
Z27	Insurance cover
Z28	Professional indemnity insurance
Z29	Termination Table
Z30	Reasons for Termination
Z31	Option W3 Negotiation

Z32	Option W4 Mediation
Z33	Change in the law
Z35	Limitation of Liability
Z36	Task Order
Z37	Management and Performance Information

SECTION 2

Z38	Environmental requirements
Z40	Public Liability Insurance
Z43	Employer provides right of access and things
Z44	Intellectual Property Rights
Z47	Small and Medium Sized Enterprises (SMEs)
Z48	Apprenticeships
Z49	Information Sharing
Z50	Compensation Events (Pensions)
Z51	Clustering – Option X21

The *Employer* is defined in the form of agreement to which this Contract Schedule is annexed.

The *Service Manager* is:

Name: [REDACTED]

Address: [REDACTED]

The *Adjudicator* is:

Name.....

Address.....

The Affected Properties are

As listed in Contract Schedule D (The Service Information) – Service Matrix

The *Employer* may from time to time add (or remove) additional Affected Properties to above list that are within scope of the required Services. Any amendments to the Affected Properties shall be discussed and agreed between the *Service Manager* and the *Contractor*.

The *service* is identified in the Service Information.

The Service Information is in Contract Schedule D.

The *language of this contract* is English.

The *law of the contract* is the law of England and Wales

The *period for reply* is 1 week

The *period for retention* is 12 years following the end of the *service period* or earlier termination

The *Adjudicator nominating body* is RICS

The *tribunal* is litigation unless both Parties agree to refer a dispute to arbitration in accordance with Contract Schedule H.

The following matters will be included in the Risk Register:

1. Reducing the Estate in-line with governmental targets.
2. Machinery of government changes
3. Reduction in Service Requirements as a result of governmental reductions.

3 Time The *starting date* is 1 October.

The *service period* is 4 months.

5 Payment The *assessment interval* is 4 weeks.

The *currency of this contract* is: GBP (pounds sterling)

The *interest rate* is 2 % per annum above the base rate of the Bank of England.

8 Risks and Insurance

The minimum amount of cover for insurance against loss of or damage caused by the *Contractor* to the *Employer's* or any individual Business Unit's property is 10,000,000 (ten million) GBP (pounds sterling).

The minimum amount of cover for insurance in respect of loss of or damage to property (except the *Employer's* or any individual Business Unit's property, Plant and materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the *Contractor*) arising from or in connection with the *Contractor's* Providing the Service for any one event is 20,000,000 (twenty million) GBP (pounds sterling).

The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the *Contractor* arising out of and in the course of their employment in connection with this contract for any one event is. 5,000,000 (five million) GBP (pounds sterling).

Contract Schedule H – Arbitration procedure

The location of the arbitration is in London.

Contract Schedule N – Prices for Task Orders

The estimated total value range of Tier One New Works is £0 - £5,000

The estimated total value range of Tier Two New Works is £5,001 - £25,000.

The estimated total value range of Tier Three New Works is £25,001 - £100,000.

The estimated total value range of Tier Four New Works is £100,001 - £100,000,000.

The Comprehensive Liability Threshold is £1200.

The Business Critical Events are as follows:

1. Fire
2. Flood
3. Vandalism
4. Power Outage
5. Industrial Action
6. Civil Unrest
7. Pandemic.

8. Continuity of Government

9. Terrorism Event

10. Water Loss

11. Any event which is an immediate health and safety or security risk, or any other event which presents an imminent risk of injury to persons or damage to any Affected Property or a situation requiring immediate action

Value of Billable Works not requiring Approval:

£250.00 (Two hundred and fifty pounds)

Contract Schedule O – Payment Schedule

The first Adjustment Date is the first Working Day following the first anniversary of the *starting date*.

The Payment Index is the Consumer Price Index

Z19 Extension to service period:

The advance notification period to the *Contractor* before extending the current *service period* is 2 months prior to the expiry of the current *service period*. *Such advance notification period shall apply, for the avoidance of doubt, to any extension beyond the initial service period.*

Option X18 is used:

- For any one event, the *Contractor's* liability to the *Employer* and/or the relevant Business Unit for loss or damage to the *Employer's* or any individual Business unit's property is limited to £20,000,000.
- The *Contractor's* liability for Defects due to his design of an item of Equipment is limited to the higher of:
 - £5,000,000 (five million pounds); or
 - 120% of the total of the Prices (as adjusted in accordance with this Contract) subject to a maximum of £20,000,000 (twenty million pounds).
- The *Contractor's* total liability to the *Employer* for all matters arising under or in connection with this contract, is limited to the higher of:
 - £5,000,000 (five million pounds); or
 - 120% of the total of the Prices (as adjusted in accordance with this Contract) subject to a maximum of £20,000,000 (twenty million pounds).
- The *end of liability date* is 12 years after the end of the *service period*.

Option X19 is used:

- The *Contractor* submits a Task Order programme to the *Service Manager* within 10 working days of receiving the Task Order.

Option X20 is used:

The *performance adjustment schedule* for Key Performance Indicators is Annex 1, Monthly KPI Measures Model of Contract Schedule L

Option Y(UK)3:

term	person or organisation
Contract Schedule I	A Former Contractor, a Notified Subcontractor, a Replacement Contractor and a Replacement Subcontractor
.....
.....
.....

Option A is used:

The *Contractor* prepares forecasts of the final total of the Prices for the whole of the *service* at intervals no longer than 4 weeks.

Option Z is used:

The *additional conditions of contract* are contained in Contract Schedule B.

Optional statements

If both Parties agree that the *tribunal* is arbitration:

- The *arbitration procedure* and place of arbitration is identified in Contract Schedule H.

If no plan is identified in part two of the Contract Data:

- The *Contractor* submits a first plan for acceptance within 2 weeks of the Contract Date

If Y (UK) 2 is not used and the final date for payment is not three weeks:

- The period within which payments are made is.....

If Y (UK) 2 is used and the final date for payment is not 14 days after the date when payment is due:

- The period for payment is.....

If there are additional *Employer's* risks:

- These are additional *Employer's* risks
 1. Inconsistencies in the asset data provided by the *Employer* and which are discovered by the *Contractor* prior to the *starting date*
 2. A difference between the rates of pay of Transferring Former Contractor Employees and/or Transferring Employer Employees and the equivalent rates of pay used by the Contractor at Further Competition to calculate the Prices. Such difference, if any, shall be calculated and accounted for in accordance with Schedule P (TUPE Surcharge)
 3. A Transferring Former Contractor Employee and/or any Transferring Employer Employee is made redundant by the *Contractor* as a result of an economic technical organisational reason entailing changes to the workforce and the *Contractor* has followed a fair dismissal procedure and complied with all contractual and legislative requirements. Any resultant redundancy costs shall be calculated and accounted for in accordance with paragraph 16.6 of Schedule P (TUPE Surcharge)

If the *Employer* is to provide Plant and Materials:

The insurance against loss of or damage to Plant and Materials is to include cover for Plant and Materials provided by the *Employer* is not applicable.

If the *Employer* is to provide any of the insurances stated in the Insurance Table:

- The *Employer* provides these insurances from the Insurance Table
 1. Insurance against.....
Cover / indemnity is.....
The deductibles are.....
 2. Insurance against.....
Cover / indemnity is.....
The deductibles are.....
 3. Insurance against.....
Cover / indemnity is.....
The deductibles are.....

If additional insurances are to be provided:

- The *Employer* provides these additional insurances:
 1. Insurance against.....
 Cover / indemnity is.....
 The deductibles are.....
 2. Insurance against.....
 Cover / indemnity is.....
 The deductibles are.....
- The *Contractor* provides these additional insurances:
 1. Professional indemnity insurance providing cover against a failure of the *Contractor* to exercise Good Industry Practice.
 Cover / indemnity is £2,000,000 in respect of each claim, without limit to the number of claims.
 The deductibles are £10,000 (Ten thousand pounds)
 Notwithstanding the provisions of clause 83.2 the *Contractor* maintains this insurance from the *starting date* until 6 years after either the end of the *service period* or the issue of a termination certificate.
 2. Insurance against.....
 Cover / indemnity is.....
 The deductibles are.....

If Option X13 is used:

- The amount of the performance bond is.....

If Option Z39 (Collateral Warranties) is used:

- The *Contractor* enters into collateral warranty agreements in favour of:
 -
 -
- The *Contractor* procures collateral warranties from the Subcontractors identified below:
 -
 -

- in favour of:
 - the Employer; and.....
 -

If Option Z47 (Small and Medium Sized Enterprises) is used:

- In October 2023, the SME Percentage is 33%. For the remainder of the service period, the SME Percentage is 25%.

If Option Z48 (Apprenticeships) is used:

- In October 2023, the Apprentice Percentage is 2.5%. For the remainder of the service period, the Apprentice Percentage is N/A.

CONTRACT SCHEDULE B

2. CONTRACT SCHEDULE B - OPTION Z: ADDITIONAL CONDITIONS OF CONTRACT

The following provisions supplement, modify or replace the published provisions of the NEC3 Term Service Contract (April 2013) (the “NEC3 TSC”).

SECTION 1: RECOMMENDED FOR ALL CONTRACTS

Option Z2

Identified and defined terms

Supplement to
NEC3 TSC clause
11

11.1

At the end of clause 11.1 add:

Terms defined in the form of agreement to which this Contract Schedule is annexed apply to this contract. Terms with capital initials not defined in this contract (excluding the Framework Agreement) have the meaning given to them in the Framework Agreement. Terms for which no interpretation is provided in this contract shall have the meaning ordinarily given to them by the legal profession where appropriate but otherwise shall be interpreted in accordance with their dictionary meaning.

11.2(6)

Amend the definition of ‘Disallowed Cost’ as follows

After the words “and the cost of” insert new fifth and sixth bullet points:

- any claim for
 - discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief, or
 - equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
- in any case in relation to any alleged act or omission of the *Contractor* and/or any Subcontractor
- any claim that termination of employment was unfair because the Contractor and/or any Subcontractor neglected to follow a fair dismissal procedure.

Delete 11.2 (17) and replace with:

11.2(17)

The Price for Services Provided to Date is the monthly payment calculated in accordance with Contract Schedule O.

Additional Clause 11.2(21)	11.2(21)	Acquired Rights Directive is the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time.
Additional Clause 11.2(22)	11.2(22)	Contractor Personnel is all persons employed or engaged by the <i>Contractor</i> together with the <i>Contractor's</i> servants, agents, suppliers, consultants and Subcontractors (and all persons employed by any Subcontractor together with the Subcontractor's servants, consultants, agents, suppliers and sub-subcontractors).
Additional Clause 11.2(22)	11.2(23)	Data Controller has the meaning given to it in the Data Protection Act 2018.
Additional Clause 11.2(24)	11.2(24)	Data Processor has the meaning given to it in the Data Protection Act 2018.
Additional Clause 11.2(25)	11.2(25)	Data Protection Legislation means the Data Protection Act 2018, the General Data Protection Regulation (EU) 2016/679 as it forms part of the laws of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 as modified by Schedule 1 to the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.
Additional Clause 11.2(26)	11.2(26)	Data Subject has the meaning given to it in the Data Protection Act 2018.
Additional Clause 11.2(27)	11.2(27)	DOTAS is the Disclosure of Tax avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992.

Additional Clause 11.2(28)	11.2(28)	<p>Employer Data is</p> <ul style="list-style-type: none"> the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: <ul style="list-style-type: none"> supplied to the <i>Contractor</i> by or on behalf of the <i>Employer</i>; or which the <i>Contractor</i> is required to generate, process, store or transmit pursuant to this contract; or any Personal Data for which the <i>Employer</i> is the Data Controller to the extent that such Personal Data is held or processed by the Contractor.
Additional Clause 11.2(29)	11.2(29)	Employment Regulations are the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Acquired Rights Directive.
Additional Clause 11.2(30)	11.2(30)	Environmental Information Regulations is the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner in relation to such regulations.
Additional Clause 11.2(31)	11.2(31)	FOIA is the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation.
Additional Clause 11.2(32)	11.2(32)	Former Contractor is the contractor supplying services to the <i>Employer</i> and/or a Business Unit before the Relevant Transfer Date that are the same as or substantially similar to the service (or any part of the service) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor).
Additional Clause 11.2(33)	11.2(33)	<p>General Anti-Abuse Rule is:</p> <ul style="list-style-type: none"> the legislation in Part 5 of the Finance Act 2013; and any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements and to avoid national insurance contributions.
Additional Clause 11.2(34)	11.2(34)	Halifax Abuse Principle is the principle explained in the CJEU Case C-255/02 Halifax and others.
Additional Clause 11.2(35)	11.2(35)	Information has the meaning given under section 84 of the Freedom of Information Act 2000.

Additional Clause 11.2(36)	11.2(36)	Key Performance Indicator is defined in Option Clause X20.1.
Additional Clause 11.2(37)	11.2(37)	<p>An Occasion of Tax Non-Compliance is:</p> <ul style="list-style-type: none"> • where any tax return of the <i>Contractor</i> submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of: <ul style="list-style-type: none"> • A Relevant Tax Authority successfully challenging the <i>Contractor</i> under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle; • The failure of an avoidance scheme which the <i>Contractor</i> was involved in, and which was, or should have been, notified to a Relevant Tax Authority under DOTAS or any equivalent or similar regime; and/or • where any tax return of the <i>Contractor</i> submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Contract Date or to a civil penalty for fraud or evasion.
Additional Clause 11.2(38)	11.2(38)	Personal Data has the meaning given to it in the Data Protection Act 2018.

Additional Clause 11.2(39)	11.2(39)	<p>A Prohibited Act is:</p> <ul style="list-style-type: none"> • to directly or indirectly offer, promise or give any person working for or engaged by the <i>Employer</i> and/or a Business Unit and/or the Authority or other Contracting Body or any other public body a financial or other advantage to: <ul style="list-style-type: none"> • induce that person to perform improperly a relevant function or activity; or • reward that person for improper performance of a relevant function or activity; • to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this contract; • committing any offence: <ul style="list-style-type: none"> • under the Bribery Act 2010 (or any legislation repealed or revoked by such Act) • under legislation or common law concerning fraudulent acts; or • defrauding, attempting to defraud or conspiring to defraud the <i>Employer and/or a Business Unit</i>; or • any activity, practice or conduct which would constitute one of the offences listed above if such activity, practice or conduct had been carried out in the UK.
Additional Clause 11.2(40)	11.2(40)	Relevant Requirements are all applicable laws relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.
Additional Clause 11.2(41)	11.2(41)	Relevant Tax Authority is HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the <i>Contractor</i> is established.
Additional Clause 11.2(42)	11.2(42)	Relevant Transfer is a transfer of employment to which the Employment Regulations applies.
Additional Clause 11.2(43)	11.2(43)	Relevant Transfer Date is, in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place.
Additional Clause 11.2(44)	11.2(44)	Request for Information is a request for information or an apparent request under the Code of Practice on Access to government Information, FOIA or the Environmental Information Regulations.

Additional Clause 11.2(45)	11.2(45)	Security Policy means the <i>Employer's</i> security policy attached as Annex 1 to Contract Schedule J (Security Policy) as may be updated from time to time.
Additional Clause 11.2(46)	11.2(46)	Transferring Employer Employees are those employees of the <i>Employer</i> and/or a Business Unit to whom the Employment Regulations will apply on the Relevant Transfer Date.
Additional Clause 11.2(47)	11.2(47)	Transferring Former Contractor Employees are, in relation to a Former Contractor, those employees of the Former Contractor to whom the Employment Regulations will apply on the Relevant Transfer Date.
Additional Clause 11.2(48)	11.2(48)	TUPE Surcharge has the meaning given in Schedule P.
Additional Clause 11.2(49)	11.2(49)	Working Day is any day other than a Saturday or Sunday or public holiday in England and Wales.

Option Z3

Assignment and Novation

Supplement to
NEC3 TSC clause
12

Insert new clauses:

- 12.5 The *Employer* is entitled to assign or otherwise dispose of its rights under this contract or any part thereof to:
- 12.5.1 any Contracting Body; or
 - 12.5.2 any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the *Employer*.
- 12.6 The *Contractor* does not, without the written consent of the *Service Manager*, assign or transfer this contract, or any part of, share of or interest in it. In the absence of the *Service Manager's* written consent no sum of money becoming due under this contract is payable to any person other than the *Contractor*.
- 12.7 The *Employer* is entitled to, and the *Contractor* gives consent to, the novation of this contract or any part thereof to:
- any Contracting Body; or
 - any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the *Employer*;
- upon such terms as the *Employer* proposes, provided that where such novation increases the burden on the *Contractor* pursuant to this contract, the novation shall be a compensation event.

- 12.8 Any change in the legal status of the *Employer* and/or a Business Unit such that it ceases to be a Contracting Body does not affect the validity of this contract. In such circumstances, this contract binds and inures to the benefit of any successor body to the *Employer* and/or a Business Unit.
- 12.9 If this contract is novated to a body which is not a Contracting Body or if a successor body which is not a Contracting Body becomes the *Employer* (both such bodies being referred to in the remainder of this clause as the “transferee”) the transferee is only able to assign, novate or otherwise dispose of its rights and obligations under this contract or any part thereof with the written consent of the *Contractor*.

Option Z4

Supplement to
NEC3 TSC clause
15

Admittance to Affected Property

Insert new clauses:

- 15.3 The *Contractor* submits to the *Service Manager* details of people who are to be employed by him and his Subcontractors in connection with the *service*. The details include a list of names and addresses, the capabilities in which they are employed, and other information required by the *Service Manager*.
- 15.4 The *Service Manager* may instruct the *Contractor* to take measures to prevent unauthorised persons being admitted to Affected Property. The instruction is a compensation event if the measures are additional to those required by the Service Information.
- 15.5 Employees of the *Contractor* and his Subcontractors are to carry an *Employer's* and/or a Business Unit pass whilst they are on the parts of the Affected Property identified in the Service Information.
- 15.6 The *Contractor* submits to the *Service Manager* for acceptance a list of the names of the people for whom passes are required. The *Service Manager* issues the passes to the *Contractor*. Each pass is returned to the *Service Manager* when the employee no longer requires access to that part of the Affected Property or after the *Service Manager* has given notice that the employee is not to be admitted to the Affected Property.
- 15.7 The *Contractor* does not take photographs of Affected Property or of work carried out in connection with the *service* unless he has obtained the acceptance of the *Service Manager*.
- 15.8 The *Contractor* takes the measures needed to prevent his and his Subcontractors' people taking, publishing or otherwise circulating such photographs.

Option Z5

Supplement to NEC3
TSC clause 1

Prevention of fraud and bribery

Insert new clauses:

- 19.1 The *Contractor* represents and warrants that neither it, nor to the best of its knowledge any of its employees, have at any time prior to the Contract Date:
- committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
 - been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 19.2 During the *services period* the *Contractor* does not:
- commit a Prohibited Act; and/or
 - do or suffer anything to be done which would cause the *Employer* and/or a Business Unit or any of the *Employer* and/or a Business Unit's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 19.3 During the *services period* the *Contractor*:
- establishes, maintains and enforces, and requires that its Subcontractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
 - keeps appropriate records of its compliance with this contract and make such records available to the *Employer* on request;
 - provides and maintains and where appropriate enforces an anti-bribery policy (which shall be disclosed to the *Employer* on request) to prevent it and any *Contractor's* employees or any person acting on the *Contractor's* behalf from committing a Prohibited Act.
- 19.4 The *Contractor* immediately notifies the *Employer* in writing if it becomes aware of any breach of clause 19.1,

or has reason to believe that it has or any of the its employees or Subcontractors have:

- been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
- been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
- received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this contract or otherwise suspects that any person or Party directly or indirectly connected with this contract has committed or attempted to commit a Prohibited Act.

19.5 If the *Contractor* makes a notification to the *Employer* pursuant to clause 19.4, the *Contractor* responds promptly to the *Employer's* enquiries, co-operates with any investigation, and allows the *Employer* to audit any books, records and/or any other relevant documentation in accordance with this contract.

19.6 If the *Contractor* breaches Clause 19.3, the *Employer* may by notice require the *Contractor* to remove from Providing the Service any *Contractor* employee whose acts or omissions have caused the *Contractor's* breach.

Option Z6

Good Industry Practice

Delete clause 20.1 and replace with

Supplement to
NEC3 TSC
clause 20

20.1 The *Contractor* Provides the Service in accordance with:

- the Service Information; and
- Good Industry Practice.

Option Z7

Supplement to
NEC3 TSC
clause 20

Official secrets

Insert new clauses:

20.6 The Official Secrets Act 1989 and, where appropriate, the provisions of section 11 of the Atomic Energy Act 1946 apply to this contract from

the *starting date* until the expiry of the service period or until a termination certificate has been issued.

20.7 The *Contractor* notifies his employees and his Subcontractors of their duties under these Acts.

Option Z8

The Transfer of Undertakings (Protection of Employment Regulations 2006

Insert a new clause:

Supplement
to NEC3
TSC 24

24.3

The Parties agree that:

- where the commencement of the provision of the *service* or any part thereof results in one or more Relevant Transfers, Contract Schedule I shall apply as follows:
 - where the Relevant Transfer involves the transfer of Transferring Employer Employees, Part A of Contract Schedule I shall apply;
 - where the Relevant Transfer involves the transfer of Transferring Former Contractor Employees, Part B of the Contract Schedule I shall apply;
 - where the Relevant Transfer involves the transfer of Transferring Employer Employees and Transferring Former Contractor Employees, Parts A and B of Contract Schedule I; and
 - Part C of Contract Schedule I shall not apply;
- where commencement of the provision of the *service* or a part of thereof does not result in a Relevant Transfer, Part C of Contract Schedule I shall apply and Parts A and B of Contract Schedule I shall not apply; and
- Part D of Contract Schedule I shall apply on the expiry or termination of the *service* or any part of thereof.

Option Z9

Supplement to NEC3
TSC clause 27

Retention of documents and Audit

Insert new clauses:

27. The *Contractor* retains throughout the *period for retention*:
5

- copies of drawings, specifications, reports, calculations and other documents which record the *service*;
- documents and information obtained or prepared by the *Contractor* or any subcontractor in connection with this contract.

The copies are retained in the form stated in the Service Information.

27. The *Contractor* permits the *Employer* and the Auditor to
6 examine documents held or controlled by the *Contractor* or any
Subcontractor.
27. The *Contractor* provides such oral or written explanations as the
7 *Employer* or the Auditor considers necessary.
27. This clause does not constitute a requirement or agreement
8 for the purposes of section 6(3) (d) of the National Audit Act
1983 for the examination, certification or inspection of the
accounts of the *Contractor*.

Option Z10

Supplement to
NEC3 TSC clause
27

Freedom of information

Insert new clauses:

- 27.10 The *Contractor* acknowledges that unless the *Service Manager* has notified the *Contractor* that the *Employer* and/or the Business Unit is exempt from the provisions of the FOIA, the *Employer* and/or a Business Unit is subject to the requirements of the Code of Practice on Government Information, FOIA and the Environmental Information Regulations. The *Contractor* cooperates with and assists the *Employer* and/or the Business Unit so as to enable the *Employer* to comply with its information disclosure obligations.
- 27.11 The *Contractor*:
- transfers to the *Service Manager* all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;
 - provides the *Service Manager* with a copy of all Information in its possession, or power in the form that the *Service Manager* requires within five Working Days (or such other period as the *Service Manager* may specify) of the *Service Manager's* request;
 - provides all necessary assistance as reasonably requested by the *Service Manager* to enable the *Employer* to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations; and
 - procures that its Subcontractors do likewise.
- 27.12 The *Employer* and/or a Business Unit is responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the provisions of the Code of Practice on Government Information, FOIA or the Environmental Information Regulations.

- 27.13 The *Contractor* does not respond directly to a Request for Information unless authorised to do so by the *Service Manager*.
- 27.14 The *Contractor* acknowledges that the *Employer* may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of information Act 2000, be obliged to disclose Information without consulting or obtaining consent from the *Contractor* or despite the *Contractor* having expressed negative views when consulted.
- 27.15 The *Contractor* ensures that all Information is retained for disclosure throughout the *period for retention* and permits the *Service Manager* to inspect such records as and when reasonably requested from time to time.

Option Z11

Supplement to
NEC3 TSC
clause 27

Employer Data

Insert new clauses:

- 27.16 The *Contractor* shall not delete or remove any proprietary notices contained within or relating to the Employer Data.
- 27.17 The *Contractor* shall not store, copy, disclose, or use the Employer Data except as necessary to Provide the Services or as otherwise expressly authorised in writing by the *Employer*.
- 27.18 To the extent that Employer Data is held and/or processed by the *Contractor*, the *Contractor* shall supply that Employer Data to the *Employer* as requested by the *Employer* and in the format specified in this contract (if any) and in any event as specified by the *Employer* from time to time in writing.
- 27.19 The *Contractor* shall take responsibility for preserving the integrity of Employer Data and preventing the corruption or loss of Employer Data.
- 27.20 The *Contractor* shall perform secure back-ups of all Employer Data and shall ensure that up-to-date back-ups are stored off-site in accordance with:
- any business continuity and/or disaster recovery plan created as part of the contract (if any);
 - the *Employer's* and/or the Business Unit's requirements set out in this contract (if any);
 - Good Industry Practice; and
 - such reasonable instructions in relation to business continuity and disaster recovery as the *Employer*

and/or the Business Unit may notify to the *Contractor* from time to time.

(together the "**BCDR Requirements**")

- 27.21 The *Contractor* shall ensure that such back-ups are available to the *Employer* and/or the Business Unit at all times upon request and are delivered to the *Employer* and/or the Business Unit at regular intervals prescribed by the *Employer* and/or the Business Unit from time to time acting reasonably.
- 27.22 The *Contractor* shall ensure that any system on which the *Contractor* holds any Employer Data, including back-up data, is a secure system that complies with the Security Policy.
- 27.23 If the Employer Data is corrupted, lost or sufficiently degraded as a result of the *Contractor's* Default so as to be unusable, the *Employer* and/or the Business Unit may:
1. require the *Contractor* (at the *Contractor's* expense) to restore or procure the restoration of Employer Data to the extent and in accordance with the BCDR Requirements and the *Contractor* shall do so as soon as practicable but in any event not later than such date as is notified to the *Contractor* by the *Employer* and/or the Business Unit acting reasonably; and/or
 2. itself restore or procure the restoration of Employer Data, and shall be repaid by the *Contractor* any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified the BCDR Requirements; and
 3. if at any time the *Contractor* suspects or has reason to believe that Employer Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the *Contractor* shall notify the *Employer* and/or the Business Unit immediately and inform the *Employer* and/or the Business Unit of the remedial action the *Contractor* proposes to take.

Option Z12

Supplement to
NEC3 TSC
clause 27

Protection of Personal Data

Insert a new clause

- 27.24 With respect to the Parties' rights and obligations under this contract, the parties agree that the *Employer* and/or the Business Unit is the Data Controller and that the *Contractor* is the Data Processor.
- 27.25 The *Contractor* shall:

- Process the Personal Data only in accordance with instructions from the *Employer* and/or the Business Unit (which may be specific instructions or instructions of a general nature as set out in this contract or as otherwise notified by the *Employer* and/or the Business Unit to the *Contractor* during the *service period*);
- Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the *service* or as is required by the *law of this contract* or any Regulatory Bodies (as defined in Schedule J);
- implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alternation or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
- take reasonable steps to ensure the reliability of any Contractor Personnel who have access to the Personal Data;
- obtain prior written consent from the *Employer* in order to transfer the Personal Data to any Subcontractors or Affiliates for the provision of the *service*;
- ensure that all Contractor Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause;
- ensure that none of Contractor Personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the *Employer* and/or the Business Unit;
- notify the *Employer* and/or the Business Unit (within five Working Days) if it receives:
 - a request from a Data Subject to have access to that person's Personal Data; or
 - a complaint or request relating to the *Employer's* obligations under the Data Protection Legislation;
- provide the *Employer* and/or the Business Unit with full cooperation and assistance in relation to any complaint or request made, including by:

- providing the *Employer* and/or the Business Unit with full details of the complaint or request;
- complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the *Employer's* and/or the Business Unit's instructions;
- providing the *Employer* and/or the Business Unit with any Personal Data it holds in relation to a Data Subject (within the timescales required by the *Employer* and/or the Business Unit);
- providing the *Employer* with any information requested by the *Employer*;
- permit the *Employer* and/or the Business Unit or the Service Manager (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the *Contractor's* data processing activities (and/or those of its agents, subsidiaries and Subcontractors) and comply with all Business Unit's reasonable requests or directions by the *Employer* and/or the Business Unit's to enable the *Employer* to verify and/or procure that the *Contractor* is in full compliance with its obligations under this contract;
- provide a written description of the technical and organisational methods employed by the *Contractor* for processing Personal Data (within the timescales required by the *Employer* and/or the Business Unit); and
- not Process or otherwise transfer any Personal Data outside the United Kingdom. If, after the Contract Date, the *Contractor* (or any Subcontractor) wishes to Process and/or transfer any Personal Data outside the United Kingdom, the following provisions shall apply:
 - the *Contractor* shall submit an early warning to the *Service Manager* which shall be dealt with in accordance with the early warning procedure in clause 16 of this contract and the clauses listed below; and
 - the *Contractor* shall set out in its early warning details of the following:
 - (a) the Personal Data which will be Processed and/or transferred outside the United Kingdom;
 - (b) the country or countries in which the Personal Data will be Processed and/or

to which the Personal Data will be transferred outside the United Kingdom;

- (c) any Subcontractors or other third Parties who will be Processing and/or transferring Personal Data outside the United Kingdom; and
 - (d) how the *Contractor* will ensure an adequate level of protection and adequate safeguards (in accordance with the Data Protection Legislation and in particular so as to ensure the *Employer's* and/or the Business Unit's compliance with the Data Protection Legislation) in respect of the Personal Data that will be Processed and/or transferred outside the United Kingdom;
- in providing and evaluating the early warning, the Parties shall ensure that they have regard to and comply with then-current Employer and/or the Business Unit, Government and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Process and/or transfers of Personal Data outside the United Kingdom and/or overseas generally; and
 - comply with such other instructions and shall carry out such other actions as the Service Manager may notify in writing, including:
 - (a) incorporating standard and/or model clauses (which are approved by the Information Commissioner's Office as offering adequate safeguards under the Data Protection Legislation) in this contract or a separate data processing agreement between the Parties; and
 - (b) procuring that any Subcontractor or other third party who will be Processing and/or transferring the Personal Data outside the United Kingdom enters into a direct data processing agreement with the *Employer* and/or the Business Unit on such terms as may be required by the *Employer* and/or the Business Unit, which the *Contractor* acknowledges may include the incorporation of standard and/or model

clauses (which are approved by the Information Commissioner's Office as offering adequate safeguards under the Data Protection Legislation).

- 27.26 The *Contractor* shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this contract in such a way as to cause the *Employer* and/or the Business Unit to breach any of its applicable obligations under the Data Protection Legislation.

Option Z13

Supplement to
NEC3 TSC
clause 27

Confidentiality

Insert a new clause

- 27.27 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this contract, each party shall:
- treat the other party's Confidential Information as confidential and safeguard it accordingly;
 - not disclose the other party's Confidential Information to any other person without the owner's prior written consent,
 - immediately notify the other Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information and
 - notify the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may be a criminal offence under the Bribery Act 2010.
- 27.28 The clause above shall not apply to the extent that:
- such disclosure is a requirement of the *law of the contract* placed upon the party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause Z10 (Freedom of Information);
 - such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - such information was obtained from a third party without obligation of confidentiality;
 - such information was already in the public domain at the time of disclosure otherwise than by a breach of this contract; or

- it is independently developed without access to the other party's Confidential Information.

27.29 The *Contractor* may only disclose the *Employer's* and/or the Business Unit's Confidential Information to the Contractor Personnel who are directly involved in the provision of the service and who need to know the information, and shall ensure that such Contractor Personnel are aware of and shall comply with these obligations as to confidentiality.

The *Contractor* shall not, and shall procure that the Contractor Personnel do not, use any of the *Employer* and/or the Business Unit's Confidential Information received otherwise than for the purposes of this contract.

27.30 The *Contractor* may only disclose the *Employer* and/or the Business Unit's Confidential Information to the Contractor Personnel who need to know the information, and shall ensure that such Contractor Personnel are aware of, acknowledge the importance of, and comply with these obligations as to confidentiality. In the event that any default, act or omission of any Contractor Personnel causes or contributes (or could cause or contribute) to the *Contractor* breaching its obligations as to confidentiality under or in connection with this contract, the *Contractor* shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by its own obligations of confidentiality to any Contractor Personnel, the *Contractor* shall provide such evidence to the *Employer* and/or the Business Unit as the *Employer* and/or the Business Unit may reasonably require (though not so as to risk compromising or prejudicing the case) to demonstrate that the *Contractor* is taking appropriate steps to comply with this clause, including copies of any written communications to and/or from Contractor Personnel, and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with Contractor Personnel in connection with obligations as to confidentiality.

27.31 At the written request of the *Employer* and/or the Business Unit, the *Contractor* shall procure that those members of the Contractor Personnel identified in the *Employer's* and/or the Business Unit's notice signs a confidentiality undertaking prior to commencing any work in accordance with this contract.

27.32 Nothing in this contract shall prevent the *Employer* from disclosing the *Contractor's* Confidential Information:

- to any Crown Body or any other Contracting Bodies. All Crown Bodies or Contracting Bodies receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Bodies on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Body;
- to any consultant, contractor or other person engaged by the *Employer* and/or the Business Unit or any person conducting an Office of Government Commerce gateway review;
- for the purpose of the examination and certification of the *Employer*'s and/or the Business Unit's accounts; or
- for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the *Employer* and/or the Business Unit has used its resources,

and for the purposes of the foregoing, disclosure of the Contractor's Confidential Information shall be on a confidential basis and subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Employer under this clause 27.32.

27.33 The *Employer* and/or the Business Unit shall use all reasonable endeavours to ensure that any government department, Contracting Body, employee, third party or Subcontractor to whom the *Contractor's* Confidential Information is disclosed pursuant to the above clause is made aware of the *Employer's* and/or the Business Unit's obligations of confidentiality.

27.34 Nothing in this clause shall prevent either party from using any techniques, ideas or know-how gained during the performance of the contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of IPR.

Option Z14

Security Requirements

Additional
NEC3 TSC
clause 27

27.36 The *Contractor* complies with, and procures the compliance of the Contractor Personnel, with:

- the Security Policy and the Security Management Plan (as defined in Schedule J) and the *Contractor* shall ensure that the Security Management Plan (as

defined in Schedule J) produced by the *Contractor* fully complies with the Security Policy;

- Contract Schedule J (Security Provisions).

Option Z15

Additional
NEC3 TSC
clause 27

Malicious Software

- 27.37 The *Contractor* shall, as an enduring obligation throughout the *service period*, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor to check for, contain the spread of, and minimise the impact of Malicious Software in the ICT Environment (or as otherwise agreed by the Parties).
- 27.38 Notwithstanding the above clause, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of *Employer* and/or the Business Unit Data, assist each other to mitigate any losses and to restore the service to their desired operating efficiency.
- 27.39 Any cost arising out of the actions of the Parties taken in compliance with the provisions of the above clause shall be borne by the Parties as follows:
- by the *Contractor* where the Malicious Software originates from the *Contractor* Software, the Third Party Software supplied by the *Contractor* (except where the *Employer* and/or the Business Unit has waived the obligation) or the *Employer* and/or the Business Unit Data (whilst the *Employer* and/or the Business Unit Data was under the control of the *Contractor*) unless the *Contractor* can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the *Employer* and/or the Business Unit when provided to the *Contractor*; and
 - by the *Employer* and/or the Business Unit if the Malicious Software originates from the *Employer* and/or the Business Unit Software (in respect of which the *Employer* and/or the Business Unit has waived its obligation) or the *Employer* and/or the Business Unit Data (whilst the *Employer* Data was under the control of the *Employer* and/or the Business Unit).

Option Z16

Supplement to NEC3
TSC clause 20

Tax Compliance

Insert new clauses:

20.9 The *Contractor* represents and warrants that as at the Contract Date, it has notified the *Employer* in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance.

20.10 If, at any point during the *service period*, an Occasion of Tax Non-Compliance occurs, the *Contractor* shall:

- notify the *Employer* in writing of such fact within 5 days of its occurrence; and
- promptly provide to the *Employer*:
 - details of the steps which the *Contractor* is taking to address the Occasions of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - such other information in relation to the Occasion of Tax Non-Compliance as the *Employer* may reasonably require.

Option Z17

Supplement to
NEC3 TSC clause
20

Change of Control

Insert a new clause:

20.11 The *Contractor* promptly notifies the Service Manager in writing on each occasion of the occurrence of any change of control as defined by section 416 of the Income and Corporation Taxes Act 1988 (any such case being a “Change of Control”). The *Employer* is permitted to exercise its rights pursuant to this clause for only six months after service of each and any notice by the *Contractor* pursuant to this clause and is not permitted to exercise such rights where the *Employer* has agreed in advance in writing to the particular Change of Control provided such Change of Control takes place as agreed.

Option Z18

Supplement to
NEC3 TSC clause
20

Conflicts of interest

Insert a new clause:

20.12 The *Contractor* discloses to the *Service Manager* any actual or potential conflict of interest arising from the *Contractor's* provision of the *service* as soon as practicable after becoming aware of such actual or potential conflict.

- 20.13 The *Contractor* immediately notifies the *Service Manager* of any circumstances giving rise to or potentially giving rise to conflicts of interest relating to the *Contractor* and/or the *Employer* (including without limitation its reputation and standing) of which it is aware or anticipates may justify the *Employer* taking action to protect its interests.

Option Z19

Supplement to
NEC3 TSC clause
30

Extension to service period

Insert a new clause:

- 30.2 The *Service Manager* may instruct up to three consecutive one-month extensions of the *service period* following the expiry of the initial term, for a maximum of 7 months, inclusive of the initial *service period*. The *Service Manager* instructs the *Contractor* no later than the period stated in the Contract Data. The instruction is a compensation event.

Option Z20

Supplement to
NEC3 TSC clause
50.2

Assessing the amount due

Delete clause 50.2 and replace with:

- 50.2 The amount due is
- the Price for Services Provided to Date,
 - less any amounts to be paid by or retained from the *Contractor*.

Any tax which the law requires the *Employer* to pay to the *Contractor* is included in the amount due.

Option Z21

Supplement to
NEC3 TSC clause
51.1

Payment

Delete clause 51.1 and replace with:

- 51.1 The *Service Manager* certifies a payment within one week of each assessment date. A payment is made by the *Contractor* to the *Employer* and/or the Business Unit if the amount due is an amount due to the *Employer* and/or the Business Unit . Other payments are made by the *Employer* and/or the Business Unit to the *Contractor*. Payments are in the currency of this contract unless otherwise stated in this contract.

Option Z22

Supplement to
NEC3 TSC clause
50

Fair payment

Insert a new clause:

- 55.1 The *Contractor* assesses the amount due to a Subcontractor without taking into account the amount certified by the *Service Manager*.
- 55.2 The *Contractor* includes in the contract with each Subcontractor:
- a period for payment of the amount due to the Subcontractor not greater than 5 days after the final date

for payment in this contract. The amount due includes, but is not limited to, payment for work which the Subcontractor has completed from the previous assessment date up to the current assessment date in this contract,

- a provision requiring the Subcontractor to include in each subsubcontract the same requirement, except that the period for payment is to be not greater than 9 days after the final date for payment in this contract and
- a provision requiring the Subcontractor to assess the amount due to a subsubcontractor without taking into account the amount paid by the *Contractor*.

Option Z23

Supplement to
NEC3 TSC clause
50

Contractual right of set off

Insert a new clause:

56.1 The *Employer* and/or the Business Unit may set off any liability of the *Contractor* to:

- the *Employer* and/or the Business Unit's ;
- any Contracting Body; or
- any Crown Body

against any liability of the *Employer and/or the Business Unit*, any Contracting Body or any Crown Body, whether such liability is present or future, liquidated or unliquidated and whether or not such liability arises under this contract.

Option Z24

Supplement to
NEC3 TSC clause
60.1

Compensation events

Insert new sub-clauses to clause 60.1 (compensation events):

60.1 (15) Any change to the minimum hourly rate of pay set by Government which applies to workers.

(16) Any change to the rate of employer's National Insurance contribution.

(17) Any introduction of a compulsory Living Wage or London Living Wage or any change thereto which applies to workers.

Option Z25

Supplement to NEC3
TSC clause 63.1

Assessing Compensation events

Delete clause 63.1 and replace with:

63.1 In this clause 63.1 the "Threshold" means 40% of the quantity of work shown in the Price List current at the time the relevant compensation event is implemented.

For a compensation event which:

- only affects the quantities of work shown in the Price List, the change to the Prices is assessed by multiplying the changed quantities of work with the appropriate rates in the Price List;
- has the effect, either individually or cumulatively together with other compensation events, of omitting a quantity of work which is less than or equal to the Threshold, the change to the Prices is assessed by multiplying the changed quantities of work with the appropriate rates in the Price List;
- has the effect, either individually or cumulatively together with other compensation events, of omitting a quantity of work which is more than the Threshold, the change to the Prices is assessed as follows:
 - for the quantity of work up to and including the Threshold the change to the Prices is assessed by multiplying the changed quantities of work with the appropriate rates in the Price List;
 - for the quantity of work in excess of the Threshold the change to the Prices is assessed by multiplying the changed quantities of work with the appropriate rates in the Price List and the Contractor shall only be entitled to the Fee calculated on the quantity of work in excess of the Threshold;
- arises from a difference between the rates of pay of Transferring Former Contractor Employees and/or Transferring Employer Employees and the equivalent rates of pay used by the Contractor at Further Competition to calculate the Prices, the change to the Prices is the TUPE Surcharge assessed in accordance with Contract Schedule P;
- arises where a Transferring Former Contractor Employee and/or any Transferring Employer Employee is made redundant by the Contractor as a result of an economic technical organisational reason entailing changes to the workforce and the Contractor has followed a fair dismissal procedure and complied with all contractual and legislative requirements, the change to the Prices is the Redundancy Surcharge assessed in accordance with Contract Schedule P.

Insert a new clause 63.14:

- 63.14 A compensation event which could cause people who are employed by the Contractor to be redundant is assessed as if the Contractor takes reasonable steps to mitigate the effects of the compensation event by:

- redeploying such people where it is practicable for the Contractor to do so; or
- where redeployment is not practicable, taking such reasonable mitigation steps to minimise the costs of redundancy where practicable.

Option Z26

Staff Transfer

Delete clause 82.1 and replace with:

Supplement to NEC3
TSC clause 82.1

82.1

Each Party indemnifies the other:

- against claims, proceedings, compensation and costs due to an event which is at his risk; and
- in accordance with the indemnities that apply to this contract in Contract Schedule I.

Option Z27

Supplement to NEC3
TSC clause 83

Insurance cover

Insert a new clause:

- 83.3 All insurances required to be effected and maintained under this contract are placed with reputable insurers, to whom the other party has no reasonable objection, lawfully carrying on such insurance business in the United Kingdom, and upon customary and usual terms prevailing for the time being in the insurance market. The said terms and conditions do not include any term or condition to the effect that any insured must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 1930 or the Third Parties (Rights Against Insurers) Act (Northern Ireland) 1930 as amended by the Insolvency (Northern Ireland) Order 1989.
- 83.4 Nothing in this clause relieves the *Contractor* from any of its obligations and liabilities under this contract

Option Z28

Supplement to NEC3 TSC
clause 83

Professional indemnity insurance

Insert a new clause:

- 83.5 If required to obtain professional indemnity insurance, the *Contractor* obtains and maintains the professional indemnity insurance upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with reputable insurers lawfully carrying on such insurance business in the United Kingdom on the basis and in an amount not less than that stated in the Contract Data, provided always that such insurance is available at commercially reasonable rates. The said terms and conditions do not include any term or condition to the effect that the *Contractor*

must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 1930 or the Third Parties (Rights Against Insurers) Act (Northern Ireland) 1930 as amended by the Insolvency (Northern Ireland) Order 1989.

- 83.6 The *Contractor* does not without the prior written approval of the *Service Manager* settle or compromise with the insurers any claim which the *Contractor* may have against the insurers and which relates to a claim by the *Employer* against the *Contractor*, nor by any act or omission lose or prejudice the *Contractor's* right to make or proceed with such a claim against the insurers.
- 83.7 The *Contractor* immediately informs the *Service Manager* if the professional indemnity insurance ceases to be available at rates and on terms that the *Contractor* considers to be commercially reasonable. Any increased or additional premium required by insurers by reason of the *Contractor's* own claims record or other acts, omissions, matters or things particular to the *Contractor* is deemed to be within commercially reasonable rates.
- 83.8 The *Contractor* co-operates fully with any measures reasonably required by the *Service Manager* including (without limitation) completing any proposals for insurance and associated documents, maintaining such insurance at rates above commercially reasonable rates if the *Employer* and/or the Business Unit undertakes in writing to reimburse the *Contractor* in respect of the net cost of such insurance to the *Contractor* above commercially reasonable rates or, if the *Employer* and/or the Business Unit effects such insurance at rates at or above commercially reasonable rates, reimbursing the *Employer* and/or the Business Unit in respect of what the net cost of such insurance to the *Employer* and/or the Business Unit would have been at commercially reasonable rates.
- 83.9 The above obligation in respect of professional indemnity insurance continues notwithstanding termination of the *Contractor's* employment under this contract for any reason whatsoever, including (without limitation) breach by the *Employer and/or the Business Unit*.

Option Z29

Supplement to NEC3
TSC clause 90.2

Termination Table

Delete the Termination Table and replace with:

TERMINATION TABLE

Terminating Party	Reason	Procedure	Amount due
The <i>Employer</i>	A reason other than R1-R32	P1, P2 and P4	A1, A2 and A4
	R1-R15, R18 or R22-R32	P1, P2, P3 and P4	A1, A2 and A3
	R17 or R20	P1 and P4	A1 and A2
	R21	P1, P3 and P4	A1 and A2
The <i>Contractor</i>	R1-R10, R16 or R19	P1, P2 and P4	A1, A2 and A4
	R17 or R20	P1, P2 and P4	A1 and A2
	R23	P1, P2, P3 and P4	A1, A2 and A3

Option Z30

Supplement to
NEC3 TSC clause
91

Reasons for Termination

Insert new clauses:

91.8 The *Employer* may terminate if:

91.8.1 the *Contractor* breaches clause 19.3 (R22); or

91.8.2 the Parties are unable to either remove a conflict of interest and/or to reduce its damaging effect to a reasonably acceptable level (R23); or

91.8.3 the warranty given by the *Contractor* in relation to Occasions of Tax Non-Compliance is materially untrue (R24); or

91.8.4 the *Contractor* commits a material breach of its obligation to notify the *Employer* of any Occasion of Tax Non-Compliance (R25); or

91.8.5 the *Contractor* fails to provide details of proposed mitigating factors in accordance with this contract in relation to any Occasion of Tax Non-Compliance which in the reasonable opinion of the *Employer*, are acceptable (R26).

91.8.6 the *Contractor*:

- is convicted or has been convicted of a criminal offence relating to the conduct of its business or profession (R27); or

- commits or is found to have committed an act of grave misconduct in the course of its business or profession (R28); or
- fails or has failed to comply with any obligations relating to the payment of any taxes or social security contributions (R29); or
- has made any serious misrepresentations in the tendering process for any project or matter in which the public sector has or had a significant participation (R30); or
- fails to obtain any necessary licences or to obtain or maintain membership of any relevant body (R31); or
- demerges into two or more firms, merges with another firm, incorporates or otherwise changes its legal form or there is a change of control as defined by section 416 of the Income and Corporation taxes Act 1988 (any such case being a “Change of Control”) and, in any such Change of Control, there are reasonable grounds for the *Employer* to withhold its consent relating to the financial standing of the new entity through which it is proposed that the service will be delivered or there are security concerns arising from the provision of the service by the new entity (R32).

Option Z31

Additional NEC3 TSC
option W3

Option W3 Negotiation

- W3.1 Without prejudice to either Party's right to refer a dispute to the *Adjudicator* at any time, any dispute or difference between the Parties arising out of or relating to this contract is referred by either Party initially to representatives of the *Employer* and *Contractor* for negotiation and resolution.
- W3.2 If any dispute is not resolved within ten Working Days after it has been referred to the Parties' representatives (or such longer period as the Parties may agree), it is referred to an authorised senior officer of the *Employer* and an authorised senior officer of the *Contractor* for negotiation and resolution.
- W3.3 If any dispute cannot be resolved within ten Working Days after it has been referred to the authorised senior officers of the *Employer* and *Contractor* (or such longer period as the Parties may agree) either Party may decline to continue to participate in the negotiation.

Option Z32

Additional NEC3 TSC
option W4

Option W4 Mediation

- W4.1 Without prejudice to either Party's right to refer a dispute to the *Adjudicator* at any time, any dispute or difference between the Parties arising out of or relating to this contract and which has not been resolved by negotiation is referred to mediation in accordance with the provisions of this clause.
- W4.2 The procedure and associated provisions for mediation pursuant to this clause are as follows:
- a neutral adviser or mediator ('the Mediator') is chosen by agreement between the *Employer* and the *Contractor* or, if they are unable to agree upon the identity of the Mediator within ten Working Days after a request by one Party to the other, or if the Mediator agreed upon is unable or unwilling to act, either Party may within ten Working Days from the date of the proposal to appoint a Mediator or within ten Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution ("CEDR") to appoint a Mediator; and
 - the Parties meet with the Mediator within ten Working Days of his appointment in order to agree the programme for exchange of all relevant information and the procedure under which negotiations will be held. The Parties may at any stage seek guidance from CEDR regarding a suitable procedure.
- W4.3 Unless otherwise agreed by the Parties, all negotiations connected with the dispute and any settlement agreement relating to it are confidential and without prejudice to the rights of the Parties in any future proceedings.
- W4.4 In the event that the Parties reach agreement on the resolution of the dispute, the agreement is reduced to writing and is binding on both Parties once it is signed by a duly authorised senior officer of the *Employer* and a duly authorised senior officer of the *Contractor*.
- W4.5 Failing agreement, the *Employer* or *Contractor* may agree to invite the Mediator to provide a non-binding but informative opinion in writing. No such invitation is made without the written consent of both Parties. If it is agreed that such an invitation is to be made, the opinion is provided on a without prejudice basis and is not used in evidence in any proceedings relating to this contract without the written consent of both Parties.

- W4.6 The *Employer* and the *Contractor* each bears their own costs in relation to any reference made to the Mediator and the fees and all other costs of the Mediator are borne jointly in equal proportions by both Parties unless otherwise directed by the Mediator.
- W4.7 In the event that the *Employer* and the *Contractor* fail to reach agreement within forty Working Days after the Mediator's appointment, or such longer period as may be agreed, the dispute may be referred to the *tribunal*.

Option Z33

Changes in the law

Supplement to
NEC3 TSC
Option X2

- X2 Delete X2.1 and replace with:
- X2.1 A change in the law in the country in which the Affected Property is located is a compensation event if:
- it occurs after the Contract Date;
 - an experienced contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable for him to have allowed for it; and
 - it is not one of the other compensation events stated in this contract.

The Service Manager may notify the Contractor of a compensation event for a change in the law and instruct him to submit quotations. If the effect of a compensation event which is a change in the law is to reduce the total Defined Cost, the Prices are reduced.

Option Z35

Limitation of Liability

Supplement to
NEC3 TSC
Option X18

- X18.1 Delete X18.1
- Delete X18.4 and replace with:
- X18.4 The Contractor's total liability to the Employer for all matters arising under or in connection with this contract is limited to the amount stated in the Contract Data and applies in contract, tort or delict and otherwise to the extent allowed under the law of the contract.

Option Z36

Task Order

Supplement to
NEC3 TSC
Option X19

- X19 Delete X19.2 and X19.3 and replace with:
- X19.2 A Task Order includes
- a detailed description of the work in the Task,
 - a priced list of items of work in the Task in which items taken from the procedure in Contract Schedule N are identified,

- the starting and completion dates for the Task,
- the amount of delay damages for the late completion of the Task and
- the total of the prices for the Task.

The Service Manager consults the Contractor about the contents of a Task Order before he issues it.

When a Task Order is issued the work involved is added to the Service Information.

An instruction to carry out a Task is not a compensation event.

X19.3 The delay damages in a Task Order, if any, are not more than the estimated cost to the *Employer* and/or the Business Unit of late completion of the Task. If Task Completion is later than the Task Completion Date, the Contractor pays delay damages at the rate stated in the Task Order from the Task Completion Date until Completion.

The prices for items in the Task price list are assessed in accordance with Contract Schedule N.

Option Z37

Supplement to
NEC3 TSC
Option X20

Management and Performance Information

X20 Delete X20 and replace with:

X20.1 A Key Performance Indicator is an aspect of performance by the *Contractor* for which a target is stated in the Performance Adjustment Schedule. The Performance Adjustment Schedule is the *performance adjustment schedule* unless later changed in accordance with this contract.

X20.2 From the *starting date* until the end of the *service period*, the *Contractor* reports to the *Service Manager*:

- the management and performance information required by Contract Schedule K;
- his performance against each of the Key Performance Indicators.

Reports are provided at monthly intervals.

X20.3 If the *Contractor* does not achieve the target stated in the Performance Adjustment Schedule, he submits to the *Service Manager* his proposals for improving performance.

X20.4 The amount calculated in accordance with the Performance Adjustment Schedule is retained from the monthly payment in accordance with the calculation of the Price for Services Provided to Date. An amount is not retained to the extent that it is caused by:

- a compensation event; or

- any failure of the Employer's property which is outside the control of the Contractor.

X20.5 The *Employer* may delete a Key Performance Indicator and associated payment from the Performance Adjustment Schedule but may not add or increase a payment stated in the Performance Adjustment Schedule save in accordance with this clause X20.

X20.6 If the *Employer* deletes a Key Performance Indicator and associated payment from the Performance Adjustment Schedule the associated payment is reallocated evenly across the remaining Key Performance Indicators so that the Monthly Total Value at Risk remains the same.

SECTION 2: RECOMMENDED FOR APPROPRIATE CONTRACTS ONLY

Option Z38 Environmental requirements

Insert new clauses:

- | | | |
|---------------------------------------|------|---|
| Supplement to
NEC3 TSC
clause 2 | 29.1 | The <i>Contractor</i> complies with all applicable environmental laws and regulations in force from time to time in relation to the <i>service</i> and promptly provides evidence of compliance when reasonably requested by the <i>Service Manager</i> . |
| | 29.2 | The <i>Contractor</i> satisfies all reasonable requests by the <i>Service Manager</i> for information regarding the environmental impact of the <i>service</i> . |

Option Z40 Public liability insurance

Insert a new clause

- | | | |
|--|-------|--|
| Supplement to
NEC3 TSC
clause 83 | 83.10 | The public liability insurance required by this contract is in the joint names of the <i>Employer</i> and such other person as the <i>Service Manager</i> may reasonably require including, without limitation, the <i>Employer's</i> consultants and contractors, the <i>Contractor</i> and all Subcontractors. |
|--|-------|--|

Option Z42

- | | | |
|--|------|---|
| Supplement to
NEC3 TSC
option Y(UK)2 | Y2.5 | If Option Y(UK)2 is said to apply then notwithstanding that this contract relates to the carrying out of construction operations other than in England or Wales or Scotland, the Act is deemed to apply to this contract. |
|--|------|---|

Option Z43 Employer provides right of access and things

Insert a new clause 15.3

- | | | |
|------------------------------|------|--|
| Supplement to
NEC3 TSC 15 | 15.3 | <p>If the <i>Contractor</i> is permitted to use equipment Plant and Materials or other such property belonging to the <i>Employer</i> (the "Employer's Property") the following provisions apply:</p> <ul style="list-style-type: none">• All Employer's Property remains the property of the <i>Employer</i>;• Any failure of Employer's Property shall not be a compensation event unless the <i>Contractor</i> demonstrates that the failure was caused by the <i>Employer's</i> undue delay in its repair or replacement. |
|------------------------------|------|--|

Option Z44 Intellectual Property Rights

Insert new clauses:

29.10 In this clause 29.10 – 29.18 only:

“Intellectual Property Rights” means any and all patents, trademarks, service marks, copyright, moral rights, rights in a design, know-how, Confidential Information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto;

“Confidential Information” means any information designated as such by the Party disclosing that information; and

“Document” means all designs, drawings, specifications, software, electronic data, photographs, plans, surveys, reports, and all other documents and/or information prepared by or on behalf of the *Contractor* in relation to this contract.

29.11 The Intellectual Property Rights in all Documents prepared by or on behalf of the *Contractor* in relation to this contract and the work executed from them remains the property of the *Contractor*. The *Contractor* hereby grants to the *Employer* Business Unit and to the Authority an irrevocable, royalty free, non-exclusive licence to use and reproduce the Documents for any and all purposes connected with the Affected Property. Such licence entitles the *Employer* and/or the Business Unit and the Authority to grant sub-licences to third parties in the same terms as this licence provided always that the *Contractor* shall not be liable to any licensee for any use of the Documents or the Intellectual Property Rights in the Documents for purposes other than those for which the same were originally prepared by or on behalf of the *Contractor*.

29.12 In the event that the *Contractor* does not own the copyright or any Intellectual Property Rights in any Document the *Contractor* uses all reasonable endeavours to procure the right to grant such rights to the *Employer* to use any such copyright or Intellectual Property Rights from any third party owner of the copyright or Intellectual Property Rights. In the event that the *Contractor* is unable to procure the right to grant to the *Employer* and/or the Business Unit in accordance with the foregoing the *Contractor* procures that the third party grants a direct licence to the *Employer* on industry acceptable terms.

29.13 The *Contractor* waives any moral right to be identified as author of the Documents in accordance with section 77, Copyright Designs and Patents Acts 1988 and any right not to have the Documents subjected to derogatory treatment in accordance with section 8 of that Act as against the *Employer* and/or the Business Unit or any licensee or assignee of the *Employer* and/or the Business Unit.

- 29.14 In the event that any act unauthorised by the *Employer* and/or the Business Unit infringes a moral right of the *Contractor* in relation to the Documents the *Contractor* undertakes, if the *Employer* and/or the Business Unit so requests and at the *Employer's* and/or the Business Unit's expense, to institute proceedings for infringement of the moral rights.
- 29.15 The *Contractor* warrants to the *Employer* and/or the Business Unit that he has not granted and shall not (unless authorised by the *Employer* and/or the Business Unit) grant any rights to any third party to use or otherwise exploit the Documents.
- 29.16 The *Contractor* supplies copies of the Documents to the *Service Manager* and to the *Employer's* and/or the Business Unit's other contractors and consultants for no additional fee to the extent necessary to enable them to discharge their respective functions in relation to this contract or related works.
- 29.17 After the termination or conclusion of the *Contractor's* employment hereunder, the *Contractor* supplies the *Service Manager* with copies and/or computer discs of such of the Documents as the *Service Manager* may from time to time request and the *Employer* and/or the Business Unit pays the *Contractor's* reasonable costs for producing such copies or discs.
- 29.18 In Providing the Service the *Contractor* does not infringe any Intellectual Property Rights of any third party. The *Contractor* indemnifies the *Employer* against claims, proceedings, compensation and costs arising from an infringement or alleged infringement of the Intellectual Property Rights of any third party.

Option Z47

Small and Medium Sized Enterprises (SMEs)

Insert new clauses:

Supplement to NEC3
TSC clause
2

- 29.40 The *Contractor* is required to take all reasonable steps to engage SMEs as Subcontractors and to seek to ensure that no less than the percentage of the Subcontractors stated in the Contract Data (the "SME Percentage") are SMEs or that a similar proportion of the Defined Cost of the *service* is undertaken by SMEs.
- 29.41 The *Contractor* is required to report to the *Employer* in its regular contract management monthly reporting cycle the numbers of SMEs engaged as Subcontractors and the value of the Defined Cost of the *service* that has been undertaken by SMEs.
- 29.42 Where available, the *Contractor* is required to tender its Subcontracts using the same online electronic portal as was provided by the *Employer* for the purposes of tendering this contract.

- 29.43 The *Contractor* is to ensure that the terms and conditions used to engage Subcontractors are no less favourable than those of this contract. A reason for the *Service Manager* not accepting subcontract conditions proposed by the *Contractor* is that they are unduly disadvantageous to the Subcontractor.

Option Z48

Apprenticeships

Insert new clauses:

Supplement to NEC3
TSC clause
2

- 29.44 The *Contractor* is required to take all reasonable steps to employ apprentices, and report to the *Employer* the numbers of apprentices employed and the wider skills training provided, during the delivery of the *service*.
- 29.45 The *Contractor* is required to take all reasonable steps to ensure that no less than the percentage of its employees stated in the Contract Data are on formal apprenticeship programmes or that a similar proportion of hours worked in delivering the *service*, (which may include support staff and Subcontractors) are provided by employees on formal apprenticeship programmes.
- 29.46 The *Contractor* is required to make available to its employees and Subcontractors working on the contract, information about the Government's Apprenticeship programme and wider skills opportunities.
- 29.47 The *Contractor* is to provide any further skills training opportunities that are appropriate for its employees engaged in Providing the Service.

29.48 The *Contractor* is to provide a written report detailing the following measures in its regular contract management monthly reporting cycle and be prepared to discuss apprenticeships at its regular meetings with the *Service Manager*:

- the number of people during the reporting period employed on the contract, including support staff and Subcontractors;
- the number of apprentices and number of new starts on apprenticeships directly initiated through the procurement process;
- the percentage of all employees taking part in an apprenticeship programme;
- if applicable, an explanation from the *Contractor* as to why it is not managing to meet the specified percentage target;
- actions being taken to improve the take up of apprenticeships;
- other training/skills development being undertaken by employees in relation to this contract, including:
 - (a) work experience placements for 14 to 16 year olds;
 - (b) work experience /work trial placements for other ages;
 - (c) student sandwich/gap year placements;
 - (d) graduate placements;
 - (e) vocational training;
 - (f) basic skills training; and
 - (g) on site training provision/ facilities.

Option Z49

Information Sharing

Insert new clause:

27.35

The *Employer* and/or the Business Unit may disclose the Confidential Information of the *Contractor*:

- on a confidential basis to any Crown Body for any proper purpose of the *Employer* and/or the Business Unit or the relevant Crown Body;
- to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- to the extent that the *Employer* and/or the Business Unit (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any Crown Body (including any benchmarking organisation) for any purpose connected with this contract;
- on a confidential basis for the purpose of the exercise of its rights under this contract;
- on a confidential basis to a proposed successor body of the *Employer* and/or the Business Unit in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this contract,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the *Employer* and/or the Business Unit under this Z clause.

Option Z50

Supplement to
NEC3 TSC
clause 60.1

60.1

Compensation Events (Pensions)

Insert new sub-clauses to clause 60.1 (compensation events):

(20) A change to the pension employer contribution rate for Transferring Former Contractor Employees or Transferring Employer Employees.

(21) A change to the pension auto-enrolment costs for Transferring Former Contractor Employees or Transferring Employer Employees.

Option Z51

New
Secondary
Option Clause

X21

Clustering

Option X21: Clustering

Identified and defined terms	X21.1	<p>(1) A Business Unit is a Central Government Body identified in the Works Information forming part of the Cluster.</p> <p>(2) The Cluster is the group of Business Units who have come together acting as one body to procure services to realise efficiencies.</p>
Clustering	X21.2	<p>The <i>Employer</i> is one of the Business Units and enters into this contract on behalf of other Business Units.</p> <p>The <i>Contractor</i> Provides the Service to each Business Unit.</p>
Payment	X21.4	<p>The <i>Contractor</i> adopts processes and systems in the administration of this contract to accommodate separate invoicing based on the amount due to the <i>Employer</i> and each Business Unit.</p> <p>The Price for Services Provided to Date is calculated separately for each Business Unit to reflect:</p> <ul style="list-style-type: none"> • the Prices attributed to the relevant <i>Employer</i> and Business Unit's Affected Property in the Price List; • the Monthly Disbursement and Tasks attributable to the relevant Business Unit's Affected Property; • compensation events being allocated evenly against each Business Unit save where the Service Manager instructs otherwise; • the performance deduction being allocated against the Employer and each Business Unit in the proportion identified in the Service Information, or where not identified in the Service Information in the same proportion as the total of the Prices is to the Prices allocated to the Employer's and each Business Unit's Affected Property.
	X21.5	<p>The <i>Contractor</i> submits to the <i>Employer</i> and each Business Unit any application for payment with a breakdown showing the allocation of the amount due against the <i>Employer</i> and each Business Unit.</p>

Option Z52

Modern Slavery

New clause	Z52.1	<p>In order to assist the <i>Employer</i> to meet its obligations under the Modern Slavery Act 2015, the <i>Contractor</i> agrees to raise any concerns about the issue or suspicion of modern slavery in any parts of its business or supply chain with the <i>Employer</i> at the earliest possible opportunity.</p>
New clause	Z52.2	<p>The <i>Contractor</i> warrants that it shall and shall procure that its sub-contractors and supply chain complies with the ETI Base Code and any anti-slavery measures notified to the <i>Contractor</i> by the <i>Employer</i>.</p>

New clause Z52.3 The *Employer*, acting by itself or through its audit agents, shall have the right during the period of the Contract and for a period of 18 (eighteen) months thereafter to assess compliance by the *Contractor*, its sub-contractor and the *Contractor's* supply chain with this Clause Z52.

3. **CONTRACT SCHEDULE C - CONTRACT DATA PART TWO – DATA PROVIDED BY THE *CONTRACTOR***

1. Statements given in all contracts:

The *Contractor* is defined in the form of agreement to which this Contract Schedule is annexed

[REDACTED]

[REDACTED]

The key persons are:

(1) Name..... [REDACTED]

Job..... [REDACTED]

Responsibilities.....

Qualifications.....

Experience.....

(2) Name.... [REDACTED]

Job.... [REDACTED]

(3) Name.. [REDACTED]

Job.... [REDACTED]

The following matters will be included in the Risk Register:

.....

.....

Optional statements

If the *Contractor* is to provide Service Information for its plan:

- The Service Information for the *Contractor's* plan is in.....

If a plan is identified in the Contract Data:

- The plan identified in the Contract Data is.....

For Option A:

- The *price list* is in Contract Schedule E.

For Option A:










- The tendered total of the Prices is [REDACTED] The parties acknowledge and agree that the Prices are an estimate and will be reviewed and reassessed accordingly during the service period.






CONTRACT SCHEDULE D

THE SERVICE INFORMATION

4. CONTRACT SCHEDULE D - THE SERVICE INFORMATION

A list of the documents that are included in this Contract Schedule D – Service Information are as follows:

Document Name	Document
Schedule D –Service Information	 Schedule D - Service Information v1.0.docx
Schedule D - Service Matrix and Service Requirements	Direct award pricing GPA-ISS Service Matr
Schedule D –Process Maps	 Schedule D - Process Maps v1.0.zip
Schedule D – FM Standards	 Schedule D - FM Standards v2.0.pdf
Schedule D – Paymech	Schedule D - Paymech v1.0.xlsx
Schedule D – Service Level Agreement	 Schedule D - Service Level Agreement v1.0
Schedule D – Service Level Agreement - Appendix F – Maintenance Standards	 Schedule D - Service Level Agreement - Ap
Schedule D – Total Facilities Management Governance	 Schedule D - Total Facilities Managemen
Schedule D – Non-TFM Site Contacts	 Schedule D - Non TFM Site Contacts v1.0
Schedule D – Photographs [REDACTED]	 Schedule D - [REDACTED]
Schedule D – [REDACTED] [REDACTED] [REDACTED]	 [REDACTED]

Schedule D – Statutory Compliance Tracker	Schedule D - Statutory Compliance
Schedule D – HMLR Service Information Document Index	 Schedule D - HMLR Service Information D
Schedule D – Window Cleaning	 Schedule D - Window Cleaning v1.0.pdf
Schedule D – [REDACTED] Security Policy	 Schedule D - [REDACTED] Security Policy
Schedule D – Security within [REDACTED]	 Schedule D - Security within [REDACTED] v1.0.pdf
Schedule D – [REDACTED] [REDACTED]	Schedule D - [REDACTED] [REDACTED]
Schedule D – Handyman Service and Reception Services	 Schedule D - Handyman Service an

The Service Matrix forms part of the Service Information. Where there is a conflict between the information in the Service Matrix and the rest of the Service Information, the information in the Service Matrix shall take precedent.

CONTRACT SCHEDULE E

THE PRICE LIST

5. CONTRACT SCHEDULE E - THE PRICE LIST

The Price List for this contract is detailed below. The parties acknowledge and agree that the Prices are an estimate and will be reviewed and reassessed accordingly during the service period. In particular, the planned closure of the office at [REDACTED] may result in a reduction in services during the service period.

Fixed

A large rectangular area of the document is completely redacted with a solid black box, obscuring the content of the 'Fixed' price list table.

Variable

A large rectangular area of the document is completely redacted with a solid black box, obscuring the content of the 'Variable' price list table.

CONTRACT SCHEDULE F

NOT USED

6. CONTRACT SCHEDULE F – NOT USED

CONTRACT SCHEDULE G

NOT USED

7. CONTRACT SCHEDULE G – NOT USED

CONTRACT SCHEDULE H
ARBITRATION PROCEDURE

8. CONTRACT SCHEDULE H - ARBITRATION PROCEDURE

- 8.1 Instead of referring a dispute to litigation the Parties may, if they both agree, refer any dispute to arbitration in accordance with this procedure.
- 8.2 The party seeking to initiate the arbitration shall give a written Notice of Arbitration to the other party. The Notice of Arbitration shall:
 - 8.2.1 state that the dispute is referred to arbitration;
 - 8.2.2 state the particulars of this contract; and
 - 8.2.3 provide a brief summary of the subject of the dispute.
- 8.3 Unless otherwise agreed in writing by the *Employer* and the *Contractor*, the provisions of the Arbitration Act 1996 shall govern the arbitration commenced pursuant to this paragraph 8.3.
- 8.4 Any Dispute, if referred to arbitration in accordance with this procedure, shall be resolved by arbitration under the procedural rules of the London Court of International Arbitration.
- 8.5 It is agreed between the *Employer* and the *Contractor* that for the purposes of the arbitration, the arbitrator shall have the power to make provisional awards as provided for in Section 39 of the Arbitration Act 1996.
- 8.6 For the avoidance of doubt it is agreed by the *Employer* and the *Contractor* that the arbitration process and anything said, done or produced in or in relation to the arbitration process (including any awards) shall be confidential between the Parties, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise. No report relating to anything said, done or produced in or in relation to the arbitration process may be made to anybody other than the *tribunal*, the *Employer* and the *Contractor*, their legal representatives and any person necessary to the conduct of the proceedings, without the agreement of the Parties.
- 8.7 The arbitration proceedings shall take place in the location stated in the Contract Data and shall be in the English language and the arbitration proceedings shall be governed by, and interpretations made in accordance with, the *law of the contract*.
- 8.8 The *Employer* and the *Contractor* shall each bear their own costs in relation to any reference made to the arbitrator and the fees and all other costs of the arbitrator shall be borne jointly in equal proportions by both Parties unless otherwise directed by the arbitrator.
- 8.9 This procedure shall be without prejudice to either party's right to refer any dispute to adjudication in accordance with this contract.

CONTRACT SCHEDULE I

STAFF TRANSFER

9. CONTRACT SCHEDULE I - STAFF TRANSFER

9.1 Definitions

9.1.1 In this Contract Schedule, the following definitions shall apply:

**“Contractor’s Final
Personnel List”**

means a list provided by the *Contractor* of all staff who will transfer under the Employment Regulations on the Relevant Transfer Date;

**“Contractor’s
Provisional Personnel
List”**

means a list prepared and updated by the *Contractor* of all staff who are engaged in or wholly or mainly assigned to the provision of the *service* or any relevant part of the *service* which it is envisaged as at the date of such list will no longer be provided by the *Contractor*;

“Employee Liabilities”

means all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:

- a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- b) unfair, wrongful or constructive dismissal compensation;
- c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- d) compensation for less favourable treatment of part-time workers or fixed term employees;
- e) outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions in relation to payments made by the *Employer* or the Replacement Contractor to a Transferring Contractor Employee which would have been payable by the *Contractor* or the Sub-

	Contractor if such payment should have been made prior to the Service Transfer Date;
	f) claims whether in tort, contract or statute or otherwise;
	g) any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;
"New Fair Deal"	the revised Fair Deal position set out in the HM Treasury guidance: "Fair Deal for staff pensions: staff transfer from central government" issued in October 2013;
"Notified Sub-Contractor"	means a Sub-Contractor identified in Annex 2 of this Contract Schedule I to whom Transferring Employer's Employees and/or Transferring Former Contractor Employees will transfer on a Relevant Transfer Date;
"Principles of Good Employment Practice"	means the guidance published by the Cabinet Office and found at www.gov.uk/government/publications/principles-of-good-employment-practice ;
"Replacement Contractor"	means any third party provider of Replacement Services appointed by or at the direction of the <i>Employer</i> and/or the Business Unit from time to time or where the <i>Employer</i> and/or the Business Unit is providing Replacement Services for its own account, shall also include the <i>Employer</i> and/or the Business Unit (as applicable)
"Replacement Services"	means any services which are substantially similar to any of the <i>service</i> and which the <i>Employer</i> and/or the Business Unit receives in substitution for any of the <i>service</i> following the end of the <i>service period</i> or earlier termination, whether those services are provided by the <i>Employer</i> and/or the Business Unit (as applicable) internally and/or by any third party;
"Replacement Sub-Contractor"	means a subcontractor of the Replacement Contractor to whom Transferring Contractor Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);
"Service Transfer"	any transfer of the <i>service</i> (or any part of the <i>service</i>), for whatever reason, from the <i>Contractor</i> or any subcontractor to a Replacement Contractor or a Replacement Sub-Contractor

“Service Transfer Date”

means the date of a Service Transfer;

"Staffing Information"

means, in relation to all persons identified on the Contractor's Provisional Personnel List or Contractor's Final Personnel List, as the case may be, such information as the *Employer* and/or the Business Unit (as applicable) may reasonably request (subject to all applicable provisions of the Data Protection Legislation), but including in an anonymised format:

- their ages, dates of commencement of employment or engagement and gender;

- details of whether they are employed, self employed contractors or consultants, agency workers or otherwise;

- details of contracted working hours;

- the identity of the employer or relevant contracting party;

- their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;

- their wages, salaries and profit sharing arrangements as applicable;

- details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;

- any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);

- details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;

- copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and

- any other “employee liability information” as such term is defined in regulation 11 of the Employment Regulations;

"Transferring Contractor Employees"

means those employees of the *Contractor* and/or the Sub-Contractors to whom the Employment Regulations will apply on the Service Transfer Date

"Transferring Employer Employees"

means those employees of the *Employer* and/or the Business Unit to whom the Employment Regulations will apply on the Relevant Transfer Date;

Interpretation

Where a provision in this Schedule imposes an obligation on the *Contractor* to provide an indemnity, undertaking or warranty, the *Contractor* shall procure that each of its Sub-Contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the *Employer and/or the Business Unit (as applicable)*, Former Contractor, Replacement Contractor or Replacement Sub-Contractor, as the case may be.

PART A

TRANSFERRING EMPLOYER EMPLOYEES AT COMMENCEMENT OF THE PROVISION OF SERVICES

9.2 Relevant Transfers

9.2.1 The *Employer* and the *Contractor* agree that:

9.2.1.1 the commencement of the provision of the *service* or of each relevant part of the *service* will be a Relevant Transfer in relation to the Transferring Employer Employees; and

9.2.1.2 as a result of the operation of the Employment Regulations, the contracts of employment between the *Employer* and/or the Business Unit (as applicable) and the Transferring Employer Employees (except in relation to any terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Relevant Transfer Date as if originally made between the *Contractor* and/or any Notified Sub-Contractor and each such Transferring Employer Employee.

9.2.2 The *Employer* and/or the Business Unit shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Employer Employees in respect of the period arising up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period up to (but not including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the *Employer*, and (ii) the *Contractor* and/or any Notified Sub-Contractor (as appropriate).

9.3 *Employer* Indemnities

9.3.1 Subject to paragraph 9.2 of Part A of this Contract Schedule, the *Employer* shall indemnify the *Contractor* and any Notified Sub-Contractor against any Employee Liabilities in respect of any Transferring Employer Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

9.3.1.1 any act or omission by the Employer and/or the Business Unit (as applicable) occurring before the Relevant Transfer Date;

9.3.1.2 the breach or non-observance by the Employer and/or the Business Unit (as applicable) before the Relevant Transfer Date of:

(a) any collective agreement applicable to the Transferring Employer Employees; and/or

(b) any custom or practice in respect of any Transferring Employer Employees which the *Employer* and/or the

Business Unit (as applicable) is contractually bound to honour.

- 9.3.1.3 any claim by any trade union or other body or person representing the Transferring Employer Employees arising from or connected with any failure by the *Employer* to comply with any legal obligation to such trade union, body or person arising before the Relevant Transfer Date;
- 9.3.1.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (a) in relation to any Transferring Employer Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
 - (b) in relation to any employee who is not a Transferring Employer Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the *Employer* and/or the Business Unit (as applicable) to the *Contractor* and/or any Notified Sub-Contractor as appropriate, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date.
- 9.3.1.5 a failure of the *Employer* and/or the Business Unit (as applicable) to discharge, or procure the discharge of, all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Employer Employees arising before the Relevant Transfer Date;
- 9.3.1.6 any claim made by or in respect of any person employed or formerly employed by the *Employer* and/or the Business Unit (as applicable) other than a Transferring Employer Employee for whom it is alleged the *Contractor* and/or any Notified Sub-Contractor as appropriate may be liable by virtue of the Employment Regulations and/or the Acquired Rights Directive; and
- 9.3.1.7 any claim made by or in respect of a Transferring Employer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Employer Employee relating to any act or omission of the *Employer* and/or the Business Unit (as applicable) in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the *Contractor* or any Sub-Contractor to comply with regulation 13(4) of the Employment Regulations.

- 9.3.2 The indemnities in paragraph 9.3.1 of Part A of this Contract Schedule shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the *Contractor* or any Sub-Contractor (whether or not a Notified Sub-Contractor) whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities:
- 9.3.2.1 arising out of the resignation of any Transferring Employer Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the *Contractor* and/or any Sub-Contractor to occur in the period from (and including) the Relevant Transfer Date); or
 - 9.3.2.2 arising from the failure by the *Contractor* or any Sub-Contractor to comply with its obligations under the Employment Regulations.
- 9.3.3 If any person who is not identified by the *Employer* and/or the Business Unit (as applicable) as a Transferring Employer Employee claims, or it is determined in relation to any person who is not identified by the *Employer* and/or the Business Unit (as applicable) as a Transferring Employer Employee, that his/her contract of employment has been transferred from the *Employer* to the *Contractor* and/or any Notified Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- 9.3.3.1 the *Contractor* shall, or shall procure that the Notified Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the *Employer* and/or the Business Unit ; and
 - 9.3.3.2 the *Employer* and/or the Business Unit (as applicable) may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of receipt of the notification by the *Contractor* and/or any Notified Sub-Contractor, or take such other reasonable steps as the *Employer* and/or the Business Unit (as applicable) considers appropriate to deal with the matter provided always that such steps are in compliance with *law of the contract*.
- 9.3.4 If an offer referred to in paragraph 9.3.3.2 of Part A of this Contract Schedule is accepted, or if the situation has otherwise been resolved by the *Employer*, the *Contractor* shall, or shall procure that the Notified Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.
- 9.3.5 If by the end of the fifteen (15) Working Day period specified in paragraph 9.3.3.2 of Part A of this Contract Schedule:
- 9.3.5.1 no such offer of employment has been made;
 - 9.3.5.2 such offer has been made but not accepted; or
 - 9.3.5.3 the situation has not otherwise been resolved,

the *Contractor* and/or any Notified Sub-Contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person except where if s188 Trade Union and Labour Relations (Consolidation) Act 1992 ("TULRCA") applies in which case the Contractor and/or any Notified Sub-Contractor may:

- (i) within 45 days give notice to terminate the employment or alleged employment of such person where s188(1A)(a) TULRCA applies; or
- (ii) within 30 days give notice to terminate the employment or alleged employment of such person where s188(1A)(b) TULRCA applies.

9.3.6 Subject to the *Contractor* and/or any Notified Sub-Contractor acting in accordance with the provisions of paragraphs 9.3.3 to 9.3.5 of Part A of this Contract Schedule and in accordance with all applicable proper employment procedures set out in the *law of the contract*, the *Employer* shall indemnify the *Contractor* and/or any Notified Sub-Contractor (as appropriate) against all Employee Liabilities arising out of the termination pursuant to the provisions of paragraph 9.3.5 of Part A of this Contract Schedule provided that the *Contractor* takes, or procures that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.

9.3.7 The indemnity in paragraph 9.3.6 of Part A of this Contract Schedule

9.3.7.1 shall not apply to:

(a) any claim for

(i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

(ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the *Contractor* and/or any Sub-Contractor;

(b) any claim that the termination of employment was unfair because the *Contractor* and/or Notified Sub-Contractor neglected to follow a fair dismissal procedure; and

9.3.7.2 shall apply only where the notification referred to in paragraph 9.3.3.1 of Part A of this Contract Schedule is made by the *Contractor* and/or any Notified Sub-Contractor (as appropriate) to the *Employer* and/or the Business Unit (as applicable) within six (6) months of the Contract Date.

9.3.8 If any such person as is referred to in paragraph 9.3.3 of Part A of this Contract Schedule is neither re-employed by the *Employer* and/or the Business Unit (as applicable) nor dismissed by the *Contractor* and/or any Notified Sub-Contractor within the time scales set out in paragraph 9.3.5 of

Part A of this Contract Schedule such person shall be treated as having transferred to the *Contractor* and/or any Notified Sub-Contractor and the *Contractor* shall, or shall procure that the Notified Sub-Contractor shall, comply with such obligations as may be imposed upon it under the *law of the contract*.

9.4 *Contractor* Indemnities and Obligations

- 9.4.1 Subject to paragraph 9.4.2 of Part A of this Contract Schedule, the *Contractor* shall indemnify the *Employer* and/or the Business Unit (as applicable) against any Employee Liabilities in respect of any Transferring Employer Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
- 9.4.1.1 any act or omission by the *Contractor* or any Sub-Contractor whether occurring before, on or after the Relevant Transfer Date;
 - 9.4.1.2 the breach or non-observance by the *Contractor* or any Sub-Contractor on or after the Relevant Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Employer Employees; and/or
 - (b) any custom or practice in respect of any Transferring Employer Employees which the *Contractor* or any Sub-Contractor is contractually bound to honour;
 - 9.4.1.3 any claim by any trade union or other body or person representing any Transferring Employer Employees arising from or connected with any failure by the *Contractor* or any Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
 - 9.4.1.4 any proposal by the *Contractor* or a Sub-Contractor made before the Relevant Transfer Date to change the terms and conditions of employment or working conditions of any Transferring Employer Employees on or after their transfer to the *Contractor* or the relevant Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Employer Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
 - 9.4.1.5 any statement communicated to or action undertaken by the *Contractor* or any Sub-Contractor to, or in respect of, any Transferring Employer Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the *Employer* i and/or the Business Unit (as applicable) in writing;

- 9.4.1.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- (a) in relation to any Transferring Employer Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
 - (b) in relation to any employee who is not a Transferring Employer Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the *Employer* and/or the Business Unit (as applicable) to the *Contractor* or a Sub-Contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- 9.4.1.7 a failure of the *Contractor* or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Employer Employees in respect of the period from (and including) the Relevant Transfer Date; and
- 9.4.1.8 any claim made by or in respect of a Transferring Employer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Employer Employee relating to any act or omission of the *Contractor* or any Sub-Contractor in relation to their obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the *Employer's* and/or the Business Unit (as applicable) failure to comply with its obligations under regulation 13 of the Employment Regulations.
- 9.4.2 The indemnities in paragraph 9.4.1 of Part A of this Contract Schedule shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the *Employer* and/or the Business Unit (as applicable) whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the *Employer's* and/or the Business Unit (as applicable) failure to comply with its obligations under the Employment Regulations.
- 9.4.3 The *Contractor* shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations (including its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of the Transferring Employer Employees, from (and including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all

wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period from and including the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the *Employer* and/or the Business Unit (as applicable) and the *Contractor*.

9.5 Information

- 9.5.1 The *Contractor* shall, and shall procure that each Sub-Contractor shall, promptly provide to the *Employer* and/or the Business Unit (as applicable) in writing such information as is necessary to enable the *Employer* and/or the Business Unit (as applicable) to carry out its duties under regulation 13 of the Employment Regulations. The *Employer* and/or the Business Unit (as applicable) shall promptly provide to the *Contractor* and each Notified Sub-Contractor in writing such information as is necessary to enable the *Contractor* and each Notified Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

9.6 Principles of Good Employment Practice

- 9.6.1 The Parties agree that the principles set out in the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the *Contractor* of employees whose employment begins after the Relevant Transfer Date, and the *Contractor* undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.
- 9.6.2 The *Contractor* shall, and shall procure that each Sub-Contractor shall, comply with any requirement notified to it by the *Employer* relating to pensions in respect of any Transferring Employer Employee as set down in:
- 9.6.2.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
 - 9.6.2.2 HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
 - 9.6.2.3 HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
 - 9.6.2.4 The New Fair Deal.

9.7 Pensions

- 9.7.1 The *Contractor* shall, and shall procure that each of its Sub-Contractors shall, comply with the pensions provisions set out in Annex 1.

PART B

TRANSFERRING FORMER CONTRACTOR EMPLOYEES AT COMMENCEMENT OF THE PROVISION OF SERVICES

9.8 Relevant Transfers

9.8.1 The Parties agree that:

9.8.1.1 the commencement of the provision of the *service* or of any relevant part of the *service* will be a Relevant Transfer in relation to the Transferring Former Contractor Employees; and

9.8.1.2 as a result of the operation of the Employment Regulations, the contracts of employment between each Former Contractor and the Transferring Former Contractor Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the *Contractor* and/or Notified Sub-Contractor and each such Transferring Former Contractor Employee.

9.8.2 The *Employer* and/or the Business Unit (as applicable) shall procure that each Former Contractor shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Contractor Employees in respect of the period up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the *Contractor* shall make, and the *Employer* and/or the Business Unit (as applicable) shall procure that each Former Contractor makes, any necessary apportionments in respect of any periodic payments.

9.9 Former Contractor Indemnities

9.9.1 Subject to paragraph 9.8.2 of Part B of this Contract Schedule, the *Employer* shall procure that each Former Contractor shall indemnify the *Contractor* and any Notified Sub-Contractor against any Employee Liabilities in respect of any Transferring Former Contractor Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

9.9.1.1 any act or omission by the Former Contractor arising before the Relevant Transfer Date;

9.9.1.2 the breach or non-observance by the Former Contractor arising before the Relevant Transfer Date of:

- (a) any collective agreement applicable to the Transferring Former Contractor Employees; and/or
 - (b) any custom or practice in respect of any Transferring Former Contractor Employees which the Former Contractor is contractually bound to honour.
- 9.9.1.3 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (a) in relation to any Transferring Former Contractor Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
 - (b) in relation to any employee who is not a Transferring Former Contractor Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Contractor to the *Contractor* and/or any Notified Sub-Contractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;
- 9.9.1.4 a failure of the Former Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Contractor Employees in respect of the period to (but excluding) the Relevant Transfer Date;
- 9.9.1.5 any claim made by or in respect of any person employed or formerly employed by the Former Contractor other than a Transferring Former Contractor Employee for whom it is alleged the *Contractor* and/or any Notified Sub-Contractor as appropriate may be liable by virtue of this contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
- 9.9.1.6 any claim made by or in respect of a Transferring Former Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Contractor Employee relating to any act or omission of the Former Contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the *Contractor* or any Sub-Contractor to comply with regulation 13(4) of the Employment Regulations.
- 9.9.2 The indemnities in paragraph 9.9.1 of Part B of this Contract Schedule shall not apply to the extent that the Employee Liabilities arise or are attributable

to an act or omission of the *Contractor* or any Sub-Contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:

- 9.9.2.1 arising out of the resignation of any Transferring Former Contractor Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the *Contractor* or any Sub-Contractor to occur in the period from (and including) the Relevant Transfer Date); or
 - 9.9.2.2 arising from the failure by the *Contractor* and/or any Sub-Contractor to comply with its obligations under the Employment Regulations).
- 9.9.3 If any person who is not identified by the *Employer* and/or the Business Unit (as applicable) as a Transferring Former Contractor Employee claims, or it is determined in relation to any person who is not identified by the *Employer* and/or the Business Unit (as applicable) as a Transferring Former Contractor Employee, that his/her contract of employment has been transferred from a Former Contractor to the *Contractor* and/or any Notified Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- 9.9.3.1 the *Contractor* shall, or shall procure that the Notified Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the *Employer* and/or the Business Unit (as applicable) and, where required by the *Employer* and/or the Business Unit's (as applicable), to the Former Contractor; and
 - 9.9.3.2 the Former Contractor may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of the notification by the *Contractor* and/or the Notified Sub-Contractor or take such other reasonable steps as the Former Contractor considers appropriate to deal with the matter provided always that such steps are in compliance with the *law of the contract*.
- 9.9.4 If an offer referred to in paragraph 9.9.3.2 of Part B of this Contract Schedule is accepted, or if the situation has otherwise been resolved by the Former Contractor and/or the *Employer* and/or the Business Unit (as applicable) the *Contractor* shall, or shall procure that the Notified Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.
- 9.9.5 If by the end of the 15 Working Day period specified in paragraph 9.9.3.2 of Part B of this Contract Schedule:
- 9.9.5.1 no such offer of employment has been made;
 - 9.9.5.2 such offer has been made but not accepted; or
 - 9.9.5.3 the situation has not otherwise been resolved;

the *Contractor* and/or any Notified Sub-Contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person except where if s188 Trade Union and Labour Relations (Consolidation) Act 1992 ("TULRCA") applies in which case the Contractor and/or any Notified Sub-Contractor may:

- (i) within 45 days give notice to terminate the employment or alleged employment of such person where s188(1A)(a) TULRCA applies; or
- (ii) within 30 days give notice to terminate the employment or alleged employment of such person where s188(1A)(b) TULRCA applies.

9.9.6 Subject to the *Contractor* and/or any Notified Sub-Contractor acting in accordance with the provisions of paragraphs 9.9.3 to 9.9.5 of Part B of this Contract Schedule and in accordance with all applicable proper employment procedures set out in the *law of the contract*, the *Employer* and/or the Business Unit (as applicable) shall procure that the Former Contractor indemnifies the *Contractor* and/or any Notified Sub-Contractor (as appropriate) against all Employee Liabilities arising out of the termination pursuant to the provisions of paragraph 9.9.5 of Part B of this Contract Schedule provided that the *Contractor* takes, or shall procure that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.

9.9.7 The indemnity in paragraph 9.9.6 of Part B of this Contract Schedule

9.9.7.1 shall not apply to:

- (a) any claim for
 - (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees;

in any case in relation to any alleged act or omission of the *Contractor* and/or any Sub-Contractor; or

- (b) any claim that the termination of employment was unfair because the *Contractor* and/or Notified Sub-Contractor neglected to follow a fair dismissal procedure; and

9.9.7.2 shall apply only where the notification referred to in paragraph 9.9.3.2 of Part B of this Contract Schedule is made by the *Contractor* and/or any Notified Sub-Contractor (as appropriate) to the *Employer* and/or the Business Unit (as applicable) and, if applicable, the Former Contractor, within six (6) months of the Contract Date.

9.9.8 If any such person as is described in paragraph 9.9.3 of Part B of this Contract Schedule is neither re-employed by the Former Contractor nor

dismissed by the *Contractor* and/or any Notified Sub-Contractor within the time scales set out in paragraph 9.9.5 of Part B of this Contract Schedule, such person shall be treated as having transferred to the *Contractor* or Notified Sub-Contractor and the *Contractor* shall, or shall procure that the Notified Sub-Contractor shall, comply with such obligations as may be imposed upon it under the *law of the contract*.

9.10 Contractor Indemnities and Obligations

9.10.1 Subject to paragraph 9.10.2 of Part B of this Contract Schedule, the *Contractor* shall indemnify the *Employer* and/or the Business Unit (as applicable) and/or the Former Contractor against any Employee Liabilities in respect of any Transferring Former Contractor Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

9.10.1.1 any act or omission by the *Contractor* or any Sub-Contractor whether occurring before, on or after the Relevant Transfer Date;

9.10.1.2 the breach or non-observance by the *Contractor* or any Sub-Contractor on or after the Relevant Transfer Date of:

(a) any collective agreement applicable to the Transferring Former Contractor Employee; and/or

(b) any custom or practice in respect of any Transferring Former Contractor Employees which the *Contractor* or any Sub-Contractor is contractually bound to honour;

9.10.1.3 any claim by any trade union or other body or person representing any Transferring Former Contractor Employees arising from or connected with any failure by the *Contractor* or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;

9.10.1.4 any proposal by the *Contractor* or a Sub-Contractor prior to the Relevant Transfer Date to change the terms and conditions of employment or working conditions of any Transferring Former Contractor Employees on or after their transfer to the *Contractor* or a Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Contractor Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;

9.10.1.5 any statement communicated to or action undertaken by the *Contractor* or a Sub-Contractor to, or in respect of, any Transferring Former Contractor Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not

been agreed in advance with the *Employer* a and/or the Business Unit (as applicable) and/or the Former Contractor in writing;

- 9.10.1.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- (a) in relation to any Transferring Former Contractor Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
 - (b) in relation to any employee who is not a Transferring Former Contractor Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Contractor to the *Contractor* or a Sub-Contractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- 9.10.1.7 a failure of the *Contractor* or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Contractor Employees in respect of the period from (and including) the Relevant Transfer Date; and
- 9.10.1.8 any claim made by or in respect of a Transferring Former Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Contractor Employee relating to any act or omission of the *Contractor* or any Sub-Contractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Contractor's failure to comply with its obligations under regulation 13 of the Employment Regulations.
- 9.10.2 The indemnities in paragraph 9.10.1 of Part B of this Contract Schedule shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Contractor's failure to comply with its obligations under the Employment Regulations.
- 9.10.3 The *Contractor* shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-Contractor shall

perform and discharge, all its obligations in respect of all the Transferring Former Contractor Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the *Contractor* and the Former Contractor.

9.11 Information

- 9.11.1.1 The *Contractor* shall, and shall procure that each Sub-Contractor shall, promptly provide to the *Employer* and/or the Business Unit (as applicable) and/or at the *Employer's* direction, the Former Contractor, in writing such information as is necessary to enable the *Employer* and/or the Business Unit (as applicable) and/or the Former Contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The *Employer* and/or the Business Unit (as applicable) shall procure that the Former Contractor shall promptly provide to the *Contractor* and each Notified Sub-Contractor in writing such information as is necessary to enable the *Contractor* and each Notified Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

9.12 Principles of Good Employment Practice

- 9.12.1.1 The *Contractor* shall, and shall procure that each Sub-Contractor shall, comply with any requirement notified to it by the *Employer* and/or the Business Unit (as applicable) relating to pensions in respect of any Transferring Former Contractor Employee as set down in:
- 9.12.1.2 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
- 9.12.1.3 HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
- 9.12.1.4 HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
- 9.12.1.5 the New Fair Deal.

9.13 Procurement Obligations

- 9.13.1.1 Notwithstanding any other provisions of this Part B of this Contract Schedule, where in this Part B the *Employer* and/or the Business Unit (as applicable) accepts an obligation to procure that a Former Contractor does or does not do something, such obligation shall be limited so that it extends only to the extent that the *Employer's* and/or the Business Unit (as applicable) contract

with the Former Contractor contains a contractual right in that regard which the *Employer* may enforce, or otherwise so that it requires only that the *Employer* and/or the Business Unit (as applicable) must use reasonable endeavours to procure that the Former Contractor does or does not act accordingly.

9.14 Pensions

- 9.14.1.1 The *Contractor* shall, and shall procure that each Sub-Contractor shall, comply with the pensions provisions in Annex 1 where any Transferring Former Contractor Employees who transfer from the Former Contractor to the *Contractor*.

PART C

NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF THE PROVISION OF SERVICES

9.15 Procedure in the Event of Transfer

- 9.15.1 The *Employer* and the *Contractor* agree that the commencement of the provision of the *service* or of any part of the *service* will not be a Relevant Transfer in relation to any employees of the *Employer* and/or the Business Unit (as applicable) and/or any Former Contractor.
- 9.15.2 If any employee of the *Employer* and/or the Business Unit (as applicable) and/or a Former Contractor claims, or it is determined in relation to any employee of the *Employer* and/or the Business Unit (as applicable) and/or a Former Contractor, that his/her contract of employment has been transferred from the *Employer* and/or the Business Unit (as applicable) and/or the Former Contractor to the *Contractor* and/or any Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- 9.15.2.1 the *Contractor* shall, and shall procure that the relevant Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the *Employer* and/or the Business Unit (as applicable) and, where required by the *Employer*, and/or the Business Unit (as applicable) give notice to the Former Contractor; and
- 9.15.2.2 the *Employer* and/or the Business Unit (as applicable) and/or the Former Contractor may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of the notification by the *Contractor* or the Sub-Contractor (as appropriate) or take such other reasonable steps as the *Employer* and/or the Business Unit (as applicable) or Former Contractor (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with the *law of the contract*.
- 9.15.3 If an offer referred to in paragraph 9.15.2.2 of Part C of this Contract Schedule is accepted (or if the situation has otherwise been resolved by the *Employer* and/or the Business Unit (as applicable) and/or the Former Contractor), the *Contractor* shall, or shall procure that the Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.
- 9.15.4 If by the end of the fifteen (15) Working Day period specified in paragraph 9.15.2.2
- 9.15.4.1 no such offer of employment has been made;
- 9.15.4.2 such offer has been made but not accepted; or
- 9.15.4.3 the situation has not otherwise been resolved,

the *Contractor* and/or the Sub-Contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person except where if s188 Trade Union and Labour Relations (Consolidation) Act 1992 ("TULRCA") applies in which case the Contractor and/or any Notified Sub-Contractor may:

- (i) within 45 days give notice to terminate the employment or alleged employment of such person where s188(1A)(a) TULRCA applies; or
- (ii) within 30 days give notice to terminate the employment or alleged employment of such person where s188(1A)(b) TULRCA applies.

9.16 Indemnities

9.16.1 Subject to the *Contractor* and/or the relevant Notified Sub-Contractor acting in accordance with the provisions of paragraphs 9.15.2 to 9.15.4 of Part C of this Contract Schedule and in accordance with all applicable employment procedures set out in the *law of the contract* and subject also to paragraph 9.15.4 of Part C of this Contract Schedule, the *Employer* shall:

9.16.1.1 indemnify the *Contractor* and/or the relevant Notified Sub-Contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the *Employer* and/or the Business Unit (as applicable) referred to in paragraph 9.15.2 of Part C of this Contract Schedule made pursuant to the provisions of paragraph 9.15.4 of Part C of this Contract Schedule provided that the *Contractor* takes, or shall procure that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities; and

9.16.1.2 procure that the Former Contractor indemnifies the *Contractor* and/or any Notified Sub-Contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Contractor made pursuant to the provisions of paragraph 9.15.2 of Part C of this Contract Schedule provided that the *Contractor* takes, or shall procure that the relevant Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.

9.16.2 If any such person as is described in paragraph 9.15.2 of Part C of this Contract Schedule is neither re employed by the *Employer* and/or the Business Unit (as applicable) and/or the Former Contractor as appropriate nor dismissed by the *Contractor* and/or any Sub-Contractor within the fifteen (15) Working Day period referred to in paragraph 9.15.4 of Part C of this Contract Schedule such person shall be treated as having transferred to the Contractor and/or the Sub-Contractor (as appropriate) and the *Contractor* shall, or shall procure that the Sub-Contractor shall, comply with such obligations as may be imposed upon it under the *law of the contract*.

9.16.3 Where any person remains employed by the *Contractor* and/or any Sub-Contractor pursuant to paragraph 9.15.2 of Part C of this Contract Schedule, all Employee Liabilities in relation to such employee shall remain with the *Contractor* and/or the Sub-Contractor and the *Contractor* shall indemnify the *Employer* and/or the Business Unit (as applicable) and any Former Contractor, and shall procure that the Sub-Contractor shall

indemnify the *Employer* and/or the Business Unit (as applicable) and any Former Contractor, against any Employee Liabilities that either of them may incur in respect of any such employees of the *Contractor* and/or employees of the Sub-Contractor.

9.16.4 The indemnities in paragraph 9.16.1 of Part C of this Contract Schedule

9.16.4.1 shall not apply to:

(a) any claim for

(i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

(ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees, or

in any case in relation to any alleged act or omission of the *Contractor* and/or any Sub-Contractor; or

(b) any claim that the termination of employment was unfair because the *Contractor* and/or Notified Sub-Contractor neglected to follow a fair dismissal procedure; and

9.16.4.2 shall apply only where the notification referred to in paragraph 9.15.2.1 of Part C of this Contract Schedule is made by the *Contractor* and/or any Sub-Contractor to the *Employer* and/or the Business Unit (as applicable) and, if applicable, Former Contractor within six (6) months of the Contract Date.

9.17 Procurement Obligations

9.17.1 Where in this Part C of this Contract Schedule the *Employer* and/or the Business Unit (as applicable) accepts an obligation to procure that a Former Contractor does or does not do something, such obligation shall be limited so that it extends only to the extent that the *Employer's* and/or the Business Unit (as *applicable*) contract with the Former Contractor contains a contractual right in that regard which the *Employer* may enforce, or otherwise so that it requires only that the *Employer* and/or the Business Unit (as applicable) must use reasonable endeavours to procure that the Former Contractor does or does not act accordingly.

PART D

EMPLOYMENT EXIT PROVISIONS

9.18 Pre-service Transfer Obligations

9.18.1 The *Contractor* agrees that within twenty (20) Working Days of the earliest of:

9.18.1.1 receipt of a notification from the *Employer* and/or the Business Unit (as applicable) of a Service Transfer or intended Service Transfer;

9.18.1.2 receipt of the giving of notice of early termination or any partial termination of this contract;

9.18.1.3 the date which is twelve (12) months before the end of the *service period*; and

9.18.1.4 receipt of a written request of the *Employer* and/or the Business Unit (as applicable) at any time (provided that the *Employer* and/or the Business Unit (as applicable) shall only be entitled to make one such request in any six (6) month period),

it shall provide in a suitably anonymised format so as to comply with the Data Protection Legislation, the Contractor's Provisional Personnel List, together with the Staffing Information in relation to the Contractor's Provisional Personnel List and it shall provide an updated Contractor's Provisional Personnel List at such intervals as are reasonably requested by the *Employer* and/or the Business Unit (as applicable).

9.18.2 At least twenty (20) Working Days prior to the Service Transfer Date, the *Contractor* shall provide to the *Employer* and/or the Business Unit (as applicable) or at the direction of the *Employer* and/or the Business Unit (as applicable) to any Replacement Contractor and/or any Replacement Sub-Contractor:

9.18.2.1 the Contractor's Final Personnel List, which shall identify which of the Staff are Transferring Contractor Employees; and

9.18.2.2 the Staffing Information in relation to the Contractor's Final Personnel List (insofar as such information has not previously been provided).

9.18.3 The *Employer* and/or the Business Unit (as applicable) shall be permitted to use and disclose information provided by the *Contractor* under paragraphs 9.18.1 and 9.18.2 of Part D of this Contract Schedule for the purpose of informing any prospective Replacement Contractor and/or Replacement Sub-Contractor.

9.18.4 The *Contractor* warrants, for the benefit of the *Employer* and/or the Business Unit (as applicable) any Replacement Contractor, and any Replacement Sub-Contractor that all information provided pursuant to

paragraphs 9.18.1 and 9.18.2 of Part D of this Contract Schedule shall be true and accurate in all material respects.

9.18.5 From the date of the earliest event referred to in paragraphs 9.18.1.1 to 9.18.1.3 of Part D of this Contract Schedule, the *Contractor* agrees, that it shall not, and agrees to procure that each Sub-Contractor shall not, assign any person to the provision of the Services who is not listed on the Contractor's Provisional Personnel List and shall not without the approval of the *Employer* and/or the Business Unit (as applicable) (not to be unreasonably withheld or delayed):

9.18.5.1 replace or re-deploy any Staff listed on the Contractor's Provisional Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;

9.18.5.2 make, promise, propose or permit any material changes to the terms and conditions of employment of the Staff (including any payments connected with the termination of employment);

9.18.5.3 increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Staff save for fulfilling assignments and projects previously scheduled and agreed;

9.18.5.4 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Contractor's Provisional Personnel List;

9.18.5.5 increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or

9.18.5.6 terminate or give notice to terminate the employment or contracts of any persons on the Contractor's Provisional Personnel List save by due disciplinary process,

and shall promptly notify, and procure that each Sub-Contractor shall promptly notify, the *Employer* and/or the Business Unit (as applicable) or, at the direction of the *Employer and/or the Business Unit (as applicable)*, any Replacement Contractor and any Replacement Sub-Contractor of any notice to terminate employment given by the *Contractor* or relevant Sub-Contractor or received from any persons listed on the Contractor's Provisional Personnel List regardless of when such notice takes effect.

9.18.6 During the *service period*, the *Contractor* shall provide to the *Employer* and/or the Business Unit (as applicable) any information the *Employer* and/or the Business Unit (as applicable) may reasonably require relating to any individual employed, assigned or engaged in providing the Services (subject to any limitations imposed by the Data Protection Legislation) including without limitation the Staffing Information and, upon reasonable request by the *Employer* and/or the Business Unit (as applicable) and

subject only to any limitation imposed by the Data Protection Legislation, the *Contractor* shall provide, and shall procure that each Sub-Contractor shall provide, the *Employer* or, at the direction of the *Employer* and/or the Business Unit (as applicable) to a Replacement Contractor and/or any Replacement Sub-Contractor with access (on reasonable notice and during normal working hours) to such employment records as the *Employer* and/or the Business Unit (as applicable) reasonably requests and shall allow the *Employer* or at the *Employer's* and/or the Business Unit's (as applicable) direction, the Replacement Contractor and/or any Replacement Sub-Contractor to have copies of any such documents.

9.18.7 The *Contractor* shall provide, and shall procure that each Sub-Contractor shall provide, all reasonable cooperation and assistance to the *Employer*, and/or the Business Unit (as applicable) any Replacement Contractor and/or any Replacement Sub-Contractor to ensure the smooth transfer of the Transferring Contractor Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Contractor Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within five (5) Working Days following the Service Transfer Date, the *Contractor* shall provide, and shall procure that each Sub-Contractor shall provide, the *Employer* and/or the Business Unit (as applicable) or, at the direction of the *Employer* and/or the Business Unit (as applicable), to any Replacement Contractor and/or any Replacement Sub-Contractor (as appropriate), in respect of each person on the Contractor's Final Personnel List who is a Transferring Contractor Employee:

9.18.7.1 the most recent month's copy pay slip data;

9.18.7.2 details of cumulative pay for tax and pension purposes;

9.18.7.3 details of cumulative tax paid;

9.18.7.4 tax code;

9.18.7.5 details of any voluntary deductions from pay; and

9.18.7.6 bank/building society account details for payroll purposes.

9.19 Employment Regulations Exit Provisions

9.19.1 The *Employer* and/or the Business Unit (as applicable) and the *Contractor* acknowledge that subsequent to the *starting date*, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or partial termination of this contract or otherwise) resulting in the Services being undertaken by a Replacement Contractor and/or a Replacement Sub-Contractor. Such change in the identity of the *Contractor* of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The *Employer* and/or the Business Unit (as applicable) and the *Contractor* further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the *Contractor* and the Transferring Contractor

Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Contractor and/or a Replacement Sub-Contractor (as the case may be) and each such Transferring Contractor Employee.

- 9.19.2 The *Contractor* shall, and shall procure that each Sub-Contractor shall, comply with all its obligations in respect of the Transferring Contractor Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Contractor Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the *Contractor* and/or the Sub-Contractor (as appropriate); and (ii) the Replacement Contractor and/or Replacement Sub-Contractor.
- 9.19.3 Subject to paragraph 9.19.4 of Part D of this Contract Schedule, the *Contractor* shall indemnify the *Employer* and/or the Business Unit (as applicable) and/or the Replacement Contractor and/or any Replacement Sub-Contractor against any Employee Liabilities in respect of any Transferring Contractor Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
- 9.19.3.1 any act or omission of the *Contractor* or any Sub-Contractor whether occurring before, on or after the Service Transfer Date;
 - 9.19.3.2 the breach or non-observance by the *Contractor* or any Sub-Contractor occurring on or before the Service Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Contractor Employees; and/or
 - (b) any other custom or practice with a trade union or staff association in respect of any Transferring Contractor Employees which the *Contractor* or any Sub-Contractor is contractually bound to honour;
 - 9.19.3.3 any claim by any trade union or other body or person representing any Transferring Contractor Employees arising from or connected with any failure by the *Contractor* or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
 - 9.19.3.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not

limited to, PAYE and primary and secondary national insurance contributions:

- (a) in relation to any Transferring Contractor Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
- (b) in relation to any employee who is not a Transferring Contractor Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the *Contractor* to the *Employer* and/or the Business Unit (as applicable) and/or Replacement Contractor and/or any Replacement Sub-Contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;

9.19.3.5 a failure of the *Contractor* or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Contractor Employees in respect of the period up to (and including) the Service Transfer Date);

9.19.3.6 any claim made by or in respect of any person employed or formerly employed by the *Contractor* or any Sub-Contractor other than a Transferring Contractor Employee for whom it is alleged the *Employer* and/or the Business Unit (as applicable) and/or the Replacement Contractor and/or any Replacement Sub-Contractor may be liable by virtue of this contract and/or the Employment Regulations and/or the Acquired Rights Directive; and

9.19.3.7 any claim made by or in respect of a Transferring Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Contractor Employee relating to any act or omission of the *Contractor* or any Sub-Contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the *Employer* and/or the Business Unit (as applicable) and/or Replacement Contractor to comply with regulation 13(4) of the Employment Regulations.

9.19.4 The indemnities in paragraph 9.19.3 of Part D of this Contract Schedule shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Contractor and/or any Replacement Sub-Contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:

9.19.4.1 arising out of the resignation of any Transferring Contractor Employee before the Service Transfer Date on account of

substantial detrimental changes to his/her working conditions proposed by the Replacement Contractor and/or any Replacement Sub-Contractor to occur in the period on or after the Service Transfer Date); or

- 9.19.4.2 arising from the Replacement Contractor's failure, and/or Replacement Sub-Contractor's failure, to comply with its obligations under the Employment Regulations.
- 9.19.5 If any person who is not a Transferring Contractor Employee claims, or it is determined in relation to any person who is not a Transferring Contractor Employee, that his/her contract of employment has been transferred from the *Contractor* or any Sub-Contractor to the Replacement Contractor and/or Replacement Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:
 - 9.19.5.1 the *Employer* and/or the Business Unit (as applicable) shall procure that the Replacement Contractor shall, or any Replacement Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the *Contractor*, and
 - 9.19.5.2 the *Contractor* may offer (or may procure that a Sub-Contractor may offer) employment to such person within fifteen (15) Working Days of the notification by the Replacement Contractor and/or any and/or Replacement Sub-Contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with the *law of the contract*.
- 9.19.6 If such offer is accepted, or if the situation has otherwise been resolved by the *Contractor* or a Sub-Contractor, the *Employer* and/or the Business Unit (as applicable) shall procure that the Replacement Contractor shall, or procure that the Replacement Sub-Contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.
- 9.19.7 If after the fifteen (15) Working Day period specified in paragraph 9.19.5.2 of Part D of this Contract Schedule has elapsed:
 - 9.19.7.1 no such offer of employment has been made;
 - 9.19.7.2 such offer has been made but not accepted; or
 - 9.19.7.3 the situation has not otherwise been resolved;the *Employer* shall advise the Replacement Contractor and/or Replacement Sub-Contractor, as appropriate that it may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.
- 9.19.8 Subject to the Replacement Contractor and/or Replacement Sub-Contractor acting in accordance with the provisions of paragraphs 9.19.5 to 9.19.7 of Part D of this Contract Schedule and in accordance with all

applicable proper employment procedures set out in the *law of the contract*, the *Contractor* shall indemnify the Replacement Contractor and/or Replacement Sub-Contractor against all Employee Liabilities arising out of the termination pursuant to the provisions of paragraph 9.18.7 of Part D of this Contract Schedule provided that the Replacement Contractor takes, or shall procure that the Replacement Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.

9.19.9 The indemnity in paragraph 9.19.8 of Part D of this Contract Schedule

9.19.9.1 shall not apply to:

(a) any claim for

(i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

(ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Replacement Contractor and/or Replacement Sub-Contractor; or

(b) any claim that the termination of employment was unfair because the Replacement Contractor and/or Replacement Sub-Contractor neglected to follow a fair dismissal procedure; and

9.19.9.2 shall apply only where the notification referred to in paragraph 9.19.5.1 of Part D of this Contract Schedule is made by the Replacement Contractor and/or Replacement Sub-Contractor to the *Contractor* within six (6) months of the Service Transfer Date.

9.19.10 If any such person as is described in paragraph 9.19.5 of Part D of this Contract Schedule is neither re-employed by the *Contractor* or any Sub-Contractor nor dismissed by the Replacement Contractor and/or Replacement Sub-Contractor within the time scales set out in paragraphs 9.19.5 to 9.19.7 of Part D of this Contract Schedule, such person shall be treated as a Transferring Contractor Employee and the Replacement Contractor and/or Replacement Sub-Contractor shall comply with such obligations as may be imposed upon it under the *law of the contract*.

9.19.11 The *Contractor* shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of the Transferring Contractor Employees up to (but not including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and

outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:

9.19.11.1 the *Contractor* and/or any Sub-Contractor; and

9.19.11.2 the Replacement Contractor and/or the Replacement Sub-Contractor.

9.19.12 The *Contractor* shall, and shall procure that each Sub-Contractor shall, promptly provide to the *Employer* and/or the Business Unit (as applicable) and any Replacement Contractor and/or Replacement Sub-Contractor, in writing such information as is necessary to enable the *Employer* and/or the Business Unit (as applicable), the Replacement Contractor and/or Replacement Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The *Employer* and/or the Business Unit (as applicable) shall procure that the Replacement Contractor and/or Replacement Sub-Contractor shall promptly provide to the *Contractor* and each Sub-Contractor in writing such information as is necessary to enable the *Contractor* and each Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

9.19.13 Subject to paragraph 9.19.14 of Part D of this Contract Schedule, the *Employer* and/or the Business Unit (as applicable) shall procure that the Replacement Contractor indemnifies the *Contractor* on its own behalf and on behalf of any Replacement Sub-Contractor and its sub-contractors against any Employee Liabilities in respect of each Transferring Contractor Employee (or, where applicable any employee representative (as defined in the Employment Regulations) of any Transferring Contractor Employee) arising from or as a result of:

9.19.13.1 any act or omission of the Replacement Contractor and/or Replacement Sub-Contractor;

9.19.13.2 the breach or non-observance by the Replacement Contractor and/or Replacement Sub-Contractor on or after the Service Transfer Date of:

(a) any collective agreement applicable to the Transferring Contractor Employees; and/or

(b) any custom or practice in respect of any Transferring Contractor Employees which the Replacement Contractor and/or Replacement Sub-Contractor is contractually bound to honour;

9.19.13.3 any claim by any trade union or other body or person representing any Transferring Contractor Employees arising from or connected with any failure by the Replacement Contractor and/or Replacement Sub-Contractor to comply with any legal

obligation to such trade union, body or person arising on or after the Relevant Transfer Date;

- 9.19.13.4 any proposal by the Replacement Contractor and/or Replacement Sub-Contractor to change the terms and conditions of employment or working conditions of any Transferring Contractor Employees on or after their transfer to the Replacement Contractor or Replacement Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Contractor Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- 9.19.13.5 any statement communicated to or action undertaken by the Replacement Contractor or Replacement Sub-Contractor to, or in respect of, any Transferring Contractor Employee on or before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the *Contractor* in writing;
- 9.19.13.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (a) in relation to any Transferring Contractor Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
 - (b) in relation to any employee who is not a Transferring Contractor Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the *Contractor* or Sub-Contractor, to the Replacement Contractor or Replacement Sub-Contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;
- 9.19.13.7 a failure of the Replacement Contractor or Replacement Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Contractor Employees in respect of the period from (and including) the Service Transfer Date; and
- 9.19.13.8 any claim made by or in respect of a Transferring Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring

Contractor Employee relating to any act or omission of the Replacement Contractor or Replacement Sub-Contractor in relation to obligations under regulation 13 of the Employment Regulations.

- 9.19.14 The indemnities in paragraph 9.19.3 of Part D of this Contract Schedule shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the *Contractor* and/or any Sub-Contractor (as applicable) whether occurring or having its origin before, on or after the Relevant Transfer Date, including any Employee Liabilities arising from the failure by the *Contractor* and/or any Sub-Contractor (as applicable) to comply with its obligations under the Employment Regulations.

ANNEX 1: PENSIONS

The provisions of this Annex shall apply in respect of the Transferring Employees who transfer from the *Employer* and/or the Business Unit (as applicable) to the *Contractor*.

9.20 DEFINITIONS

9.20.1 In this Annex the following definitions shall apply:

"Admission Agreement"	means an agreement to be entered into by which the <i>Contractor</i> agrees to participate in the Schemes as amended from time to time;
"Eligible Employee"	means any Fair Deal Employee who at the relevant time is an eligible employee as defined in the Admission Agreement;;
"Fair Deal Employees"	means those Transferring Employer Employees who are on the Relevant Transfer Date entitled to the protection of New Fair Deal and any Transferring Former Contractor Employees who originally transferred pursuant to a Relevant Transfer under the Employment Regulations (or the predecessor legislation to the Employment Regulations), from employment with a public sector employer and who were once eligible to participate in the Schemes and who at the Relevant Transfer Date become entitled to the protection of New Fair Deal; and
"Schemes"	means the Principal Civil Service Pension Scheme available to employees of the civil service and employees of bodies under the Superannuation Act 1972, as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Scheme and (ii) Death Benefits Scheme; the Civil Service Additional Voluntary Contribution Scheme; and the 2015 New Scheme (with effect from a date to be notified to the <i>Contractor</i> by the Minister for the Cabinet Office);

9.21 Participation

- 9.21.1 The *Contractor* undertakes to enter into the Admission Agreement.
- 9.21.2 The *Contractor* and the *Employer* and/or the Business Unit (as applicable) undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the *Contractor* to participate in the Schemes in respect of the Fair Deal Employees.
- 9.21.3 The *Contractor* shall bear its own costs and all costs that the Employer reasonably incurs in connection with the negotiation, preparation and

execution of documents to facilitate the *Contractor* participating in the Schemes.

9.22 Future Service Benefits

- 9.22.1 The *Contractor* shall (or in the event that Part B applies and staff have already been readmitted to the Schemes) procure that the Fair Deal Employees shall be either automatically enrolled in or offered continued membership of the Schemes that they currently contribute to or were eligible to join immediately prior to the Relevant Transfer Date and the *Contractor* shall procure that the Fair Deal Employees shall continue to accrue or accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.
- 9.22.2 The *Contractor* undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the *Employer and/or the Business Unit (as applicable)*, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the *Employer and/or the Business Unit (as applicable)* in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes at the relevant date.
- 9.22.3 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.
- 9.22.4 In respect of Part B of this Schedule only, if the *Contractor* is rejoining the Schemes for the first time, the *Employer and/or the Business Unit (as applicable)* shall procure that the Fair Deal Employees shall be either admitted to or offered continued membership of the relevant section of the Schemes that they became eligible to join on the Relevant Transfer Date and shall continue to accrue or accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.

9.23 Funding

- 9.23.1 The *Contractor* undertakes to pay to the Schemes such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.
- 9.23.2 The *Contractor* shall indemnify and keep indemnified the *Employer and/or the Business Unit (as applicable)* on demand against any claim by, payment to, or loss incurred by the Schemes in respect of the failure to account to the Schemes for payments received and non-payment or the late payment of any sum payable by the *Contractor* to or in respect of the Schemes.

9.24 Provision of Information

9.24.1 The *Contractor* and the *Employer* and/or the Business Unit (as applicable) respectively undertake to each other:

9.24.1.1 to provide all information which the other party may reasonably request concerning matters

(a) referred to in this Annex and

(b) set out in the Admission Agreement

and shall supply such information as expeditiously as possible;
and

9.24.1.2 not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other party (not to be unreasonably withheld or delayed).

9.25 Indemnities

9.25.1 The *Contractor* undertakes to the *Employer* and/or the Business Unit (as applicable) to indemnify and keep indemnified the *Employer* and/or the Business Unit (as applicable) on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

9.26 Employer Obligation

9.26.1 The *Contractor* shall comply with the requirements of the Pensions Act 2008 and the Transfer of Employment (Pension Protection) Regulations 2005.

9.27 Subsequent Transfers

9.27.1 The *Contractor* shall:

9.27.1.1 not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the date of the relevant future transfer; and

9.27.1.2 provide all such co-operation and assistance as the Replacement Contractor and/or the *Employer* and/or the Business Unit (as applicable) may reasonably require to enable the Replacement Contractor to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under the New Fair Deal; and.

9.27.1.3 for the period either

- (a) after notice (for whatever reason) is given, in accordance with the other provisions of this contract, to terminate the contract or any part of the *service*; or
- (b) after the date which is two (2) years prior to the date of expiry of this contract,

ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Contract or the *Employer* and/or the Business Unit (as applicable), no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of the *Employer* and/or the Business Unit (as applicable) (such approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

ANNEX 2: LIST OF NOTIFIED SUBCONTRACTORS

Proposed list of ISS sub-contractors:

[REDACTED]

CONTRACT SCHEDULE J

SECURITY PROVISIONS

10. CONTRACT SCHEDULE J - SECURITY PROVISIONS

10.1 Definitions

For the purposes of this schedule the following terms shall have the meanings given below:

"Affiliates"	in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;
"Breach of Security"	<p>in accordance with the Security Requirements and the Security Policy, the occurrence of:</p> <ul style="list-style-type: none">(a) any unauthorised access to or use of the service, the Employer and/or the Business Unit Premises, the Sites, the Contractor System and/or any ICT, information or data (including the Confidential Information and the Employer and/or the Business Unit Data) used by the <i>Employer</i> and/or the Business Unit and/or the <i>Contractor</i> in connection with this contract; and/or(b) the loss and/or unauthorised disclosure of any information or data (including the Confidential Information and the Employer and/or the Business Unit Data), including any copies of such information or data, used by the <i>Employer</i> and/or the Business Unit and/or the <i>Contractor</i> in connection with this contract.
"Clearance"	means national security clearance and employment checks undertaken by and/or obtained from the Defence Vetting Agency;
"Commercially Sensitive Information"	the information agreed between the Parties (if any) comprising the information of a commercially sensitive nature relating to the <i>Contractor</i> , its IPR or its business or which the <i>Contractor</i> has indicated to the <i>Employer</i> that, if disclosed by the <i>Employer</i> , would cause the <i>Contractor</i> significant commercial disadvantage or material financial loss;
"Confidential Information"	the <i>Employer's</i> and/or the Business Unit Confidential Information and/or the <i>Contractor's</i> Confidential Information;
"Contracting Body"	any Contracting Body as defined in Regulation 5(2) of the Public Contracts (Works, Service and Supply)

(Amendment) Regulations 2000 other than the *Employer* and/or the Business Unit .

"Contractor's Confidential Information"

any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and contractors of the *Contractor*, including IPRs, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential, including the Commercially Sensitive Information;

"Contractor Equipment"

the hardware, computer and telecoms devices and equipment supplied by the *Contractor* or its Subcontractors (but not hired, leased or loaned from the *Employer and/or the Business Unit*) for the provision of the *service*;

"Contractor Software"

software which is proprietary to the *Contractor*, including software which is or will be used by the *Contractor* for the purposes of providing the *service*;

"Contractor System"

the information and communications technology system used by the *Contractor* in performing the *service* including the Software, the *Contractor* Equipment and related cabling (but excluding the *Employer* System);

"Control"

means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and "Controls" and "Controlled" shall be interpreted accordingly;

"Crown Body"

any department, office or agency of the Crown;

"Default"

any breach of the obligations of the relevant party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant party, its employees, servants, agents or Sub contractors in connection with or in relation to the subject-matter of this contract and in respect of which such party is liable to the other;

"Dispute Resolution Procedure"

the dispute resolution procedure set out in this contract (if any) or as agreed between the Parties;

"Employer Confidential Information"

all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and contractors of the *Employer* and/or the Business Unit, including all IPRs, together with all information derived

from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential;

"Employer Premises"	means premises owned, controlled or occupied by the <i>Employer</i> and/or the Business Unit or its Affiliates which are made available for use by the <i>Contractor</i> or its Subcontractors for provision of the <i>service</i> (or any of them) on the terms set out in this contract or any separate agreement or licence;
"Employer System"	the <i>Employer's</i> and/or the Business Unit's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the <i>Employer</i> and/or the Business Unit or the <i>Contractor</i> in connection with this contract which is owned by or licensed to the <i>Employer</i> and/or the Business Unit by a third party and which interfaces with the <i>Contractor</i> System or which is necessary for the <i>Employer</i> and/or the Business Unit to receive the <i>service</i> ;
"Environmental Information Regulations"	the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations;
"FOIA"	the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such legislation;
"Good Industry Practice"	the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector;
"ICT"	information and communications technology;
"ICT Environment"	the <i>Employer</i> System and the <i>Contractor</i> System;
"Impact Assessment"	an assessment of a Change Request;
"Information"	has the meaning given under section 84 of the Freedom of Information Act 2000;
"Information Assets Register"	the register of information assets to be created and maintained by the <i>Contractor</i> throughout the <i>service period</i> as described in the contract (if any) or as otherwise agreed between the Parties;
"Intellectual Property"	(a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights

Rights" or "IPRs"	<p>in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information;</p> <p>(b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and</p> <p>(c) all other rights having equivalent or similar effect in any country or jurisdiction;</p>
"ISMS"	the Information Security Management System as defined by ISO/IEC 27001. The scope of the ISMS will be as agreed by the parties and will directly reflect the scope of the service;
"Know-How"	all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know how relating to the <i>service</i> but excluding know how already in the <i>Contractor's</i> or the <i>Employer's</i> and/or the Business Unit possession before this contract;
"List x"	means, in relation to a Subcontractor, one who has been placed on List x in accordance with Ministry of Defence guidelines and procedures, due to that Sub contractor undertaking work on its premises marked as CONFIDENTIAL or above;
"Malicious Software"	any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;
"Process"	has the meaning given to it under the Data Protection Legislation but, for the purposes of this contract, it shall include both manual and automatic processing;
"Protectively Marked"	shall have the meaning as set out in the Security Policy Framework.
"Regulatory Bodies"	those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this contract or any other affairs of the <i>Employer</i> and/or the Business Unit and "Regulatory Body" shall be construed accordingly;

"Request for Information"	a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations;
"Security Management Plan"	the <i>Contractor's</i> security plan prepared pursuant to paragraph 10.5.3 of schedule J (Security Management Plan) an outline of which is set out in Appendix 1 of schedule J (Security Management Plan);
"Security Policy Framework"	means the Cabinet Office Security Policy Framework (available from the Cabinet Office Security Policy Division);
"Security Requirements"	means the requirements in the contract relating to security of the provision of the service (if any) or such other requirements as the <i>Employer</i> and/or the Business Unit may notify to the <i>Contractor</i> from time to time;
"Security Tests"	shall have the meaning set out in Annex 2 (Security Management Plan) of this Contract Schedule J;
"Service Levels"	the levels of <i>service</i> required to be provided, as prescribed in this contract (if any) or as otherwise agreed by the Parties;
"Sites"	any premises from which the <i>service</i> are provided or from which the <i>Contractor</i> manages, organises or otherwise directs the provision or the use of the <i>service</i> or where any part of the <i>Contractor</i> System is situated or where any physical interface with the <i>Employer</i> System takes place;
"Software"	Specially Written Software, <i>Contractor</i> Software and Third Party Software;
"Specially Written Software"	any software created by the <i>Contractor</i> (or by a third party on behalf of the <i>Contractor</i>) specifically for the purposes of this contract;
"Staff Vetting Procedures"	the <i>Employer's</i> and/or the Business Unit's procedures and departmental policies for the vetting of personnel whose role will involve the handling of information of a sensitive or confidential nature or the handling of information which is subject to any relevant security measures, including, but not limited to, the provisions of the Official Secrets Act 1911 to 1989;
"Statement of Applicability"	shall have the meaning set out in ISO/IEC 27001 and as agreed by the Parties during the procurement phase;
"Standards"	the British or international standards,[<i>Employer's</i> and/or the Business Unit's internal policies and procedures, Government codes of practice and guidance together with any other specified policies or procedures referred to in this contract (if any) or as otherwise agreed by the Parties;

"Third Party Software" software which is proprietary to any third party other than an Affiliate of the *Contractor* which is or will be used by the *Contractor* for the purposes of providing the *service*; and

10.2 Introduction

10.2.1 This schedule covers:

- 10.2.1.1 principles of protective security to be applied in Providing the Service;
- 10.2.1.2 wider aspects of security relating to Providing the Service;
- 10.2.1.3 the development, implementation, operation, maintenance and continual improvement of an ISMS;
- 10.2.1.4 the creation and maintenance of the Security Management Plan;
- 10.2.1.5 audit and testing of ISMS compliance with the Security Requirements;
- 10.2.1.6 conformance to ISO/IEC 27001 (Information Security Requirements Specification) and ISO/IEC27002 (Information Security Code of Practice) and;
- 10.2.1.7 obligations in the event of actual, potential or attempted breaches of security.

10.3 Principles of Security

- 10.3.1 The *Contractor* acknowledges that the *Employer* places great emphasis on the confidentiality, integrity and availability of information and consequently on the security provided by the ISMS.
- 10.3.2 The *Contractor* shall be responsible for the effective performance of the ISMS and shall at all times provide a level of security which:
 - 10.3.2.1 is in accordance with Good Industry Practice, the *law of the contract* and this contract;
 - 10.3.2.2 complies with the Security Policy;
 - 10.3.2.3 complies with at least the minimum set of security measures and standards as determined by the Security Policy Framework (Tiers 1-4) available from the Cabinet Office Security Policy Division (COSPD);
 - 10.3.2.4 meets any specific security threats to the ISMS; and
 - 10.3.2.5 complies with ISO/IEC27001 and ISO/IEC27002 in accordance with paragraph 10.3.2 of this schedule;

- 10.3.2.6 complies with the Security Requirements; and
 - 10.3.2.7 complies with the *Employer's* and/or the Business Unit's ICT standards.
 - 10.3.3 The references to standards, guidance and policies set out in paragraph 10.3.2.2 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, from time to time.
 - 10.3.4 In the event of any inconsistency in the provisions of the above standards, guidance and policies, the *Contractor* gives an early warning to the *Service Manager* of such inconsistency immediately upon becoming aware of the same, and the *Service Manager* shall, as soon as practicable, advise the *Contractor* which provision the *Contractor* shall be required to comply with.
- 10.4 ISMS and Security Management Plan
- 10.4.1 Introduction:
 - 10.4.1.1 The *Contractor* shall develop, implement, operate, maintain and continuously improve and maintain an ISMS which will, without prejudice to paragraph 10.3.2, be approved, by the *Service Manager*, tested in accordance with the provisions relating to testing as set out in the contract (if any) or as otherwise agreed between the Parties, periodically updated and audited in accordance with ISO/IEC 27001.
 - 10.4.1.2 The *Contractor* shall develop and maintain a Security Management Plan in accordance with this Schedule to apply during the *service period*.
 - 10.4.1.3 The *Contractor* shall comply with its obligations set out in the Security Management Plan.
 - 10.4.1.4 Both the ISMS and the Security Management Plan shall, unless otherwise specified by the *Employer*, aim to protect all aspects of the *service* and all processes associated with Providing the Service, including the Affected Property, the *Contractor* System and any ICT, information and data (including the Employer and/or the Business Unit Confidential Information and the Employer and/or the Business Unit's Data) to the extent used by the *Employer* or the *Contractor* in connection with this contract.
 - 10.4.2 Development of the Security Management Plan:
 - 10.4.2.1 Within 20 Working Days after the Contract Date and in accordance with paragraph 10.4.4 (Amendment and Revision), the *Contractor* will prepare and deliver to the *Service Manager* for approval a fully complete and up to date Security Management Plan which will be based on the draft Security Management Plan set out in Appendix 2 of this Part 2 of this Contract Schedule J.

10.4.2.2 If the Security Management Plan, or any subsequent revision to it in accordance with paragraph 10.4.4 (Amendment and Revision), is approved by the *Service Manager* it will be adopted immediately and will replace the previous version of the Security Management Plan at Appendix 2 of this Part 2 of this Contract Schedule J. If the Security Management Plan is not approved by the *Service Manager* the *Contractor* shall amend it within 10 Working Days or such other period as the Parties may agree in writing of a notice of non-approval from the *Service Manager* and re-submit to the *Service Manager* for approval. The Parties will use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than 15 Working Days (or such other period as the Parties may agree in writing) from the date of its first submission to the *Service Manager*. If the *Service Manager* does not approve the Security Management Plan following its resubmission, the matter will be resolved in accordance with the Dispute Resolution Procedure. No approval to be given by the *Service Manager* pursuant to this paragraph 10.4.2.2 of this schedule may be unreasonably withheld or delayed. However any failure to approve the Security Management Plan on the grounds that it does not comply with the requirements set out in paragraph 10.4.3.4 shall be deemed to be reasonable.

10.4.3 Content of the Security Management Plan:

- 10.4.3.1 The Security Management Plan will set out the security measures to be implemented and maintained by the *Contractor* in relation to all aspects of the *service* and all processes associated with Providing the Service and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the *service* comply with the provisions of this schedule (including the principles set out in paragraph 10.3);
- 10.4.3.2 The Security Management Plan (including the draft version) should also set out the plans for transiting all security arrangements and responsibilities from those in place at the Contract Date to those incorporated in the *Contractor's* ISMS at the date notified by the *Service Manager* to the *Contractor* for the *Contractor* to meet the full obligations of the Security Requirements.
- 10.4.3.3 The Security Management Plan will be structured in accordance with ISO/IEC27001 and ISO/IEC27002, cross-referencing if necessary to other schedules of this contract which cover specific areas included within that standard.
- 10.4.3.4 The Security Management Plan shall be written in plain English in language which is readily comprehensible to the staff of the *Contractor* and the *Employer* engaged in the *service* and shall only reference documents which are in the possession of the *Employer* or whose location is otherwise specified in this schedule.

- 10.4.4 Amendment and Revision of the ISMS and Security Management Plan:
- 10.4.4.1 The ISMS and Security Management Plan will be fully reviewed and updated by the *Contractor* annually or from time to time to reflect:
- (a) emerging changes in Good Industry Practice;
 - (b) any change or proposed change to the Contractor System, the *service* and/or associated processes;
 - (c) any new perceived or changed security threats; and
 - (d) any reasonable request by the *Service Manager*.
- 10.4.4.2 The *Contractor* will provide the *Service Manager* with the results of such reviews as soon as reasonably practicable after their completion and amend the ISMS and Security Management Plan at no additional cost to the *Employer* and/or the Business Unit . The results of the review should include, without limitation:
- (a) suggested improvements to the effectiveness of the ISMS;
 - (b) updates to the risk assessments;
 - (c) proposed modifications to the procedures and controls that effect information security to respond to events that may impact on the ISMS; and
 - (d) suggested improvements in measuring the effectiveness of controls.
- 10.4.4.3 On receipt of the results of such reviews, the *Service Manager* will approve any amendments or revisions to the ISMS or Security Management Plan in accordance with the process set out at paragraph 10.4.2.2.
- 10.4.4.4 Any change or amendment which the *Contractor* proposes to make to the ISMS or Security Management Plan (as a result of a *Service Manager*'s request or change to the *service* or otherwise) shall be subject to the early warning procedure and shall not be implemented until approved in writing by the *Service Manager*.
- 10.4.5 Testing
- 10.4.5.1 The *Contractor* shall conduct tests of the ISMS ("Security Tests") on an annual basis or as otherwise agreed by the Parties. The date, timing, content and conduct of such Security Tests shall be agreed in advance with the *Service Manager*.
- 10.4.5.2 The *Service Manager* shall be entitled to witness the conduct of the Security Tests. The *Contractor* shall provide the *Service Manager* with the results of such tests (in a form approved by the

Employer and/or the Business Unit in advance) as soon as practicable after completion of each Security Test.

- 10.4.5.3 Without prejudice to any other right of audit or access granted to the *Employer* pursuant to this contract, the *Service Manager* and/or its authorised representatives shall be entitled, at any time and without giving notice to the *Contractor*, to carry out such tests (including penetration tests) as it may deem necessary in relation to the ISMS and the *Contractor's* compliance with the ISMS and the Security Management Plan. The *Service Manager* may notify the *Contractor* of the results of such tests after completion of each such test. Security Tests shall be designed and implemented so as to minimise the impact on the delivery of the *service*. If such tests adversely affect the *Contractor's* ability to deliver the *service* to the agreed Service Levels, the *Contractor* shall be granted relief against any resultant under-performance for the period of the tests.
- 10.4.5.4 Where any Security Test carried out pursuant to paragraphs 10.4.5.2 or 10.4.5.3 above reveals any actual or potential Breach of Security, the *Contractor* shall promptly notify the *Service Manager* of any changes to the ISMS and to the Security Management Plan (and the implementation thereof) which the *Contractor* proposes to make in order to correct such failure or weakness. Subject to the *Service Manager's* approval in accordance with paragraph 10.4.1.1, the *Contractor* shall implement such changes to the ISMS and the Security Management Plan in accordance with the timetable agreed with the *Service Manager* or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the ISMS or Security Management Plan to address a non-compliance with the Security Policy or Security Requirements the change to the ISMS or Security Management Plan shall be at no cost to the *Employer*.
- 10.4.6 Compliance with ISO/IEC 27001
- 10.4.7 Unless otherwise agreed by the Parties, the *Contractor* shall obtain independent certification of the ISMS to ISO/IEC 27001 within 12 months of the Contract Date and shall maintain such certification for the duration of the contract.
- 10.4.8 In the event that paragraph 10.5.1 above applies, if certain parts of the ISMS do not conform to Good Industry Practice, or controls as described in ISO/IEC 27002 are not consistent with the Security Policy, and, as a result, the *Contractor* reasonably believes that it is not compliant with ISO/IEC 27001, the *Contractor* shall promptly notify the *Service Manager* of this and the *Employer* and/or the Business Unit in its absolute discretion may waive the requirement for certification in respect of the relevant parts.
- 10.4.9 The *Service Manager* shall be entitled to carry out such regular security audits as may be required and in accordance with Good Industry Practice,

in order to ensure that the ISMS maintains compliance with the principles and practices of ISO 27001.

10.4.10 If, on the basis of evidence provided by such audits, it is the *Service Manager's* reasonable opinion that compliance with the principles and practices of ISO/IEC 27001 is not being achieved by the *Contractor*, then the *Service Manager* shall notify the *Contractor* of the same and give the *Contractor* a reasonable time (having regard to the extent and criticality of any non-compliance and any other relevant circumstances) to become compliant with the principles and practices of ISO/IEC 27001. If the *Contractor* does not become compliant within the required time then the *Service Manager* has the right to obtain an independent audit against these standards in whole or in part.

10.4.11 If, as a result of any such independent audit as described in paragraph 10.5.4 the *Contractor* is found to be non-compliant with the principles and practices of ISO/IEC 27001 then the *Contractor* shall, at its own expense, undertake those actions required in order to achieve the necessary compliance and shall reimburse in full the costs incurred by the *Employer* in obtaining such audit.

10.5 Breach of Security

10.5.1 Either party shall give an early warning to the other in accordance with the agreed security incident management process as defined by the ISMS upon becoming aware of any Breach of Security or any potential or attempted Breach of Security.

10.5.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in paragraph 10.6.1, the *Contractor* shall:

10.5.2.1 immediately take all reasonable steps necessary to:

- (a) remedy such breach or protect the integrity of the ISMS against any such potential or attempted breach or threat; and
- (b) prevent an equivalent breach in the future.

such steps shall include any action or changes reasonably required by the *Service Manager*; and

10.5.2.2 as soon as reasonably practicable provide to the *Service Manager* full details (using such reporting mechanism as defined by the ISMS) of the Breach of Security or the potential or attempted Breach of Security.

ANNEX 1 – Security Policy



GPA Access Control
Policy GPA Security 2!



GPA Data Protection
Policy GPA Digital and



GPA Privileged User
Security Policy GPA S



GPA Supplier
Assurance Security Pc



GPA Technology
Acquisition Security PP



Information Security
Policy GPA Security 2!

<https://www.gov.uk/government/collections/government-security>

<https://www.gov.uk/government/publications/orange-book>

Strategy in line with HMG's 007 Functional Security Standard

<https://www.gov.uk/government/publications/government-functional-standard-govs-007-security#:~:text=This%20functional%20standard%20is%20part,organisations%20and%20across%20organisational%20boundaries.>

ANNEX 2 – Security Management Plan



Security
Management Plan Ter

CONTRACT SCHEDULE K

MANAGEMENT INFORMATION

11. CONTRACT SCHEDULE K - MANAGEMENT AND PERFORMANCE INFORMATION

- 11.1 The *Contractor* must submit the following management information to the *Employer* on a monthly basis:

Each Service Report shall detail the following on a site-by-site basis and facilitate effective monitoring of achievement of Key Performance Indicators;

- Summary of PPM, periodic cleaning and forward maintenance activities in reporting month showing planned date and the actual date activities were carried out.
- Service performance in reporting month.
- Forward work plan to show PPM for following two months, specialist or periodic cleaning for the following month and current Forward Maintenance Plan.
- Contract variation requests.
- Details of all complaints.
- Statement of accounts showing the invoiced amounts, payments made by the Employer, payments made to sub-contractors, payments made to suppliers.
- Individual building usage of electricity, gas and water (main and sub meters). Highlight areas where each building is failing to reach targets and make recommendations to improve performance.
- Forthcoming changes in legislation.
- Health and safety, reportable accidents, incidents and near misses
- Environmental, Energy, Corporate Social Responsibilities and environment breaches
- Review of staffing numbers, and contract management structures including list of site staff showing name, job descriptions, work location, Disclosure & Barring Service (DBS) status, Security Industry Authority (SIA) licence and other relevant certification details as required.
- Service delivery proposals and contractual issues if any changes have occurred.
- Security issues
- Compliance and risk.

The Service Report shall measure the performance of each service area, these performance statistics are to be agreed with the Employer, but typically to contain:

- All reported faults in reporting period.
- Performance failure occurrences and duration.
- Performance failures dealt with within rectification periods.
- Performance failures not dealt with within rectification periods.
- Number of outstanding performance failures not dealt with.
- Average response times across types of fault.
- Call statistics from the Helpdesk, Reception or Switchboard services showing number of calls, longest ringing time and abandoned call rate.
- Waste removed from site showing weights of all waste streams.

The Employer and Contractor shall within reason have the opportunity to add further measurable items to this list, such requests shall be provided within a reasonable time before the production of the report to enable the Contractor to collate the necessary information.

CONTRACT SCHEDULE L

OPERATIONAL KEY PERFORMANCE INDICATORS

12. CONTRACT SCHEDULE L - OPERATIONAL KEY PERFORMANCE INDICATORS

This schedule sets out the *Employer's* specific KPIs and weightings as per Annex 1 Monthly KPI Measures Model.

Annex 1 – Monthly KPI Measures Model



CONTRACT SCHEDULE M

NOT USED

13. CONTRACT SCHEDULE M – NOT USED

CONTRACT SCHEDULE N

PRICES FOR TASK ORDERS

14. CONTRACT SCHEDULE N – PRICES FOR TASK ORDERS

14.1 Introduction

14.1.1 This schedule prescribes the procedure, calculations and rates to be used by the *Service Manager* and *Contractor* when assessing the Prices for Task Orders. Works described in this Contract Schedule are instructed as Task Orders and are not compensation events.

14.1.2 The following definitions shall apply to this Schedule:

14.1.2.1 Billable Works mean Works that become billable due to falling into the exclusions identified in clause 14.2.6 or exceeding the Comprehensive Liability Threshold.

14.1.2.2 Business Critical Events means the events set out in Contract Schedule A, Data Part One – Data Provided by the *Employer*, or an event which relates to the immediate security or health and safety of an Affected Property and mitigation of Business Continuity and Disaster Recovery risks.

14.1.2.3 Comprehensive Liability Threshold means the value set out in Contract Schedule A, Data Part One – Data Provided by the *Employer*.

14.1.2.4 Project Management Percentage Uplift means those rates set out in Contract Schedule E – The Price List.

14.1.2.5 Resource Rates means those rates set out as such in the Price List.

14.1.2.6 Tier One New Works means works with a total estimated value range as set out in Contract Schedule A, Data Part One – Data Provided by the *Employer*.

14.1.2.7 Tier Two New Works means works with a total estimated value range as set out in Contract Schedule A, Data Part One – Data Provided by the *Employer*.

14.1.2.8 Tier Three New Works means works with a total estimated value range as set out in Contract Schedule A, Data Part One – Data Provided by the *Employer*.

14.1.2.9 Tier Four New Works means works with a total estimated value range as set out in Contract Schedule A, Data Part One – Data Provided by the *Employer*.

14.2 Commercial Requirements

14.2.1 New Works

- 14.2.1.1 New Works shall all be authorised in accordance with Framework Schedule 2 Part A Annex 2 - New Works and Approvals Process. New Works may be required by the *Employer and/or the Business Unit*.
- 14.2.1.2 The *Employer* and/or the Business Unit may require these New Works:
- (a) to be managed and executed by the *Contractor*;
 - (b) to be managed by any third party and executed by the *Contractor*;
 - (c) to be managed by the *Contractor* and executed by suppliers under the Framework (other than the *Contractor*); or
 - (d) to be managed by the *Contractor* and executed by any third party.
- 14.2.1.3 Any quotation for New Works shall breakdown the costs in the categories below (in addition to any other applicable cost category);
- (a) labour;
 - (b) parts;
 - (c) replacement Assets;
 - (d) materials;
 - (e) profit and overheads; and
 - (f) Project Management Percentage Uplift (where applicable).

14.2.2 Quotation and Tenders for New Works

- 14.2.2.1 Where the *Service Manager* gives instructions to the *Contractor* to manage and/or execute New Works of a certain value (value to be determined at Further Competition) the following shall apply:
- (a) Tier One New Works shall be managed and executed by the *Contractor* and valued in accordance with the rates set out in the agreed Resource Rates. The *Contractor* shall provide the *Service Manager* with an estimate of costs and shall not commence any Tier One New Works until approval has been granted by the *Employer* and/or the Business Unit to proceed to completion.
 - (b) Tier Two New Works shall be managed and executed by the *Contractor*. Where instructed by the *Service Manager*, the *Contractor* shall obtain three written

quotations. The *Contractor* shall not commence any Tier Two New Works until approval has been granted by the *Service Manager* to proceed to completion.

- (c) Tier Three New Works shall be managed and executed by the *Contractor*. Where instructed by the *Service Manager*, the *Contractor* shall obtain three formal tenders under the *Contractor's* defined procurement process. The *Contractor* shall not commence any Tier Three New Works until approval has been granted by the *Service Manager* to proceed to completion.
- (d) Tier Four New Works shall be managed and executed by the *Contractor*. Where instructed by the *Service Manager*, the *Contractor* shall obtain five formal tenders under the *Contractor's* defined procurement process. The *Contractor* shall not commence any Tier Four New Works until approval has been granted by the *Service Manager* to proceed to completion.
- (e) The *Contractor* shall seek approval from the *Service Manager* prior to proceeding on any Billable Works with the exception of
 - (i) Billable Works up to the value specified in the Contract Schedule A, Data Part One – Data Provided by the Employer; or
 - (ii) New Works required as a consequence of a Business Critical Event.
 - The *Employer* shall not unreasonably withhold approval of values; however the *Contractor* shall retrospectively follow the above defined processes during the next Working Day.
- (f) Where New Works arise as a result of any
 - (i) Reactive Maintenance Works where the costs exceed the Comprehensive Liability Threshold,
 - (ii) Works that are Small Works, or
 - (iii) Works Arising from Planned Maintenancethe New Works shall not proceed until an instruction is received from the *Service Manager* in writing or via the CAFM System.

14.2.3 Projects

- 14.2.3.1 The *Service Manager* may decide that the New Works should be allocated a specific resource dedicated to providing a project management service, i.e. that the New Works are a Project.

- 14.2.3.2 If the *Service Manager* does not specify this requirement at the initiation of a New Works request, the *Contractor* may provide a quotation which includes this. However acceptance of this service must be approved in advance by the *Service Manager*.
- 14.2.3.3 This Project Management Percentage Uplift will be in addition to any costs for other professional services related to the delivery of the Project, for example architects or professional space planning services. However this will not apply to the services of a project or programme management discipline (for example, CDM co-ordinator). Such costs would be expected to be borne within the Project Management Percentage Uplift.
- 14.2.3.4 The Project Management Percentage Uplift shall always be applied to the value of the Project prior to any other uplift, for example profit and overheads
- 14.2.3.5 The *Contractor* shall provide evidence of the resource allocation to be provided in discharging this service at the time of quotation or tender and this must be agreed as acceptable by the *Employer* prior to any works commencing.

This shall be evidenced clearly in the quotation for works, and shall include as a minimum:

- (i) Resource / trade rates to be applied;
 - (ii) Number of hours activity expected;
 - (iii) Any travel or other expenses expected to be incurred; and
 - (iv) Any additional resources required to discharge the service.
- 14.2.3.6 Where the *Contractor* cannot demonstrate that the entire resource indicated above has been delivered whilst discharging the works, the *Employer* reserves the right to withhold a proportion of or the whole project management fee as deemed appropriate. The *Service Manager* will be the final arbiter in such circumstances and it is for the *Contractor* to demonstrate that this Project has been delivered as expected to the levels or resource time quoted for.

14.2.4 Not Used

14.2.5 Comprehensive Liability Threshold

- 14.2.5.1 The *Contractor* shall note that with the exception of emergencies or Business Critical Events, no activity with a value in excess of the agreed Comprehensive Liability Threshold shall be undertaken without a Task Order instructed via the *Service Manager*

- 14.2.5.2 Where costs of Reactive Maintenance exceed the Comprehensive Liability Threshold, only the cost above this value shall be billed to the *Employer* through the approval process as detailed in Framework Schedule 2 Part A Annex 2 – New Works and Approvals Process.
- 14.2.5.3 The *Contractor* shall supply and install all parts associated with Reactive Maintenance at its own cost. The *Contractor* shall note that for the avoidance of doubt, that this requirement includes the replacement of entire Assets as well as component part of Assets where replacement is deemed appropriate.
- 14.2.5.4 The *Contractor* shall maximise the benefits of its own buying power supply agreements to offer the most advantageous commercial position to the *Employer* and/or the Business Unit to ensure value for money. Any negotiated discounts applied against current trade price levels shall be passed to the *Employer* in full. Where appropriate the *Contractor* shall utilise the *Employer's* Contractor parts agreements, where any such agreements exist.
- 14.2.5.5 The *Contractor* shall source parts at the most cost effective terms and in recognition of quality and delivery time requirements. The *Contractor* and the *Employer* shall agree in advance the use of refurbished parts where they are deemed to be cost beneficial without any loss of service or as required in order to achieve required return to full operational service.
- 14.2.5.6 In the event of emergencies or Business Critical Events, the *Contractor* may proceed with remedial action without prior approval from the *Employer*. These events shall be defined as Business Critical works. The *Contractor* shall seek formal approval from the *Employer* by email and/or telephone as soon as is operationally possible, and shall keep the *Employer* advised at all times on the technical and financial status of the task. The *Employer* shall not unreasonably withhold approval of values; however the *Contractor* shall retrospectively follow the above defined processes during the next Working Day.
- 14.2.6 Hard FM General Requirements and Exclusions
- 14.2.6.1 Where works fall into the following categories, they are exclusions to the Lump Sum Price and charges will be subject to review and agreement between the *Contractor* and the *Employer* during Monthly contract performance meetings. Where charges apply, they will be considered via the New Works and Approvals process. This will include but not be limited to:
- (a) Equipment Beyond Economic Repair;
 - (b) Misuse of an Asset and/or an Affected Property and/or abuse of an Asset and/or an Affected Property where this can be proven by the Contractor

- (c) Damage or failure if due to continued use by the *Employer* and/or the Business Unit or Building User after fault has been diagnosed and the *Contractor* has advised the *Employer* and/or the Business Unit not to use the Asset;
- (d) The Building User not following the *Employer* and/or the Business Unit or manufacturer's operating procedural Standards;
- (e) Other unapproved *Contractors* repairing Assets;
- (f) Water or cleaning fluid damage due to incorrect cleaning procedures by Building Users;
- (g) Damage or failure due to electrical supplies being interrupted or altered by others;
- (h) Access denied to the *Contractor* where access had been agreed and prearranged;
- (i) *Employer* specifies a Compensation Event;
- (j) Fire, leaks, act of god, storm damage, floods or similar force majeure; unless caused by an act or failure of the *Contractor*;
- (k) New Works;
- (l) That part of the cost of the Reactive Maintenance Services for an event which exceeds the Comprehensive Liability Threshold;
- (m) Operator error by a Building User, where this can be proven by the *Contractor*.

14.2.6.2 The above listed works include Works Arising from Planned Maintenance.

14.2.6.3 A schedule of works arising from events listed in paragraph 14.2.6.1 above shall be provided to the *Employer* on a monthly basis and payment will be made through the defined approval process as agreed between the *Employer* and the *Contractor*.

CONTRACT SCHEDULE O

PAYMENT MECHANISM

15. CONTRACT SCHEDULE O – PAYMENT MECHANISM

15.1 Definitions

Adjustment Date	the date at which indexation is to be applied on each anniversary of the <i>starting date</i> . The first Adjustment Date is stated in Contract Schedule A – Contract Data Part One. Subsequent Adjustment Dates are on each anniversary of the first Adjustment Date.
Contract Day	a calendar day during the <i>service period</i> .
Contract Month(n)	a calendar month during the <i>service period</i> , referred to as “n”.
Contract Year	each annual period during the <i>service period</i> , starting on the <i>starting date</i> , and each anniversary thereof.
Indexed Monthly Payment	is an amount due which forms part of the Monthly Payment and is calculated in accordance with the formula for the Indexed Monthly Payment identified in this Contract Schedule O.
Monthly Disbursement	is the amount of disbursements, if any, paid by the <i>Contractor</i> on behalf of the <i>Employer</i> and/or the Business Unit (excluding any VAT) within the Previous Contract Month “n-1” and which are identified within the Service Information as a disbursement that the <i>Contractor</i> may reclaim from the <i>Employer</i> and/or the Business Unit for reimbursement.
Monthly Payment	is the amount due at each assessment date calculated in accordance with this Contract Schedule O.
Payment Index	is the index identified in Contract Schedule A – Contract Data Part One.
Previous Contract Month(n-1)	is the calendar month, referred to as “n-1” during the <i>service period</i> immediately prior to the relevant Contract Month “n”.
Monthly Total Value at Risk	is 6% of the sum of the Indexed Monthly Payment and Un-Indexed Monthly Payment of the relevant Contract Month.
Un-Indexed Monthly Payment	<p>is an amount due which forms part of the Monthly Payment and which is calculated differently depending on whether the relevant Monthly Payment is before or after the first Adjustment Date. The Un-Indexed Monthly Payment is calculated as follows:</p> <p>a) Before the first Adjustment Date it is: One twelfth (1/12) of the total of the Prices (excluding adjustments for compensation events) identified in the Price List for the relevant Contract Year plus the cost of compensation</p>

events falling due for payment within the relevant Contract Month

or

- b) After the first Adjustment Date: The cost of compensation events for the relevant Contract Month which:
- fall due for payment within the relevant Contract Month; and
 - have been assessed by the *Service Manager* after the last Adjustment Date.

15.2 CALCULATION OF THE MONTHLY PAYMENT

15.2.1 The Monthly Payment, MP_n , in respect of a Contract Month “n” shall be calculated in accordance with the following formula:

$$MP_n = IMP_n + UMP_n + MD_{n-1} + TO_{n-1} - PD_{n-1} \quad (1)$$

where:

- MP_n is the Monthly Payment to be determined in respect of the Contract Month “n”;
- IMP_n is the Indexed Monthly Payment for Contract Month “n”;
- UMP_n is the Un-indexed Monthly Payment for Contract Month “n”;
- MD_{n-1} is the Monthly Disbursement evidenced by invoices;
- TO_{n-1} is the total of the prices for Tasks which have reached Task Completion during the Previous Contract Month; and
- PD_{n-1} is the performance deduction in respect of the Previous Contract Month for failure against the KPIs in accordance with clause X20 (Management and Performance Information).

15.3 Monthly Payment at Final Contract Month

15.3.1 Equation (1) is superseded by equation (2) at final Contract Month:

$$MP_n = IMP_n + UMP_n + MD_{n-1} + TO_{n-1} - (2 \times PD_{n-1}) \quad (2)$$

15.3.2 The terms are consistent with those given above.

15.4 Monthly Payment following Final Contract Month

15.4.1 A balancing payment to reflect the performance deduction in the final Contract Month will be paid to, or deducted from, the sums due to the *Contractor* following the assessment of the *Contractor's* performance in the final Contract Month and will reflect actual performance in the final month of the *services period*.

- 15.4.2 A balancing payment will be paid to the *Contractor* for Monthly Disbursement, and Tasks which have reached Task Completion within the final month of the *services period*.

15.5 CALCULATION OF THE INDEXED MONTHLY PAYMENT (IMP_n)

- 15.5.1 The Indexed Monthly Payment (IMP_n) in respect of a Contract Month “n” shall be calculated in accordance with the following formula:

$$IMP_n = (IMP_{ADn-1} + UMP_{ADn-1}) \times \frac{CPI_{AD}}{CPI_o} \quad (3)$$

where:

CPI_o Is:

- a) for the first Adjustment Date, the Payment Index for the Contract Month commencing at the *starting date*;
- or
- b) for each subsequent Adjustment Date, the Payment Index for the Contract Month commencing at the previous Adjustment Date.

CPI_{AD} is the Payment Index for the Contract Month commencing on the relevant Adjustment Date.

IMP_{ADn-1} is the Indexed Monthly Payment for the Contract Month prior to the relevant Adjustment Date. If this is for the first Adjustment Date then this will be taken as zero (0).

UMP_{ADn-1} is the Un-Indexed Monthly Payment for the Contract Month prior to the Adjustment Date.

- 15.5.2 If the index has not been published for the relevant Contract Month as required for this calculation then the last published value of the index available at the Adjustment Date shall be used.

15.6 CALCULATION OF THE PERFORMANCE DEDUCTION (PD_n)

- 15.6.1 The monthly performance deductions shall be a maximum of the Monthly Total Value at Risk for the relevant Contract Month.

- 15.6.2 The monthly adjustment in relation to performance deduction for the Contract Month “n” (PD_n) is the sum of the performance deductions for Month “n” for failure against the KPI for each aspect of performance in that month (PDKPI_{sn}), calculated in accordance with the following formula:

$$PD_n = \sum PD_{KPIsn} \quad (6)$$

15.6.3 PDKPIsn shall be determined in accordance with the following formula:

$$PD_{KPIsn} = KSD_n \times R \quad (7)$$

where:

- PDKPIsn is the aggregate of the performance deductions for each of the KPI, against the KPI for each aspect of performance, for the Contract Month “n”
- KSDn is the KPI Service Deduction for each KPI for the Contract Month. This Deduction is applied to both the Indexed Monthly Payment and Un-Indexed Monthly Payment for Contract Month “n” and is detailed in Contract Schedule L and the Performance Adjustment Schedule; and
- R is the Ratchet applied individually to each KPI with repeated or frequent failure, this will either be 1, 1.5, 1.75 or 2 and determined in accordance with mechanism below.

15.7 RATCHET

- 15.7.1 A ratchet will apply to the total value of KPI deductions for each aspect of performance for frequent or repeated failure of the KPI target (the “Ratchet”).
- 15.7.2 The Ratchet is applied to the KPI for each aspect of performance and shall only apply once the aspect of performance against that KPI falls below the target stated in the Performance Adjustment Schedule.
- 15.7.3 The Ratchet is applied to the deduction for the relevant Contract Month. There are three levels of Ratchet, the application of which depends on frequency of repeated failures against the KPIs for the aspect of performance.
- 15.7.4 In the instance that either the aspect of performance has not experienced repeat or consecutive failure, or that the conditions for the ratchets outlined below are not applicable, the Ratchet will taken to be one (1).
- 15.7.5 Ratchet for ‘Consecutive Failure’:
- 15.7.5.1 A repetition ratchet of 1.5 will be applied if any aspect of performance has failed the KPI for two (2) consecutive months the Ratchet will apply to the deduction for the second month.
- 15.7.5.2 A repetition ratchet of 1.75 will be applied if any aspect of performance has failed the KPI for three (3) consecutive months the Ratchet will apply to the deduction for the third month.
- 15.7.5.3 A repetition ratchet of 2 will be applied if any aspect of performance has failed the KPI for four (4) consecutive months the Ratchet will apply to the deduction for the fourth and every subsequent consecutive month.

15.7.6 Ratchet for 'Failure over a 12 month period':

- 15.7.6.1 If in any 12 month rolling period the KPI for an aspect of performance is failed three (3) times a Ratchet of 1.5 will be applied to the deduction for the month in which the third occurrence occurs.
- 15.7.6.2 If in any 12 month rolling period the KPI for a Service is failed four (4) or five (5) times a Ratchet of 1.75 will be applied to the deduction for the month in which the fourth and fifth occurrence occurs.
- 15.7.6.3 If in any 12 month rolling period the KPI for a service is failed more than six (6) times a Ratchet 2 will be applied to the deduction for the month in which the sixth occurrence and for every subsequent occurrence within the 12 month rolling period occurs.
- 15.7.6.4 In the instance that there is an occurrence of both a 'Consecutive Failure' and a 'Failure over a 12-month period' and more than one Ratchet would apply the deduction and Ratchet resulting in the highest deductions will be used.

15.8 **EXTENSION TO SERVICE PERIOD**

- 15.8.1 Where the *Service Manager* instructs an extension to the *service period*, the Prices for the compensation event shall:
 - 15.8.1.1 be calculated on a pro-rata basis using the Prices in the Price List and adjusted for indexation using the Payment Index; and
 - 15.8.1.2 be apportioned to the Monthly Payment as part of the Un-Indexed Monthly Payment.

15.9 **BEDDING IN PERIOD**

- 15.9.1 The *Contractor* will be expected to be fully mobilised prior to the *starting date*. As such deductions will apply from the *starting date* and no bedding in period will apply.

CONTRACT SCHEDULE P

TUPE SURCHARGE

16. CONTRACT SCHEDULE P – TUPE SURCHARGE

16.1 Introduction

16.1.1 This schedule sets out the process for determining the:

16.1.1.1 TUPE Surcharge, if a Relevant Transfer takes place; and

16.1.1.2 Redundancy Surcharge in the event that, following a Relevant Transfer, a Transferring Former Contractor Employee and/or a Transferring Employer Employee is made redundant by the *Contractor* as a result of an economic technical organisational reason entailing changes to the workforce and the *Contractor* has followed a fair dismissal procedure and complied with all contractual and legislative requirements.

16.1.2 The “TUPE Surcharge” means:

16.1.2.1 the difference, on an annual basis, between:

- (a) the costs to employ Transferring Former Contractor Employees and/or Transferring Employer Employees (as the case may be); and
- (b) the equivalent costs to employ staff used by the Contractor at Further Competition to calculate the Prices,

in respect of the following:

- (i) annual salary
- (ii) annual national insurance cost
- (iii) annual pension cost
- (iv) holiday entitlement
- (v) annual life insurance cost
- (vi) annual sick pay entitlement
- (vii) maternity/paternity costs
- (viii) any other cost arising directly from the contract of employment of the Transferring Former Contractor Employee and or Transferring Employer Employee for which there is an equivalent cost applicable to the employed staff

used by the Contractor at Further Competition to calculate the Prices.

16.1.3 The “Redundancy Surcharge” means, in relation to a redundancy as described in paragraph 16.1.1.2 above, the following costs:

16.1.3.1 any tribunal awards, redundancy payments including contractual or enhanced redundancy costs and notice payments.

16.2 TUPE Surcharge

16.2.1 Where a Relevant Transfer takes place, or will take place, the *Contractor* shall, no later than 30 days after the Relevant Transfer Date, submit to the *Service Manager*, its calculation of the TUPE Surcharge together with a breakdown and supporting evidence as may be reasonably necessary for the *Service Manager* to corroborate and assess the calculation of the TUPE Surcharge.

16.2.2 On receipt of the *Contractor's* calculation of the TUPE Surcharge in accordance with paragraph 16.2.1 the *Service Manager* shall either:

16.2.2.1 Notify the *Contractor* in writing of acceptance of the TUPE Surcharge relating to the Relevant Transfer.

16.2.2.2 Request further information/evidence; and/ or

16.2.2.3 Request a meeting to discuss/clarify the evidence provided

16.2.3 Where the TUPE Surcharge is agreed following the receipt of further information/evidence or following a meeting, the *Service Manager* shall notify the *Contractor* in writing.

16.2.4 In the event that the *Contractor* and the *Service Manager* are unable to agree the TUPE Surcharge, they shall follow the agreed dispute resolution procedure.

16.2.5 On agreement of the TUPE Surcharge the Prices shall be changed accordingly.

16.3 Annual Review of TUPE Surcharge

16.3.1 The TUPE Surcharge shall be reviewed by the *Service Manager* at the commencement of each Contract Year (as defined in Schedule O – Payment Mechanism).

16.3.2 The *Contractor* shall submit to the *Service Manager*, no later than 30 days prior to Contract Year, evidence (in accordance with clause 16.2.1) of any change to the TUPE Surcharge since it was last adjusted including but not limited to whether or not a Transferring Former Contractor Employee and/or a Transferring Employer Employee is still employed by the *Contractor* and/or engaged on this contract. The *Employer* shall cease to be liable to pay the TUPE Surcharge in respect of a particular Transferring Former Contractor Employee or a Transferring Employer Employee from the date

upon which he ceases to be employed by the *Contractor* or engaged on this contract (whichever occurs the earliest).

16.3.3 On receipt of the *Contractor's* calculation of the TUPE Surcharge in accordance with paragraph 16.3.2 the *Service Manager* shall either:

16.3.3.1 Notify the *Contractor* in writing of acceptance of the adjusted TUPE Surcharge; or

16.3.3.2 Request further information/evidence; and/ or

16.3.3.3 Request a meeting to discuss/clarify the evidence provided

16.3.4 Where the adjustment to the TUPE Surcharge is agreed following the receipt of further information/evidence or following a meeting, the *Service Manager* shall notify the *Contractor* in writing.

16.3.5 In the event that the *Contractor* and the *Service Manager* are unable to agree the adjustment to the TUPE Surcharge, they shall follow the agreed dispute resolution procedure.

16.4 Adjustment to the TUPE Surcharge

16.4.1 Where the adjusted TUPE Surcharge is less than the TUPE Surcharge in the previous Contract Year, the Prices shall be adjusted to account for the lower TUPE Surcharge.

16.4.2 The adjusted TUPE Surcharge shall be used as the benchmark in the subsequent annual TUPE costs review.

16.4.3 Where the adjusted TUPE Surcharge is more than the TUPE Surcharge in the previous Contract Year, the Prices shall be adjusted to account for the higher TUPE Surcharge.

16.5 Right of Audit

16.5.1 The *Service Manager* reserves the right to review and audit the calculation of the TUPE Surcharge at any time and the *Contractor* shall repay to the Employer any over payment between the TUPE Surcharge used to adjust the Prices and the corrected TUPE Surcharge calculated following a review and audit.

- Redundancy Surcharge
- Where a Relevant Transfer takes place, or will take place, the *Contractor* shall not make any Transferring Former Contractor Employee(s) and/or Transferring Employer Employee(s) redundant without consulting the *Service Manager*.
- The *Contractor* shall mitigate the effects of any Redundancy Surcharge by:

- redeploying such people where it is practicable for the *Contractor* to do so; or
- where redeployment is not practicable, taking such reasonable mitigation steps to minimise the costs of redundancy where practicable; and
- complying with the law and any reasonable instructions from the *Service Manager*.
- The Redundancy Surcharge shall be zero unless the *Contractor* has consulted with the *Service Manager*, pursuant to paragraph 16.6.1, about the particular Transferring Former Contractor Employee(s) and/or Transferring Employer Employee(s) within 12 months of the *date of the Relevant Transfer*.
- Where redundancy is unavoidable, the *Contractor* shall provide the *Service Manager* with its estimate of the Redundancy Surcharge together with a breakdown and supporting evidence as may be reasonably necessary for the *Service Manager* to corroborate and assess the calculation of the Redundancy Surcharge.
- On receipt of the *Contractor's* calculation of the Redundancy Surcharge in accordance with paragraph 16.6.4 the *Service Manager* shall either:
 - notify the *Contractor* in writing of acceptance of the Redundancy Surcharge relating to the Relevant Transfer; and/or
 - request further information/evidence; and/ or
 - request a meeting to discuss/clarify the evidence provided.
- Where the Redundancy Surcharge is agreed following the receipt of further information/evidence or following a meeting, the *Service Manager* shall notify the *Contractor* in writing.
- In the event that the *Contractor* and the *Service Manager* are unable to agree the Redundancy Surcharge, they shall follow the agreed dispute resolution procedure.
- On agreement of the Redundancy Surcharge the Prices shall be changed accordingly.

CONTRACT SCHEDULE Q

LIST OF ROLES AT RISK OF REDUNDANCY

The list of roles at risk of redundancy is as follows:



GPA Remaining ISS
employee roles. [REDACTED]