



Ministry of Justice

**AMENDMENT AND RESTATEMENT AGREEMENT IN RESPECT OF CALL OFF CONTRACT
TERMS AND CONDITIONS**

Soft FM Services:

WORK PACKAGE D – SOFT FM – SOUTH

Contract Reference Number: con_14524

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Future FM – Soft Services –South

Commercial and Contract Management (CCM) Directorate

Date 28 March 2018

AMENDMENT AND RESTATEMENT AGREEMENT

Between

The Secretary of State for Justice

And

OCS Group UK Limited

in respect of an agreement for the provision of

Soft Facilities Management Services

Work Package D – South and

Home Office South

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AMENDMENT AND RESTATEMENT AGREEMENT made the 28th day of March 2018

BETWEEN

- (1) The Secretary of State for Justice of 102 Petty France, London SW1H 9AJ, acting as part of the Crown (the "**Employer**"); and
- (2) OCS Group UK Limited (Company Number 3056469) Of/whose registered address is at 4 Tilgate Forest Business Park, Brighton Road, Crawley, West Sussex, RH11 9BP (the "**Contractor**").

BACKGROUND

- (A) The Minister for the Cabinet Office (the "**Cabinet Office**") as represented by Crown Commercial Service, a trading fund of the Cabinet Office, without separate legal personality (the "**Authority**"), established a framework for facilities management services for the benefit of public sector bodies.
- (B) The *Contractor* was appointed to the framework and executed the framework agreement (with reference number **RM1056**) which is dated 28th July 2015 (the "**Framework Agreement**").
- (C) On 20 November 2017, the Employer and the Contractor entered into an agreement in respect of Work Package B – South for the provision by the Contractor of soft FM services (the "**Contract**").
- (D) The Parties have agreed to amend and restate the Contract on the terms set out herein to include certain additional services.

IT IS AGREED AS FOLLOWS:

1 DEFINITIONS AND INTERPRETATION

- 1.1 Capitalised terms and expressions used in this Agreement shall have the meaning given to those same terms and expressions (whether expressly or by reference) in the Contract save where otherwise expressly defined herein or the context otherwise requires.
- 1.2 Save where expressly stated otherwise or the context otherwise requires, references to Clauses are to the clauses of this Agreement.
- 1.3 In relation to the subject matter of this Agreement (and the respective rights, duties, obligations and liabilities of the parties in respect of the same) only, in the event of any inconsistency, ambiguity or discrepancy between any provision of this Agreement and any provision of the Contract, the provision or provisions of this Agreement shall prevail.

2 EFFECTIVE DATE

- 2.1 This Agreement shall come into full force and effect on and from 0001 hours on 29th March 2018 (the "**Effective Date**").

3 VARIATION OF THE SERVICES CONTRACT

- 3.1 The Parties hereby agree that the Contract is amended and restated in the form set out in the Schedule to this Agreement.
- 3.2 The Contract shall continue in full force and effect, in accordance with its terms (as amended pursuant to this Agreement).
- 3.3 On or before the execution of this Agreement, the Contractor will deliver to the Employer a written confirmation from the Guarantor acknowledging it has notice of the terms of this Agreement and confirming that its obligations and liabilities under the Call Off Guarantee

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referred to in clause X4 of the Contract extend to the Contract as amended pursuant to this Agreement.

4 ENTIRE AGREEMENT

4.1 This Agreement constitutes the entire agreement between the parties relating to the subject matter of this Agreement and supersedes and extinguishes any prior communications, drafts, informal agreements, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing, between the parties in relation to the subject matter of this Agreement.

4.2 In entering into this Agreement neither party has relied on any representation, warranty, collateral agreement or other assurance (except those set out in this Agreement) made by or on behalf of the other party before the signature of this Agreement and each of the parties waives all rights and remedies which, but for this Clause 4.2, might otherwise be available to it in respect of any such representation, warranty, collateral agreement or other assurance provided that nothing in this Clause 4.2 shall limit or exclude any liability for fraud.

5 DISPUTE RESOLUTION

5.1 The provisions of clause W2, clause W3 and Contract Schedule H of the Contract shall apply, mutatis mutandis, in respect of any disputes arising out of or in connection with this Agreement.

6 RIGHTS OF THIRD PARTIES

6.1 This Agreement is enforceable by the Parties and their successors in title and permitted assignees. The Parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it, save as provided in clause YUK(3) of the Contract.

7 COSTS

The Employer shall be responsible for the reasonable costs and expenses of the Contractor reasonably incurred in connection with the negotiation, preparation and execution of this Agreement.

8 COUNTERPARTS

This Agreement may be executed in any number of counterparts which, when executed and delivered shall be an original and together constitute the same document.

9 GOVERNING LAW AND JURISDICTION

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales and each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

IN WITNESS WHEREOF the Parties have executed this contract by their duly authorised representatives and delivered on the date first above written.

Executed for and on behalf of)
THE SECRETARY OF STATE)
FOR JUSTICE

) Authorised signatory

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Signed for and on behalf of the *CONTRACTOR*

By:

Name:

Title:

in the presence of:

Witness:

Full Name:

Address:

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SCHEDULE

Date 20 November 2017 and amended and restated on 28th March 2018

FORM OF AGREEMENT
Incorporating the NEC3 Term Service Contract
April 2013

Between

The Secretary of State for Justice

And

OCS Group UK Limited

for the provision of

Soft Facilities Management Services

Work Package D – South and

Home Office South

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THIS AGREEMENT is made the 20th day of November 2017 and amended and restated on 28th March 2018

BETWEEN

- (1) The Secretary of State for Justice of 102 Petty France, London SW1H 9AJ, acting as part of the Crown (the "**Employer**"); and
- (2) OCS Group UK Limited (Company Number 3056469) Of/whose registered address is at 4 Tilgate Forest Business Park, Brighton Road, Crawley, West Sussex, RH11 9BP (the "**Contractor**").

BACKGROUND

- (A) The Minister for the Cabinet Office (the "**Cabinet Office**") as represented by Crown Commercial Service, a trading fund of the Cabinet Office, without separate legal personality (the "**Authority**"), established a framework for facilities management services for the benefit of public sector bodies.
- (B) The *Contractor* was appointed to the framework and executed the framework agreement (with reference number **RM1056**) which is dated 28th July 2015 (the "**Framework Agreement**").
- (C) On the 4th November 2016, the *Employer*, acting as part of the Crown, invited the *Contractor* along with other framework suppliers to tender for *Employer's* facilities management service requirements in accordance with the Call Off Procedure (as defined in the Framework Agreement).
- (D) On the 26th January 2017, the *Contractor* submitted a tender response and was subsequently selected by the *Employer* to provide the *service*.
- (E) The *Contractor* has agreed to perform the *service* in accordance with this agreement and the Framework 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.

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IN WITNESS WHEREOF the Parties have executed this contract by their duly authorised representatives and delivered on the date first above written.

**Executed for and on behalf of)
THE SECRETARY OF STATE)
FOR JUSTICE**

.....
) Authorised signatory

Signed for and on behalf of the *CONTRACTOR*

By:

Name:

Title: Company Secretary / Director

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CONTRACT SCHEDULE A

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

Statements given in all contracts

1. 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
 - X4 Call Off Guarantee
 - X18 Limitation of liability
 - X19 Task Order
 - X20 Key Performance Indicators
 - X21 Clustering
 - 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

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Z7	Official secrets
Z8	The Transfer of Undertakings (Protection of Employment) Regulation 2008
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 – NOT USED
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
Z34	Call Off Guarantee

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- Z35 Limitation of Liability
- Z36 Task Order
- Z37 Management and Performance Information

SECTION 2

- Z38 Environmental requirements
- Z40 Public Liability Insurance
- Z41 Performance bond – **NOT USED**
- 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

SECTION 3

- Z60 Ambiguities and inconsistencies
- Z61 Time
- Z62 Payment
- Z63 Compensation Events (Affected Properties)
- Z64 Partial termination
- Z65 Step in
- Z66 The Additional Service

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

The *Service Manager* is:

Name: REDACTED

Address: 102 Petty France, London, SW1H 9AJ

The *Adjudicator* is:

Appointed by the *Adjudicator nominating body*.

The Affected Property is identified in Part A of the Service Information for the Original Service and Part B of the Service Information for the Additional Service.

The *service* is the Original Service and the Additional Service.

The Service Information is in Contract Schedule D Part A for the Original Service and Contract Schedule D Part A as supplemented by Contract Schedule D Part B for the Additional Service (Part B may be updated in accordance with Contract Schedule Q).

The *language of this contract* is English.

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

The *period for reply* is one week.

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

The *Adjudicator nominating body* is Centre for Effective Dispute Resolution (CEDR).

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:

Contract risks, maintenance risks, operational service risks, service continuity risks, Supplier management and staffing risks.

3 Time The *starting date* is 22 January 2018 in respect of the Original Service and 0001 hours on 29th March 2018 in respect of the Additional Service

The *service period* is five years from the *starting date* in respect of the Original Service or such later period if extended in accordance with this Contract, for the Original Service and for the Additional Service is the period from the *starting date* for the Additional Service until 30 June 2021.

5 Payment The *assessment interval* is monthly.

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

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The minimum amount of cover for insurance against loss of or damage caused by the *Contractor* to the *Employer's* property is 50,000,000 GBP (pounds sterling) in respect of any one occurrence, the number of occurrences being unlimited in any annual policy period and 50,000,000 GBP (pounds sterling) in respect any one occurrence and in the annual aggregate in respect of products liability or pollution liability (to the extent insured by the policy).

The minimum amount of cover for insurance in respect of loss of or damage to property (except the *Employer'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 is 50,000,000 GBP (pounds sterling) in respect of any one occurrence, the number of occurrences being unlimited in any annual policy period and 50,000,000 GBP (pounds sterling) in respect any one occurrence and in the annual aggregate in respect of products liability or pollution liability (to the extent insured by the policy).

The minimum amount of cover 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 10,000,000 GBP (pounds sterling) in respect of any one occurrence, the number of occurrences being unlimited in any annual policy period.

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 £1001 (in respect of Tier One New Works requested by the Department for Education Business Unit) or £301 (in respect of Tier One New Works requested by all other Business Units) to £5000.

The estimated total value range of Tier Two New Works is £5,001 to £50,000.

The estimated total value range of Tier Three New Works is £50,001 to £500,000.

The estimated total value range of Tier Four New Works is £500,001 to £1,000,000.

The Comprehensive Liability Threshold is £1000 in respect of activities relating to Affected Properties of the Department for Education Business Unit and £300 in respect of activities relating to Affected Properties of all other Business Units.

The Business Critical Events are as follows:

Any event which is an immediate health and safety or security risk, or is required to protect the property from further damage.

Value of Billable Works not requiring Approval:

£0

Contract Schedule O – Payment Schedule for Original Service

The first Adjustment Date in respect of the Original Service is the first Working Day following the first anniversary of the *starting date*. The first Adjustment Date in respect of the Additional Service is the first Working Day following the first anniversary of the Additional Service Steady State Commencement Date

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The Payment Index is the Consumer Price Index.

Z19 Extension to service period:

The notification period is three month(s) prior to the expiry of the current *service period* for the Original Service. There is no extension of the *service period* for the Additional Service.

Option X18 is used:

- For any one event, the *Contractor's* liability to the *Employer* for loss or damage to the *Employer's* property is limited to 50,000,000 GBP (pounds sterling).
- The *Contractor's* liability for Defects due to his design of an item of Equipment is limited to the higher of:
 - 5,000,000 GBP (pounds sterling) ; or
 - 120% of the total of the Prices (as adjusted in accordance with this Contract) subject to a maximum of 20,000,000 GBP (pounds sterling).
- The *Contractor's* total liability to the *Employer* for all matters arising under or in connection with this contract (including indirect and consequential loss), is limited to the higher of:
 - 5,000,000 GBP (pounds sterling) ; or
 - 120% of the total of the Prices (as adjusted in accordance with this Contract) subject to a maximum of 20,000,000 GBP (pounds sterling).
- The *end of liability date* is six years after the end of the relevant *service period*.

Option X19 is used:

- Subject to Contract Schedule Q, the *Contractor* submits a Task Order programme to the *Service Manager* within 5 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
All terms of this contract other than clauses 90 to 93	a Business Unit

Option A is used:

Call Off Contract: Soft FM Services – South

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The *Contractor* prepares forecasts of the final total of the Prices for the whole of the Original Service at intervals no longer than monthly.

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 four weeks of the Contract Date.

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 - **not applicable**

If there are additional *Employer's* risks:

- These are additional *Employer's* risks
 1. A difference between the rates of pay of Transferring Former Contractor Employees and/or Transferring Employer Employees and/or Additional Service Transferring Employees and/or Additional Service Non-TUPE 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).
 2. A Transferring Former Contractor Employee and/or any Transferring Employer Employee and/or any Additional Service Transferring Employee and/or any Additional Service Non-TUPE 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* for an amount of - **not applicable** - GBP (pounds sterling)

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 - **not applicable**

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Cover / indemnity is - **not applicable**

The deductibles are - **not applicable**

2. Insurance against - **not applicable**

Cover / indemnity is - **not applicable**

The deductibles are - **not applicable**

3. Insurance against - **not applicable**

Cover / indemnity is - **not applicable**

The deductibles are - **not applicable**

If additional insurances are to be provided:

- The *Employer* provides these additional insurances:

1. Insurance against - **not applicable**

Cover / indemnity is - **not applicable**

The deductibles are - **not applicable**

2. Insurance against - **not applicable**

Cover / indemnity is - **not applicable**

The deductibles are - **not applicable**

- 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 5,000,000 GBP (pounds sterling) in respect of any one claim and in the annual aggregate.

The deductibles are 250,000 GBP (pounds sterling)

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.

Option X13 (Performance Bond) is NOT USED

If Option Z39 (Collateral Warranties) is used:

- The *Contractor* enters into collateral warranty agreements in favour of:
 - **not applicable**
 - **not applicable**

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- The *Contractor* procures collateral warranties from the Subcontractors identified below:
 - **not applicable**
 - **not applicable**
- in favour of:
 - **not applicable**
 - **not applicable**

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

- The SME Percentage for the Original Service and the Additional Service during the Additional Service Steady State Period is **REDACTED**. The SME Percentage for the Additional Service during the Additional Service Initial Period is **REDACTED**.

If Option Z48 (Apprenticeships) is used:

- The Apprentice Percentage for the Original Service and the Additional Service during the Additional Service Steady State Period is a minimum of **REDACTED**. The Apprenticeship Percentage for the Additional Service during the Additional Service Initial Period is **REDACTED**.

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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:

Option Z 2

Identified and defined terms

Supplement 11.1
to NEC3 TSC
clause 11

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.

11.2(17)

Delete 11.2 (17) and replace with:

The Price for Services Provided to Date is the monthly payment calculated in accordance with Contract Schedule O plus the monthly payment, if any calculated in accordance with Contract Schedule Q.

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	11.2(19)	Delete 11.2(19) and replace with: In respect of : <ul style="list-style-type: none"> • the Original Service, the Prices are the amounts stated in the Price column of the relevant Price List. Where a quantity is stated for an item in the Price List, the Price is calculated by multiplying the quantity by the rate; and • the Additional Service, the Prices are: <ul style="list-style-type: none"> • in respect of the Additional Service Initial Period, the monthly payment calculated pursuant to paragraph 17.3 of Contract Schedule Q; and • in respect of the Additional Service Steady State Period, the amounts stated in the Price column of the Additional Service Price List (as defined in Contract Schedule Q). Where a quantity is stated for an item in the Additional Service Price List, the Price is calculated by multiplying the quantity by the rate.
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(21A)	11.2(21A)	Additional Service is the service to be provided at the Affected Property identified in the Service Information at Part B of Contract Schedule D
Additional Clause 11.2(21A1)	11.2(21A1)	Additional Service Transferring Employees are those employees of the Former Contractor (Carillion (AMBS) Limited (in provisional liquidation)) who transfer with the protection of the Employment Regulations and the Employment Regulations will apply to effect a Relevant Transfer on the <i>starting date</i> for the Additional Service.
Additional Clause 11.2(21A2)	11.2(21A2)	Additional Service Non-TUPE Employees are those employees of the Former Contractor (Carillion Services Ltd (in compulsory liquidation)) who would have been Transferring Former Contractor Employees in relation to the Additional Service had regulation 8(7) of the Employment Regulations not applied.
Additional Clause 11.2(21B)	11.2(21B)	Additional Service Initial Period is defined in Contract Schedule Q.
Additional Clause 11.2(21C)	11.2(21C)	Additional Service Steady State Period is defined in Contract Schedule Q.
Additional Clause 11.2(22)	11.2(22)	Business Unit is defined in Option Clause X21.1.

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Additional Clause 11.2(23)	11.2(23)	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(24)	11.2(24)	Data Controller has the meaning given to it in the Data Protection Act 1998.
Additional Clause 11.2(25)	11.2(25)	Data Processor has the meaning given to it in the Data Protection Act 1998.
Additional Clause 11.2(55)	11.2(26)	Data Protection Legislation means the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, 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(27)	11.2(27)	Data Subject has the meaning given to it in the Data Protection Act 1998.
Additional Clause 11.2(28)	11.2(28)	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(29)	11.2(29)	Employer Data is <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.

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Additional Clause 11.2(30)	11.2(30)	Employer's New Works and Approvals Process is the process set out in the Annex to Contract Schedule N.
Additional Clause 11.2(31)	11.2(31)	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(32)	11.2(32)	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(33)	11.2(33)	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(34)	11.2(34)	Former Contractor is the contractor supplying services to the <i>Employer</i> 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(34A)	11.2(34A)	Former Contractor Personnel is all persons employed or engaged by the Former Contractor together with the Former Contractor's 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(35)	11.2(35)	General Anti-Abuse Rule is: <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(36)	11.2(36)	Halifax Abuse Principle is the principle explained in the CJEU Case C-255/02 Halifax and others.
Additional Clause 11.2(37)	11.2(37)	Information has the meaning given under section 84 of the Freedom of Information Act 2000.
Additional Clause 11.2(38)	11.2(38)	Key Performance Indicator is defined in Option Clause X20.1.

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Additional Clause 11.2(39)	11.2(39)	An Occasion of Tax Non-Compliance is: <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(39A)	11.2(39A)	Original Service is the service identified in the Service Information at Part A of Contract Schedule D
Additional Clause 11.2(40)	11.2(40)	Personal Data has the meaning given to it in the Data Protection Act 1998.
Additional Clause 11.2(41)	11.2(41)	A Prohibited Act is: <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 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</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.

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Additional Clause 11.2(42)	11.2(42)	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(43)	11.2(43)	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(44)	11.2(44)	Relevant Transfer is a transfer of employment to which the Employment Regulations applies.
Additional Clause 11.2(45)	11.2(45)	Relevant Transfer Date is, in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place.
Additional Clause 11.2(46)	11.2(46)	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(47)	11.2(47)	Security Policy means the <i>Employer's</i> (and individual Business Units, where applicable) security policy attached as Annex 1 to Contract Schedule J (Security Policy) as may be updated from time to time.
Additional Clause 11.2(48)	11.2(48)	Transferring Employer Employees are those employees of the <i>Employer</i> to whom the Employment Regulations will apply to effect a Relevant Transfer on the Relevant Transfer Date.
Additional Clause 11.2(49)	11.2(49)	Transferring Former Contractor Employees are, in relation to a Former Contractor, those employees of the Former Contractor to whom the Employment Regulations will apply to effect a Relevant Transfer on the Relevant Transfer Date.
Additional Clause 11.2(50)	11.2(50)	TUPE Surcharge has the meaning given in Schedule P.
Additional Clause 11.2(51)	11.2(51)	Working Day is any day other than a Saturday or Sunday or public holiday in England and Wales.

Option Z 3

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*.

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- 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* 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*.
- 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 Z 4

Supplement to
NEC3 TSC
clause 15

Admittance to Affected Property

Insert new clauses:

- 15.4 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*.
- 15.5 The *Service Manager* may instruct the *Contractor* to take measures to prevent unauthorised persons being admitted to Affected Property.
- 15.6 Employees of the *Contractor* and his Subcontractors are to carry an *Employer's* pass whilst they are on the parts of the Affected Property identified in the Service Information.
- 15.7 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

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admitted to the Affected Property.

- 15.8 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*.
- 15.9 The *Contractor* takes the measures needed to prevent his and his Subcontractors' people taking, publishing or otherwise circulating such photographs.

Option Z 5

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* or any of the *Employer'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

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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 Z 6

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;
- Good Industry Practice; and
- The Framework Agreement.

Option Z 7

Official secrets

Supplement to
NEC3 TSC
clause 20

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 Z 8

The Transfer of Undertakings (Protection of Employment Regulations 2006

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Insert a new clause:

Supplement to
NEC3 TSC 24

24.3

The Parties agree that, subject to Contract Schedule Q:

- 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 and Annex 1: pensions of Contract Schedule I shall apply;
 - where the Relevant Transfer involves the transfer of Transferring Former Contractor Employees, Part B and Annex 1: pensions of the Contract Schedule I shall apply;
 - where the Relevant Transfer involves the transfer of and/or the offer of employment to Transferring Former Contractor Employees and/or Additional Service Transferring Employees, and/or Additional Service Non-TUPE Employees, Part B and Annex 1: pensions 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 and Annex 1: pensions of Contract Schedule I shall apply; 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 Annex 1: pensions might apply and Parts A and B of Contract Schedule I shall not apply;
- Part D of Contract Schedule I shall apply on the expiry or termination of the *service* or any part of thereof.

Option Z 9

Supplement to
NEC3 TSC
clause 27

Retention of documents and Audit

Insert new clauses:

27.5 The *Contractor* retains throughout the *period for retention*:

- 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.

27.6 The *Contractor* permits the *Employer* and the Auditor to examine documents held or controlled by the *Contractor* or any Subcontractor.

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27.7 The *Contractor* provides such oral or written explanations as the *Employer* or the Auditor considers necessary.

27.8 This clause does not constitute a requirement or agreement 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 Z 10

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* is exempt from the provisions of the FOIA, the *Employer* 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* 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* 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*.

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- 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 Z 11

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* 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* 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* at all times upon request and are delivered to the *Employer* at regular intervals prescribed by the *Employer* 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.

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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* may:

- 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* acting reasonably; and/or
- 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
- 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* immediately and inform the *Employer* of the remedial action the *Contractor* proposes to take.

Option Z 12

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* 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* (which may be specific instructions or instructions of a general nature as set out in this contract or as otherwise notified by the *Employer* 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;
- 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*;

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- 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*;
- notify the *Employer* (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* with full cooperation and assistance in relation to any complaint or request made, including by:
 - providing the *Employer* 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* instructions;
 - providing the *Employer* with any Personal Data it holds in relation to a Data Subject (within the timescales required by the *Employer*);
 - providing the *Employer* with any information requested by the *Employer*;
- permit the *Employer* 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 reasonable requests or directions by the *Employer* 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
- not Process or otherwise transfer any Personal Data outside the European Economic Area. If, after the Contract Date, the *Contractor* (or any Subcontractor) wishes to Process and/or transfer any Personal Data outside the European Economic Area, 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 European

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Economic Area;

- (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 European Economic Area;
 - (c) any Subcontractors or other third parties who will be Processing and/or transferring Personal Data outside the European Economic Area; 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* compliance with the Data Protection Legislation) in respect of the Personal Data that will be Processed and/or transferred outside the European Economic Area;
- in providing and evaluating the early warning, the parties shall ensure that they have regard to and comply with then-current Employer, 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 European Economic Area 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 European Commission 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 European Economic Area enters into a direct data processing agreement with the *Employer* on such terms as may be required by the *Employer*, which the *Contractor* acknowledges may include the incorporation of standard and/or model clauses (which are approved by the European Commission 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* to breach any of its applicable obligations under the Data Protection Legislation.

Option Z 13

Supplement to

Confidentiality

Insert a new clause

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NEC3 TSC
clause 27

- 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; and
 - not disclose the other party's Confidential Information to any other person without the owner's prior written consent.
- 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 Z17 (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* 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* Confidential Information received otherwise than for the purposes of this contract.
- 27.30 The *Contractor* may only disclose the *Employer* 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* as the *Employer* 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,

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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*, the *Contractor* shall procure that those members of the Contractor Personnel identified in the *Employer'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* or any person conducting an Office of Government Commerce gateway review;
- for the purpose of the examination and certification of the *Employer'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* 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* 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* 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 Z 14

Security Requirements

Additional
NEC3 TSC
clause 27

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

- Part A of the Security Policy in respect of services provided to the Department for Education Business Unit and Part B of

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the Security Policy in respect of services provided to all other Business Units;

- the Security Management Plan and the *Contractor* shall ensure that the Security Management Plan produced by the *Contractor* fully complies with the Security Policy;
- Contract Schedule J (Security Provisions).

Option Z 15

Malicious Software

Additional
NEC3 TSC
clause 27

- 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 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* has waived the obligation) or the *Employer Data* (whilst the *Employer 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* when provided to the *Contractor*; and
 - by the *Employer* if the Malicious Software originates from the *Employer* Software (in respect of which the *Employer* has waived its obligation) or the *Employer Data* (whilst the *Employer Data* was under the control of the *Employer*).

Option Z 16

Tax Compliance

Supplement to
NEC3 TSC
clause 20

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.

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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 Z 17

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 Z 18

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 Z 19

Supplement to
NEC3 TSC
clause 30

Extension to service period

Insert a new clause:

30.2 The *Service Manager* may instruct the *Contractor* to extend the *service period* for the Original Service up to a maximum of seven

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(7) years, inclusive of the initial term. The *Service Manager* instructs the *Contractor* no later than the period stated in the Contract Data. The instruction is a compensation event. The *Service Manager* may not instruct an extension of the *service period* for the Additional Service.

Option Z 20

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 Z 21

Payment – NOT USED

Option Z 22

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 sub subcontract 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 sub subcontractor without taking into account the amount paid by the *Contractor*.

Option Z 23

Supplement to
NEC3 TSC
clause 50

Contractual right of set off

Insert a new clause:

56.1 The *Employer* may set off any liability of the *Contractor* to:

- the *Employer*;
- any Contracting Body; or
- any Crown Body

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against any liability of the *Employer*, 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 Z 24

Compensation events

Supplement to
NEC3 TSC
clause 60.1

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 Z 25

Assessing Compensation events

Supplement to
NEC3 TSC
clause 63.1

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 relevant Price List current at the starting date (in the case of the Original Service) or at the Additional Service Steady State Commencement Date (in the case of the Additional Service).

In respect of the Original Service and in respect of the Additional Service during the Additional Service Steady State Period, 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;
- extends the *service period*, the change to the Prices is assessed in accordance with Contract Schedule O;
- has the effect, either individually or cumulatively together with other compensation events, of omitting a quantity of work:
 - 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;
 - 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;

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- 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 less the Fee (the Fee is calculated on the quantity of work in excess of the Threshold).
- arises in relation to the Original Service only from a difference between the rates of pay of Transferring Former Contractor Employees and/or Transferring Employer Employees and/or Additional Service Transferring Employees and/or Additional Service Non-TUPE 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.
- where a Transferring Former Contractor Employee and/or any Transferring Employer Employee and/or Additional Service Transferring Employees and/or Additional Service Non-TUPE Employees 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 Z 26

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 Z 27

Insurance cover

Supplement to

Insert a new clause:

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NEC3 TSC
clause 83

- 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 Z 28

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.

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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* 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* effects such insurance at rates at or above commercially reasonable rates, reimbursing the *Employer* in respect of what the net cost of such insurance to the *Employer* 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*.

Option Z 29

Supplement to
NEC3 TSC
clause 90.2

Termination Table

Delete the Termination Table and replace with:

TERMINATION TABLE

Terminating Party	Reason	Procedure	Amount due
<i>The 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, R20, R33	P1 and P4	A1 and A2
	R21	P1, P3 and P4	A1 and A2
<i>The 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
	R34	P1 and P4	A1 and A2

Option Z 30

Supplement to
NEC3 TSC
clause 91

Reasons for Termination

Insert new clauses:

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- 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).

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91.8.7it is entitled to do so in terms of Contract Schedule Q (R33), provided that any such termination shall be in respect of the Additional Service only.

Option Z 31

Option W3 Negotiation

Additional NEC3
TSC option W3

- 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 Z 32

Option W4 Mediation

Additional NEC3
TSC option W4

- 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

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- 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 Z 33

Changes in the law

Supplement to
NEC3 TSC
Option X2

X2

Delete X2.1 and replace with:

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- 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 Z 34 Call Off Guarantee

Supplement to NEC3 TSC Option X4 X4 Delete X4 and replace with:

- X4.1 The *Contractor* gives to the *Employer* a guarantee by the Call Off Guarantor of the *Contractor's* performance in the form of the Call Off Guarantee. If the Call Off Guarantee was not given by the Contract Date, it is given to the *Employer* within four weeks of the Contract Date.

Option Z 35 Limitation of Liability

Supplement to NEC3 TSC Option X18 X18.1 Delete X18.1

Option Z 36 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;
 - (save in respect of Additional Service during the Additional Service Initial Period) 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 (save in respect of Additional Service during the Additional Service Initial Period); and
 - the total of the prices for the Task (save in respect of Additional Service during the Additional Service Initial Period).

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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* 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 save that there is no Price List in respect of the Additional Service during the Additional Service Initial Period.

Option Z 37

Management and Performance Information

Supplement X20
to NEC3
TSC Option
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 Subject to Contract Schedule Q, 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; or
- any failure in respect of the Additional Service occurring during the Additional Service Initial Period.

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- 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.

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SECTION 2:

Option Z 38 Environmental requirements

Insert new clauses:

- | | | |
|--|------|---|
| Supplement to
NEC3 TSC
clause 29 | 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 Z 40 Public liability insurance

Insert a new clause

- | | | |
|--|-------|--|
| Supplement to
NEC3 TSC
clause 83 | 83.10 | The public liability insurance required by this contract includes an indemnity to principals clause in favour of the <i>Employer</i> and such other person as the <i>Service Manager</i> may reasonably require. |
|--|-------|--|

Option Z 41 Performance bond – NOT USED

Option Z 43 Employer provides right of access and things

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Insert a new clause 15.3

- Supplement to NEC3 TSC 15 15.3
- If the *Contractor* is permitted to use equipment Plant and Materials or other such property belonging to the *Employer* (the “Employer’s Property”) the following provisions apply:
- All Employer’s Property remains the property of the *Employer*;
 - Any failure of Employer’s Property shall not be a compensation event unless the *Contractor* demonstrates that the failure was caused by the *Employer’s* undue delay in its repair or replacement.

Option Z 44

Intellectual Property Rights

Insert new clauses:

- Supplement to NEC3 TSC clause 29 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* 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 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*.

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- 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* 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* or any licensee or assignee of the *Employer*.
- 29.14 In the event that any act unauthorised by the *Employer* infringes a moral right of the *Contractor* in relation to the Documents the *Contractor* undertakes, if the *Employer* so requests and at the *Employer's* expense, to institute proceedings for infringement of the moral rights.
- 29.15 The *Contractor* warrants to the *Employer* that he has not granted and shall not (unless authorised by the *Employer*) 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* 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* 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 Z 47

Small and Medium Sized Enterprises (SMEs)

Insert new clauses:

- Supplement to NEC3 TSC clause 29
- 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.

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- 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 Z 48

Apprenticeships

Insert new clauses:

- Supplement to NEC3 TSC clause 29
- 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 (the “Apprenticeship Percentage”) 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.

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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 Z 49

Information Sharing

Supplement to NEC3 TSC clause 27 27.35

Insert new clause:

The *Employer* may disclose the Confidential Information of the *Contractor*:

- on a confidential basis to any Crown Body for any proper purpose of the *Employer* or the relevant Crown Body;
- to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- to the extent that the *Employer* (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* 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* under this Z clause.

Option Z 50

Compensation Events (Pensions)

Supplement to NEC3 TSC clause 60.1 60.1

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

(18) a change to the pension employer contribution rate for Transferring Former Contractor Employees or Transferring Employer Employees or Additional Service Transferring Employees or Additional Service Non-TUPE Employees.

(19) a change to the pension auto-enrolment costs for Transferring Former Contractor Employees or Transferring Employer Employees or Additional Service Transferring Employees or Additional Service Non-TUPE Employees.

Option Z 51

Clustering

New Secondary Option Clause X21

Option X21: Clustering

Delete X21 and replace with:

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Identified and defined terms	X21.1	<p>(1) A Business Unit is a Central Government Body, a division of a Central Government Body or another part of the Crown identified in the Service 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> <p>(3) Any references to services being provided to the Employer or contracts with the Employer prior to this contract shall be deemed to also include any services or contracts with Business Units.</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 from the relevant Service Commencement Date.</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 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 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 <i>Service Manager</i> instructs otherwise;• the performance deduction being allocated against 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 each Business Unit's Affected Property.
	X21.5	<p>The <i>Contractor</i> submits any application for payment to a Business Unit or to the <i>Employer</i> as instructed by the <i>Service Manager</i> with a breakdown showing the allocation of the amount due against each Business Unit and the <i>Contractor</i> submits a copy of each application for payment submitted to a Business Unit to the <i>Employer</i>.</p>

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SECTION 3: FURTHER Z CLAUSES REQUIRED BY THE EMPLOYER

Option Z60

Ambiguities and Inconsistencies

Delete TSC clause 17.1 and replace with:

Supplement to
NEC3 TSC
clause 17.1

- 17.1 Subject to Clause 17.2 and Clause 17.3, the *Service Manager* or the *Contractor* notifies the other as soon as either becomes aware of an ambiguity or inconsistency in or between the documents which are part of this contract. The *Service Manager* gives an instruction resolving the ambiguity or inconsistency.
- 17.2 Subject to Clause 17.3, where there is any inconsistency between, on the one hand, any of the TSC core clauses as amended, the main Option A clauses as amended, the secondary Option clauses as amended and/or the dispute resolution clause W2, and on the other hand any other part of this contract, the former are to take precedence.
- 17.3 Where there is any inconsistency between, on the one hand, Contract Schedule Q and on the other hand, any other part of this contract, the former is to take precedence.

Option Z61

Time

Delete TSC clause 30.1 and replace with:

Supplement to
NEC3 TSC
clause 30.1

- 30.1 The *Contractor* does not start work (other than in respect of the mobilisation services) until the *starting date* and Provides the Service throughout the *service period*.

Option Z62

Payment

Delete TSC clause 51.1 and replace with:

Supplement to
NEC3 TSC
clause 51.1

- 51.1 The *Service Manager* certifies a payment within one week of each assessment date. The first payment is the amount due. Other payments are the change in the amount due since the last payment certificate. A payment is made by the *Contractor* to the *Employer* or relevant Business Unit if the change reduces the amount due. Other payments are made by the *Employer* or the relevant Business Unit to the *Contractor*. Payment are in the *currency of this contract* unless otherwise stated in this contract.

Option Z63

Compensation Events (Affected Properties)

Delete TSC clause 60.1(1) and replace with:

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- Supplement to NEC3 TSC clause 60.1 60.1 (1) The *Service Manager* gives an instruction changing the Service Information (including but not limited to removal or addition of an Affected Property) except
- a change made in order to accept a Defect or
 - a change to the Service Information provided by the *Contractor* for his plan which is made either at his request or to comply with other Service Information provided by the *Employer*
 - pursuant to Contract Schedule Q, paragraph 17.4.

Option Z64

Partial termination

Insert new sub-clause 91.8 as follows:

- Supplement to NEC3 TSC clause 91 91.8 Where the *Employer* is entitled to terminate under clause 90.2 and clause 91, the *Employer* may terminate in respect of part of the *services* only, whereupon a corresponding reduction in the Prices shall be made.

Option Z 65

Step in

Insert a new clause 94 as follows:

- Supplement to NEC3 TSC clause 94 94.1 If the *Employer* is of the reasonable opinion that:
- (1) there has been a material breach of the contract by the *Contractor*;
 - (2) a serious risk exists to the health or safety of persons or property or to the environment, as a result of a breach of contract by the *Contractor*; or
 - (3) action is required to discharge a statutory duty, resulting from a breach of contract by the *Contractor*,

then the *Employer* may, without prejudice to its rights under this contract, without terminating the contract, itself supply or procure the supply of all or part of the *services* until such time as the *Contractor* has demonstrated to the reasonable satisfaction of the *Employer* that the *Contractor* will once more be able to supply all or such part of the *services* in accordance with the contract.

- 94.2 The *Employer* may charge the *Contractor* for any costs and/or losses reasonably incurred and any reasonable administration costs in respect of the supply of any part of the *services* by the *Employer* or a third party if such costs exceed the payment which would otherwise have been payable to the *Contractor* for such part of the *services* and provided that the *Employer* uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement *services*.

Option Z67

Additional Service

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Insert a new Clause 28 as follows

28 Additional Service

28.1 The provisions of Contract Schedule Q apply in respect of the Additional Service.

CONTRACT SCHEDULE C

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

Statements given in all contracts:

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

The *direct fee percentage* is REDACTED in respect of the Original Service and is REDACTED for the Additional Service during the Additional Service Initial Period and REDACTED for the Additional Service during the Additional Service Steady State Period.

The *subcontracted fee percentage* is REDACTED in respect of the Original Service and is REDACTED for the Additional Service during the Additional Service Initial Period and REDACTED for the Additional Service during the Additional Service Steady State Period.

The key persons are:

- (1) **Name:** REDACTED
Job: REDACTED
Responsibilities: REDACTED
Qualifications: REDACTED
Experience: REDACTED
- (2) **Name:** REDACTED
Job: REDACTED
Responsibilities: REDACTED
Qualifications: REDACTED
Experience: REDACTED
- (3) **Name:** REDACTED
Job: REDACTED
Responsibilities: REDACTED
Qualifications: REDACTED
Experience: REDACTED
- (4) **Name:** REDACTED
Job: REDACTED
Responsibilities: REDACTED

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Qualifications: REDACTED

Experience: REDACTED

The following matters will be included in the Risk Register:

Contract risks, maintenance risks, operational service risks, service continuity risks, Supplier management and staffing risks.

Optional statements

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

- The Service Information for the *Contractor's* plan is in – **not applicable**

If a plan is identified in the Contract Data:

- The plan identified in the Contract Data is - **not applicable**

For Option A:

- The *price list* is in Contract Schedule E Part A for the Original Service and is to be developed and adopted in accordance with Contract Schedule Q for the Additional Service.

For Option A:

- The tendered total of the Prices is for the Original Service and the tendered total of the Prices for the Additional Service is to be developed and agreed in accordance with Contract Schedule Q.

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CONTRACT SCHEDULE D

4. **CONTRACT SCHEDULE D - THE SERVICE INFORMATION**

PART A – THE ORIGINAL SERVICE

PART B – THE ADDITIONAL SERVICE

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CONTRACT SCHEDULE E

5. **CONTRACT SCHEDULE E - THE PRICE LIST**

PART A – ORIGINAL SERVICE PRICE LIST

PART B – ADDITIONAL SERVICE PRICE LIST

To be developed and adopted in accordance with Contract Schedule Q.

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CONTRACT SCHEDULE F

6. **CONTRACT SCHEDULE F – NOT USED**

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CONTRACT SCHEDULE G

7. CONTRACT SCHEDULE G – CALL OFF GUARANTEE

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OCS GROUP LIMITED

- AND -

THE SECRETARY OF STATE FOR JUSTICE

DEED OF GUARANTEE

RELATING TO FACILITIES MANAGEMENT

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DEED OF GUARANTEE

THIS DEED OF GUARANTEE is made the day of 2017

BETWEEN:

- (1) OCS Group Limited a company incorporated in England and Wales with number 01298292, whose registered office is at 4 Tilgate Forest business Park, Brighton Road, Crawley, West Sussex, RH11 9BP (“**Guarantor**”); in favour of
- (2) The Secretary of State for Justice acting as part of the Crown whose principal office is at 102 Petty France, London, SW1P 9AJ (“**Beneficiary**”)

WHEREAS:

- (A) The Guarantor has agreed, in consideration of the Beneficiary entering into the Guaranteed Agreement with the Supplier, to guarantee all of the Supplier's obligations under the Guaranteed Agreement.
- (B) It is the intention of the Parties that this document be executed and take effect as a deed.

Now in consideration of the Beneficiary entering into the Guaranteed Agreement, the Guarantor hereby agrees with the Beneficiary as follows:

1. DEFINITIONS AND INTERPRETATION

In this Deed of Guarantee:

- 1.1 unless defined elsewhere in this Deed of Guarantee or the context requires otherwise, defined terms shall have the same meaning as they have for the purposes of the Guaranteed Agreement;
- 1.2 the words and phrases below shall have the following meanings:

"Authority"	has the meaning given to it in the Framework Agreement;
"Call Off Contract"	has the meaning given to it in the Framework Agreement;
"Framework Agreement"	means the Framework Agreement for the Services dated 28 th July 2015 with reference RM1056 made between the Authority and the Supplier;
"Guaranteed Agreement"	means the Call Off Contract made between the Beneficiary and the Supplier on
"Guaranteed Obligations"	means all obligations and liabilities of the Supplier to the Beneficiary under the Guaranteed Agreement together with all obligations owed by the Supplier to the Beneficiary that are supplemental to, incurred under, ancillary to or calculated by reference to the Guaranteed Agreement;
"Services"	has the meaning given to it in the Framework Agreement;
"Supplier"	OCS Group UK Limited with company number 03056469 whose registered office is at 4 Tilgate Forest business Park, Brighton Road, Crawley, West Sussex, RH11 9BP

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- 1.3 references to this Deed of Guarantee and any provisions of this Deed of Guarantee or to any other document or agreement (including to the Guaranteed Agreement) are to be construed as references to this Deed of Guarantee, those provisions or that document or agreement in force for the time being and as amended, varied, restated, supplemented, substituted or novated from time to time;
- 1.4 unless the context otherwise requires, words importing the singular are to include the plural and vice versa;
- 1.5 references to a person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect;
- 1.6 the words "other" and "otherwise" are not to be construed as confining the meaning of any following words to the class of thing previously stated where a wider construction is possible;
- 1.7 unless the context otherwise requires, reference to a gender includes the other gender and the neuter;
- 1.8 unless the context otherwise requires, references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it;
- 1.9 unless the context otherwise requires, any phrase introduced by the words "including", "includes", "in particular", "for example" or similar, shall be construed as illustrative and without limitation to the generality of the related general words;
- 1.10 references to Clauses and Schedules are, unless otherwise provided, references to Clauses of and Schedules to this Deed of Guarantee; and
- 1.11 references to liability are to include any liability whether actual, contingent, present or future.
- 1.12 the Beneficiary may not recover any more under this Deed of Guarantee in respect of any matter than it would be entitled to recover from the Supplier in respect of that matter under the Guaranteed Agreement, net of any set off.

2. GUARANTEE AND INDEMNITY

- 2.1 The Guarantor irrevocably and unconditionally guarantees and undertakes to the Beneficiary to procure that the Supplier duly and punctually performs all of the Guaranteed Obligations now or hereafter due, owing or incurred by the Supplier to the Beneficiary.
- 2.2 The Guarantor irrevocably and unconditionally undertakes upon demand to pay to the Beneficiary all monies and liabilities which are now or at any time hereafter shall have become payable by the Supplier to the Beneficiary under or in connection with the Guaranteed Agreement or in respect of the Guaranteed Obligations as if it were a primary obligor.
- 2.3 If at any time the Supplier shall fail to perform any of the Guaranteed Obligations, the Guarantor, as primary obligor, irrevocably and unconditionally undertakes to the Beneficiary that, upon first demand by the Beneficiary it shall, at the cost and expense of the Guarantor:
 - 2.3.1 fully, punctually and specifically perform such Guaranteed Obligations as if it were itself a direct and primary obligor to the Beneficiary in respect of the Guaranteed Obligations and liable as if the Guaranteed Agreement had been entered into directly by the Guarantor and the Beneficiary; and
 - 2.3.2 as a separate and independent obligation and liability, indemnify and keep the Beneficiary indemnified against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all court costs and

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all legal fees on a solicitor and own client basis, together with any disbursements,) of whatever nature which may result or which such Beneficiary may suffer, incur or sustain arising in any way whatsoever out of a failure by the Supplier to perform the Guaranteed Obligations save that, subject to the other provisions of this Deed of Guarantee, this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are purported to be imposed on the Supplier under the Guaranteed Agreement.

- 2.4 As a separate and independent obligation and liability from its obligations and liabilities under Clauses 2.1 to 2.3 above, the Guarantor as a primary obligor irrevocably and unconditionally undertakes to indemnify and keep the Beneficiary indemnified on demand against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all legal costs and expenses), of whatever nature, whether arising under statute, contract or at common law, which such Beneficiary may suffer or incur if any obligation guaranteed by the Guarantor is or becomes unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the Guarantor's liability shall be no greater than the Supplier's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.

3. OBLIGATION TO ENTER INTO A NEW CONTRACT

- 3.1 If the Guaranteed Agreement is terminated for any reason, whether by the Beneficiary or the Supplier, or if the Guaranteed Agreement is disclaimed by a liquidator of the Supplier or the obligations of the Supplier are declared to be void or voidable for any reason, then the Guarantor will, at the request of the Beneficiary enter into a contract with the Beneficiary in terms mutatis mutandis the same as the Guaranteed Agreement and the obligations of the Guarantor under such substitute agreement shall be the same as if the Guarantor had been original obligor under the Guaranteed Agreement or under an agreement entered into on the same terms and at the same time as the Guaranteed Agreement with the Beneficiary.

4. DEMANDS AND NOTICES

- 4.1 Any demand or notice served by the Beneficiary on the Guarantor under this Deed of Guarantee shall be in writing, addressed to:

4.1.1 4 Tilgate Forest business Park, Brighton Road, Crawley, West Sussex, RH11 9BP

4.1.2 For the Attention of the Company Secretary

or such other address in England and Wales as the Guarantor has from time to time notified to the Beneficiary in writing in accordance with the terms of this Deed of Guarantee as being an address for the receipt of such demands or notices.

- 4.2 Any notice or demand served on the Guarantor or the Beneficiary under this Deed of Guarantee shall be deemed to have been served:

4.2.1 if delivered by hand, at the time of delivery; or

4.2.2 if posted, at 10.00 a.m. on the second Working Day after it was put into the post.

- 4.3 In proving service of a notice or demand on the Guarantor or the Beneficiary it shall be sufficient to prove that delivery was made, or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded delivery letter, or that the facsimile message was properly addressed and despatched, as the case may be.

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4.4 Any notice purported to be served on the Beneficiary under this Deed of Guarantee shall only be valid when received in writing by the Beneficiary.

5. BENEFICIARY'S PROTECTIONS

5.1 The Guarantor shall not be discharged or released from this Deed of Guarantee by any arrangement made between the Supplier and the Beneficiary (whether or not such arrangement is made with or without the assent of the Guarantor) or by any amendment to or termination of the Guaranteed Agreement or by any forbearance or indulgence whether as to payment, time, performance or otherwise granted by the Beneficiary in relation thereto (whether or not such amendment, termination, forbearance or indulgence is made with or without the assent of the Guarantor) or by the Beneficiary doing (or omitting to do) any other matter or thing which but for this provision might exonerate the Guarantor.

5.2 This Deed of Guarantee shall be a continuing security for the Guaranteed Obligations and accordingly:

5.2.1 it shall not be discharged, reduced or otherwise affected by any partial performance (except to the extent of such partial performance) by the Supplier of the Guaranteed Obligations or by any omission or delay on the part of the Beneficiary in exercising its rights under this Deed of Guarantee;

5.2.2 it shall not be affected by any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement, any legal limitation or other incapacity, of the Supplier, the Beneficiary, the Guarantor or any other person;

5.2.3 if, for any reason, any of the Guaranteed Obligations shall prove to have been or shall become void or unenforceable against the Supplier for any reason whatsoever, the Guarantor shall nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor in respect thereof; and

5.2.4 the rights of the Beneficiary against the Guarantor under this Deed of Guarantee are in addition to, shall not be affected by and shall not prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Beneficiary.

5.3 The Beneficiary shall be entitled to exercise its rights and to make demands on the Guarantor under this Deed of Guarantee as often as it wishes and the making of a demand (whether effective, partial or defective) in respect of the breach or non performance by the Supplier of any Guaranteed Obligation shall not preclude the Beneficiary from making a further demand in respect of the same or some other default in respect of the same Guaranteed Obligation.

5.4 The Beneficiary shall not be obliged before taking steps to enforce this Deed of Guarantee against the Guarantor to obtain judgment against the Supplier or the Guarantor or any third party in any court, or to make or file any claim in a bankruptcy or liquidation of the Supplier or any third party, or to take any action whatsoever against the Supplier or the Guarantor or any third party or to resort to any other security or guarantee or other means of payment. No action (or inaction) by the Beneficiary in respect of any such security, guarantee or other means of payment shall prejudice or affect the liability of the Guarantor hereunder.

5.5 The Beneficiary's rights under this Deed of Guarantee are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Beneficiary deems expedient.

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- 5.6 Any waiver by the Beneficiary of any terms of this Deed of Guarantee, or of any Guaranteed Obligations shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.
- 5.7 Any release, discharge or settlement between the Guarantor and the Beneficiary shall be conditional upon no security, disposition or payment to the Beneficiary by the Guarantor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition shall not be fulfilled the Beneficiary shall be entitled to enforce this Deed of Guarantee subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made. The Beneficiary shall be entitled to retain this security after as well as before the payment, discharge or satisfaction of all monies, obligations and liabilities that are or may become due owing or incurred to the Beneficiary from the Guarantor for such period as the Beneficiary may determine.

6. GUARANTOR INTENT

- 6.1 Without prejudice to the generality of Clause 5 (Beneficiary's protections), the Guarantor expressly confirms that it intends that this Deed of Guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to the Guaranteed Agreement and any associated fees, costs and/or expenses.

7. RIGHTS OF SUBROGATION

- 7.1 The Guarantor shall, at any time when there is any default in the performance of any of the Guaranteed Obligations by the Supplier and/or any default by the Guarantor in the performance of any of its obligations under this Deed of Guarantee, exercise any rights it may have:

- 7.1.1 of subrogation and indemnity;
- 7.1.2 to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Supplier's obligations; and
- 7.1.3 to prove in the liquidation or insolvency of the Supplier,

only in accordance with the Beneficiary's written instructions and shall hold any amount recovered as a result of the exercise of such rights on trust for the Beneficiary and pay the same to the Beneficiary on first demand. The Guarantor hereby acknowledges that it has not taken any security from the Supplier and agrees not to do so until Beneficiary receives all moneys payable hereunder and will hold any security taken in breach of this Clause on trust for the Beneficiary.

8. DEFERRAL OF RIGHTS

- 8.1 Until all amounts which may be or become payable by the Supplier under or in connection with the Guaranteed Agreement have been irrevocably paid in full, the Guarantor agrees that, without the prior written consent of the Beneficiary, it will not:
- 8.1.1 exercise any rights it may have to be indemnified by the Supplier;
 - 8.1.2 claim any contribution from any other guarantor of the Supplier's obligations under the Guaranteed Agreement;
 - 8.1.3 take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Beneficiary under the Guaranteed Agreement

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or of any other guarantee or security taken pursuant to, or in connection with, the Guaranteed Agreement;

8.1.4 demand or accept repayment in whole or in part of any indebtedness now or hereafter due from the Supplier; or

8.1.5 claim any set-off or counterclaim against the Supplier;

8.2 If the Guarantor receives any payment or other benefit or exercises any set off or counterclaim or otherwise acts in breach of this Clause 8, anything so received and any benefit derived directly or indirectly by the Guarantor therefrom shall be held on trust for the Beneficiary and applied in or towards discharge of its obligations to the Beneficiary under this Deed of Guarantee.

9. REPRESENTATIONS AND WARRANTIES

9.1 The Guarantor hereby represents and warrants to the Beneficiary that:

9.1.1 the Guarantor is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has power to carry on its business as now being conducted and to own its property and other assets;

9.1.2 the Guarantor has full power and authority to execute, deliver and perform its obligations under this Deed of Guarantee and no limitation on the powers of the Guarantor will be exceeded as a result of the Guarantor entering into this Deed of Guarantee;

9.1.3 the execution and delivery by the Guarantor of this Deed of Guarantee and the performance by the Guarantor of its obligations under this Deed of Guarantee including, without limitation entry into and performance of a contract pursuant to Clause 3) have been duly authorised by all necessary corporate action and do not contravene or conflict with:

- (a) the Guarantor's memorandum and articles of association or other equivalent constitutional documents;
- (b) any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is subject; or
- (c) the terms of any agreement or other document to which the Guarantor is a Party or which is binding upon it or any of its assets;

9.1.4 all governmental and other authorisations, approvals, licences and consents, required or desirable, to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed of Guarantee, and to make this Deed of Guarantee admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect; and

9.1.5 this Deed of Guarantee is the legal valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms.

10. PAYMENTS AND SET-OFF

10.1 All sums payable by the Guarantor under this Deed of Guarantee shall be paid without any set-off, lien or counterclaim, deduction or withholding, howsoever arising, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor will pay that additional amount which is necessary to ensure that the Beneficiary receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.

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10.2 The Guarantor shall pay interest on any amount due under this Deed of Guarantee at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

10.3 The Guarantor will reimburse the Beneficiary for all legal and other costs (including VAT) incurred by the Beneficiary in connection with the enforcement of this Deed of Guarantee.

11. GUARANTOR'S ACKNOWLEDGEMENT

11.1 The Guarantor warrants, acknowledges and confirms to the Beneficiary that it has not entered into this Deed of Guarantee in reliance upon, nor has it been induced to enter into this Deed of Guarantee by any representation, warranty or undertaking made by or on behalf of the Beneficiary (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this Deed of Guarantee.

12. ASSIGNMENT

12.1 The Beneficiary shall be entitled to assign or transfer the benefit of this Deed of Guarantee at any time to any person without the consent of the Guarantor being required and any such assignment or transfer shall not release the Guarantor from its liability under this Guarantee.

12.2 The Guarantor may not assign or transfer any of its rights and/or obligations under this Deed of Guarantee.

13. SEVERANCE

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

14. THIRD PARTY RIGHTS

14.1 A person who is not a Party to this Deed of Guarantee shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed of Guarantee. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

15. GOVERNING LAW

15.1 This Deed of Guarantee and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in all respects in accordance with English law.

15.2 The Guarantor irrevocably agrees for the benefit of the Beneficiary that the courts of England shall have jurisdiction to hear and determine any suit, action or proceedings and to settle any dispute which may arise out of or in connection with this Deed of Guarantee and for such purposes hereby irrevocably submits to the jurisdiction of such courts.

15.3 Nothing contained in this Clause shall limit the rights of the Beneficiary to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the

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taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).

15.4 The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of this Clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.

IN WITNESS whereof the Guarantor has caused this instrument to be executed and delivered as a Deed the day and year first before written.

EXECUTED as a DEED by

OCS Group Limited acting by

Director/Secretary

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CONTRACT SCHEDULE H

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 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.

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CONTRACT SCHEDULE I

9. **CONTRACT SCHEDULE I - STAFF TRANSFER**

9.1 Definitions

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

“Additional Service Transferring Employees”	Additional Service Transferring Employees are those employees of the Former Contractor (Carillion (AMBS) Limited (in provisional liquidation)) who transfer with the protection of the Employment Regulations and the Employment Regulations will apply to effect a Relevant Transfer on the Effective date.
“Additional Service Non-TUPE Employees”	means those employees of the Former Contractor (Carillion Services Ltd (in compulsory liquidation)) who would have been Transferring Former Contractor Employees in relation to the Additional Service had regulation 8(7) of the Employment Regulations not applied;
“Contractor’s Final Personnel List”	means a list provided by the <i>Contractor</i> 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 <i>Contractor</i> of all staff who are engaged in or wholly or mainly assigned to the provision of the <i>service</i> or any relevant part of the <i>service</i> which it is envisaged as at the date of such list will no longer be provided by the <i>Contractor</i>
“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: <ol style="list-style-type: none">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

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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;

"Former Contractor"

means a Contractor supplying services to the Employer or a Business Unit before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such contractor (or any sub-contractor of any such sub-contractor);

"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 and/or Additional Service Transferring Employees and/or Additional Service Non-TUPE 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 *Employer* from time to time or where the *Employer* is providing Replacement Services for its own account, shall also include the *Employer*

"Replacement Services"

means any services which are substantially similar to any of the *service* and which the *Employer* receives in substitution for any of the *service* following the end of the *service period* or earlier termination, whether those services are provided by the *Employer* 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 *service* (or any part of the *service*),

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for whatever reason, from the *Contractor* 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* 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* to whom the Employment Regulations will apply on the Relevant

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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*, Former Contractor, Replacement Contractor or Replacement Sub-Contractor, as the case may be.

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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 the Transferring Employer Employees (except in relation to any terms disappplied 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* 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 9.3.2 of Part A of this Contract Schedule, the *Employer* shall indemnify the *Contractor* and any Notified Sub-Contractor against any Employee Liabilities arising from or as a result of:

9.3.1.1 any act or omission in respect of any Transferring Employer Employee (or, where applicable any employee representative as defined in the Employment Regulations) by the *Employer* occurring before the Relevant Transfer Date;

9.3.1.2 the breach or non-observance by the *Employer* 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* 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

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- 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* 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* 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* 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* 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.

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- 9.3.3 If any person who is not identified by the *Employer* as a Transferring Employer Employee claims, or it is determined in relation to any person who is not identified by the *Employer* 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
- 9.3.3.2 the *Employer* 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* 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.
- 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 of employment 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

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- (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* 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* 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* against any Employee Liabilities arising from or as a result of:

9.4.1.1 any act or omission by the *Contractor* or any Sub-Contractor in respect of any Transferring Employer Employee (or, where applicable any employee representative as defined in the Employment Regulations) 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,

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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* 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* 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;
- 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* failure to comply with its obligations under regulation 13 of the Employment Regulations; and
- 9.4.1.9 a failure by the Supplier or any Sub-contractor to comply with its obligations under Paragraph 9.3.8 above.

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* 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* failure to comply with its obligations under the Employment Regulations.

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- 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 the *Contractor*.
- 9.5 Information
- 9.5.1 The *Contractor* shall, and shall procure that each Sub-Contractor shall, promptly provide to the *Employer* in writing such information as is necessary to enable the *Employer* to carry out its duties under regulation 13 of the Employment Regulations. The *Employer* 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.

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PART B

TRANSFERRING FORMER CONTRACTOR EMPLOYEES AND ADDITIONAL SERVICE TRANSFERRING EMPLOYEES AND ADDITIONAL SERVICE NON-TUPE 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 the Additional Service Transferring 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 and/or Additional Service Transferring 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; and

9.8.1.3 the Contractor shall, or shall procure that the Notified Sub-Contractor shall, offer employment to (and, where such offer is accepted, employ) the Additional Service Non-TUPE Employees substantially on their existing terms (save insofar as such terms and conditions relate to any occupational pension scheme or pension entitlement, as to which paragraph 1 of Annex 1 shall apply), such offer of employment to commence on the Effective Date or as soon as reasonably practicable thereafter.

9.8.2 The *Employer* 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 and the Additional Service Transferring 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* shall procure that each Former Contractor makes, any necessary apportionments in respect of any periodic payments.

9.9 Former Contractor Indemnities

9.9.1 The *Employer* shall procure that each Former Contractor shall indemnify the *Contractor* and any Notified Sub-Contractor against any Employee Liabilities arising from or as a result of:

9.9.1.1 any act or omission by the Former Contractor in respect of any Transferring Former Contractor Employee or, where applicable any

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employee representative (as defined in the Employment Regulations) of any Transferring Former Contractor Employee 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 In the case of the commencement of the Additional Service, the Employer indemnifies the Contractor and any Notified Sub-Contractor in the terms set out in paragraph 9.9.1 above provided that each reference to Transferring Former

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Contractor Employee or Transferring Former Contractor Employees shall be interpreted as meaning each Transferring Former Contractor Employee(s) and/or Additional Service Transferring Employee(s) as applicable.

- 9.9.3 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:
- 9.9.3.1 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
 - 9.9.3.2 arising from the failure by the *Contractor* and/or any Sub-Contractor to comply with its obligations under the Employment Regulations.
- 9.9.4 If any person who is not identified by the *Employer* as a Transferring Former Contractor Employee or an Additional Service Transferring Employee or Additional Service Non-TUPE Employee claims, or it is determined in relation to any person who is not identified by the *Employer* as a Transferring Former Contractor Employee or an Additional Service Transferring Employee or Additional Service Non-TUPE 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:
- 9.9.4.1 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, where required by the *Employer*, to the Former Contractor; and
 - 9.9.4.2 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*.
- 9.9.5 If an offer referred to in paragraph 9.9.4.2 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*, the *Contractor* shall, or shall procure that the Notified Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.
- 9.9.6 If by the end of the 15 Working Day period specified in paragraph 9.9.4.2 of Part B of this Contract Schedule:
- 9.9.6.1 no such offer of employment has been made;
 - 9.9.6.2 such offer has been made but not accepted; or
 - 9.9.6.3 the situation has not otherwise been resolved;

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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.

9.9.7 Subject to the *Contractor* and/or any Notified Sub-Contractor acting in accordance with the provisions of paragraphs 9.9.4 to 9.9.6 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* 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 of employment pursuant to the provisions of paragraph 9.9.6 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.

9.9.8 In the case of the commencement of the Additional Service, the Employer indemnifies the Contractor and any Notified Sub-Contractor in the terms set out in paragraph 9.9.7 above.

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

9.9.9.1 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 *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

9.9.9.2 shall apply only where the notification referred to in paragraph 9.9.3.1 of Part B of this Contract Schedule is made by the *Contractor* and/or any Notified Sub-Contractor (as appropriate) to the *Employer* and, if applicable, the Former Contractor, within six (6) months of the Contract Date.

9.9.10 If any such person as is described in paragraph 9.9.4 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 9.9.6 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

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- 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 Former Contractor against any Employee Liabilities arising from or as a result of:
- 9.10.1.1 any act or omission by the *Contractor* or any Sub-Contractor in respect of any Transferring Former Contractor Employee or, where applicable any employee representative (as defined in the Employment Regulations) of any Transferring Former Contractor Employee 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* 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

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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;
- 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; and
- 9.10.1.9 a failure by the Contractor or any Sub-contractor to comply with its obligations under Paragraph 9.9.8 above
- 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 at the *Employer's* direction, the Former Contractor, in writing such information as is necessary to enable the *Employer* and/or the Former Contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The *Employer* 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.

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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* 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* 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* 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* 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.

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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 any Former Contractor.

9.15.2 If any employee of the *Employer* and/or a Former Contractor claims, or it is determined in relation to any employee of the *Employer* and/or a Former Contractor, that his/her contract of employment has been transferred from the *Employer* 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, where required by the *Employer*, give notice to the Former Contractor; and

9.15.2.2 the *Employer* 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* 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 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.

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 9.16.4 of Part C of this Contract Schedule, the *Employer* shall:

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- 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* 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 referred to in paragraph 9.15.2 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 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 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 9.16.2 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 any Former Contractor, and shall procure that the Sub-Contractor shall indemnify the *Employer* 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

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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, 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* 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* 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* must use reasonable endeavours to procure that the Former Contractor does or does not act accordingly.

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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* 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 six (6) months before the end of the *service period*; and

9.18.1.4 receipt of a written request of the *Employer* at any time (provided that the *Employer* 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*.

9.18.2 At least twenty (20) Working Days prior to the Service Transfer Date, the *Contractor* shall provide to the *Employer* or at the direction of the *Employer* 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* 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*, 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 save insofar as any such information was provided to the *Contractor* in relation to the provision of the Additional Service.

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* (not to be unreasonably withheld or delayed):

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- 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, permit or implement 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* or, at the direction of the *Employer*, 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 and shall procure that each Sub-Contractor shall provide to the *Employer* any information the *Employer* may reasonably require relating to the manner in which the Services are organised which shall include:

- 9.18.6.1 the number of employees engaged in providing the Services;
- 9.18.6.2 the percentage of time spent by each employee in providing the Services;
- 9.18.6.3 a description of the nature of work undertaken by each employee by location; and
- 9.18.6.4 any information 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 subject only to any limitation imposed by the Data Protection Legislation, the *Contractor* shall provide, and shall procure that each Sub-Contractor shall provide, to the Employer or, at the direction of the Employer 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 reasonably requests and shall allow the Employer or at the Employer's direction,

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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*, 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* or, at the direction of the *Employer*, 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 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 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

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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 Replacement Contractor and/or any Replacement Sub-Contractor against any Employee Liabilities arising from or as a result of:

9.19.3.1 any act or omission of the *Contractor* or any Sub-Contractor in respect of any Transferring Contractor Employee or, where applicable any employee representative (as defined in the Employment Regulations) of any Transferring Contractor Employee 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 identified in the Contractor's Final Personnel List 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 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);

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- 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 identified in the Contractor's Final Personnel List for whom it is alleged the *Employer* 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 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 identified in the Contractor's Final Personnel List claims, or it is determined in relation to any person who is not identified in the Contractor's Final Personnel List, 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* 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* 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.

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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 Replacement Contractor and/or Replacement Sub-Contractor, as appropriate 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 of employment 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

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Contract Schedule, such person shall be treated as a Transferring Contractor Employee.

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 any person identified in the Contractor's Final Personnel List before and on 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 any Replacement Contractor and/or Replacement Sub-Contractor, in writing such information as is necessary to enable the *Employer*, the Replacement Contractor and/or Replacement Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The *Employer* 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* 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 arising from or as a result of:

9.19.13.1 any act or omission of the Replacement Contractor and/or Replacement Sub-Contractor in respect of each Transferring Contractor Employee identified in the Contractor's Final Personnel List or, where applicable any employee representative (as defined in the Employment Regulations) of any such Transferring Contractor Employee whether occurring before on or after the Service Transfer Date;

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 identified in the Contractor's Final Personnel List; 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 identified in the Contractor's Final

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Personnel List 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 Service 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 Service Transfer Date, or to change the terms and conditions of employment or working conditions of any person identified in the Contractor's Final Personnel List 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 Service 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 identified in the Contractor's Final Personnel List on or before the Service Transfer Date regarding the Service 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 identified in the Contractor's Final Personnel List, 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 identified in the Contractor's Final Personnel List, 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 identified in the Contractor's Final Personnel List 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 identified in the Contractor's Final Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Contractor Employee relating to any act or omission of the Replacement Contractor or Replacement

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Sub-Contractor in relation to obligations under regulation 13 of the Employment Regulations.

- 9.19.14 The indemnities in paragraph 9.19.13 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.

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ANNEX 1: PENSIONS

The provisions of this Annex shall apply in respect of the Transferring Employer Employees and/or Transferring Former Contractor Employees who transfer from the *Employer* and/or a Former Contractor to the *Contractor*.

1.1 DEFINITIONS

1.1.1 In this Annex the following definitions shall apply:

"Administering Authority" means in relation to the Fund, Tameside Metropolitan Borough Council, in its capacity as administering authority (within the meaning of Schedule 1 of the LGPS Regulations) of the Fund or such other body administering the fund established under the LGPS in which the Eligible LGPS Employees are active members or eligible to join;

"Beckmann Liabilities" liabilities in respect of the satisfaction of rights, arising under an occupational pension scheme, which are not related to old age, invalidity or survivors' benefits (within the meanings of those terms used in regulation 10(2) of the Employment Regulations);

"Broadly Comparable" means:

- (a) in respect of a pension scheme, a status satisfying the condition that there are no identifiable employees who will suffer material detriment overall in terms of future accrual of pension benefits as demonstrated by the issue by the Government Actuary's Department of a broad comparability certificate relating to the CSP Schemes and/or the LGPS as the context requires; and
- (b) in respect of benefits provided for or in respect of a member under a pension scheme, benefits that are consistent with that pension scheme's certificate of broad comparability issued by the Government Actuary's Department;

and "Broad Comparability" shall be construed accordingly;

"CSPS Admission Agreement" an admission agreement in the form available on the Civil Service Pensions website immediately prior to the Relevant Transfer Date to be entered into by the *Contractor* and/or Sub-contractor under which the *Contractor* and/or Sub-contractor agrees to participate in the CSP Schemes in respect of the

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	Services;
"CSPS Eligible Employee"	means any CSPS Fair Deal Employee who at the relevant time is an eligible employee as defined in the Admission Agreement;
"CSPS Fair Deal Employees"	those Transferring Employer Employees who are on the Relevant Transfer Date entitled to the protection of New Fair Deal (and, in the event that Part B of this Schedule applies, 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 CSP Schemes and who at the Relevant Transfer Date become entitled to the protection of New Fair Deal);
"CSP Schemes"	the Principal Civil Service Pension Scheme available to Civil Servants and employees of bodies under Schedule 1 of the Superannuation Act 1972 (and eligible employees of other bodies admitted to participate under a determination under section 25 of the Public Service Pensions Act 2013), 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; the Designated Stakeholder Pension Scheme and "alpha" introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014;
"Fund Actuary"	means the actuary to the Fund appointed by the Administering Authority;
"Fund"	means the Greater Manchester Pension Fund within the LGPS;
"Initial Contribution Rate"	fourteen per cent (14%) of the LGPS Eligible Employees Pensionable Pay;
"LGPS"	means the Local Government Pension Scheme as governed by the LGPS Regulations, and any other regulations (in each case as amended from time to time) which are from time to time applicable to the Local Government Pension Scheme;
"LGPS Admission Agreement"	means the admission agreement within the meaning in Schedule 1 of the LGPS Regulations;
"LGPS Admission Body"	means an admission body (with the meaning of paragraph 1(d) of Part 3 of Schedule 2 of the LGPS Regulations;
"LGPS Eligible Employees"	means those employees to whom the Employment Regulations apply on the Relevant Transfer Date and who immediately prior to that date were active members of or eligible to join the LGPS;
"LGPS Regulations"	means the Local Government Pension Scheme Regulations 2013 (SI 2013/2356) and The Local Government Pension Scheme (Transitional

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Provisions, Savings and Amendment) Regulations 2014, and any other regulations (in each case as amended from time to time) which are from time to time applicable to the LGPS;

"New Fair Deal"

means 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 including any amendments to that document immediately prior to the Relevant Transfer Date; and

"Pensionable Pay"

shall have the same meaning as "Pensionable Pay" as defined in the LGPS Regulations;

"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 the Agreement, or any other affairs of the *Employer* or any Service Recipient and "Regulatory Body" shall be construed accordingly.

1.2 Contractor Obligation

1.2.1 The *Contractor* shall comply with the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff.

1.2.2 Subject to Part 1 of the Pensions Act 2008, in relation to any Additional Service Non TUPE Employees and/or the Additional Service Transferring Employees who participated in a defined contribution pension arrangement immediately before the Relevant Transfer Date, the Contractor shall make contributions in respect of Employees, at the same monthly rate and on the same terms (but excluding any exceptional payments made, including for example but without limitation in respect of early ill health retirement or bonus or termination of employment) as applicable to them immediately before the Relevant Transfer Date.

1.3 Provision of Information

1.3.1 The *Contractor* and the *Employer* respectively undertake to each other:

1.3.1.1 to provide all information which the other Party may reasonably request, accepting that the *Employer* may need to request information from the Administering Authority, concerning matters (i) referred to in this Annex, (ii) set out in the CSPS Admission Agreement and (iii) the LGPS Admission Agreement, and to supply the information as expeditiously as possible; and

1.3.1.2 not to issue any announcements to the CSPS Fair Deal Employees and or the LGPS Eligible 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).

1.3.2 In relation to the LGPS Admission Agreement the Contractor undertakes to provide to the Employer quarterly management data containing:

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- 1.3.2.1 current LGPS Eligible Employees and their National Insurance number:
- 1.3.2.2 annual Pensionable Pay and year to date Pensionable Pay:
- 1.3.2.3 a list of all LGPS Eligible Employees who have left the LGPS since the previous report; and
- 1.3.2.4 the total year to date employer and employee contributions paid to the LGPS.

The data shall be provided on a standard template supplied by the Employer (HMPPS Finance) and shall be supplied by the fifth Business Day of the following month after quarter end and the Contractor shall respond to any queries within 5 Business Days.

1.4 Sub-Contractors

- 1.4.1 If the *Contractor* enters into a Sub-contract for the delivery of all or part of the Services which will involve the transfer of employment of any CSPA Eligible Employee or LGPS Eligible Employee it will impose obligations on its Sub-contractor in identical terms as those imposed on the *Contractor* by this Annex to Schedule I.
- 1.4.2 The *Contractor* shall procure that each Sub-contractor provides indemnities to the *Employer* that are identical to the indemnities set out in Paragraphs 1.12 to 1.16 of this Annex. Where a Sub-contractor fails to satisfy any claim made under such one or more indemnities, the *Contractor* will be liable for satisfying any such claim as if it had provided the indemnity itself.

1.5 Disputes

- 1.5.1 Any dispute between the *Employer* and the *Contractor* or between their respective actuaries or the Fund Actuary about any of the actuarial matters referred to in this Annex shall in the absence of agreement between the *Employer* and the *Contractor* be referred to an independent actuary:
 - 1.5.1.1 who will act as an expert and not as an arbitrator;
 - 1.5.1.2 whose decision will be final and binding on the *Employer* and the *Contractor*, and
 - 1.5.1.3 whose expenses shall be borne equally by the *Employer* and the *Contractor* unless the independent actuary shall otherwise direct.

1.6 Third Party Rights

- 1.6.1 The Parties agree that the Contracts (Rights of Third Parties) Act 1999 will apply to the provisions of this Annex to the extent necessary to ensure that any CSPA Fair Deal Employee, any LGPS Eligible Employee will have the right to enforce any obligation owed to him or her or it by the *Contractor* under this Annex, in his or her or its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.
- 1.6.2 Further, the *Contractor* must ensure that the Contracts (Rights of Third Parties) Act 1999 will apply to any Sub-contract to the extent necessary to ensure that any CSPA Fair Deal Employee, any LGPS Eligible Employee will have the right to

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enforce any obligation owed to them by the Sub-contractor in his or her or its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

1.7 Pension Pre-Service Transfer Obligations

1.7.1 The *Contractor* agrees that from the earliest of:

1.7.1.1 receipt of a notification from the *Employer* of a Service Transfer or intended Service Transfer;

1.7.1.2 receipt of the giving of notice of early termination or any Partial Termination of this Contract;

1.7.1.3 the date which is twelve (12) months before the end of the Term; and

1.7.1.4 receipt of a written request of the *Employer* at any time (provided that the *Employer* shall only be entitled to make one such request in any six (6) month period),

1.7.2 that it shall not, and agrees to procure that each Sub contractor shall not without the approval of the *Employer* (not to be unreasonably withheld or delayed):

1.7.2.1 make, promise, propose or permit any material change to the pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Contractor;

1.7.2.2 make pensionable any category of earnings which were not previously pensionable; or

1.7.2.3 reduce the pension contributions (if any) payable by such employees,

save that sub-paragraphs 1.7.2.1 to 1.7.2.3 above shall not apply to any change made as a consequence of participation in the CSPS Admission Agreement or the LGPS Admission Agreement.

1.7.3 The *Contractor* shall not and shall procure that each Sub-contractor shall not adversely affect pension rights accrued by all and any CSPS Fair Deal Employees and or LGPS Eligible Employees in the period ending on the Service Transfer Date.

1.7.4 The *Contractor* shall and shall procure that each Sub-contractor shall provide all such co-operation and assistance as the CSP Schemes, the LGPS, the Fund, the Administering Authority, the Successor and/or the Employer may reasonably require to enable the Successor to participate in the CSP Schemes and or the LGPS in respect of CSPS Eligible Employees and/or LGPS Eligible Employees and to give effect to any transfer of accrued rights required as part of participation under the New Fair Deal.

1.7.5 The Contractor shall and shall procure that each Sub-contractor shall provide all such co-operation and assistance as the CSP Schemes, the LGPS, the Fund, the Administering Authority, the Replacement Contractor and/or the Employer may reasonably require, including but not limited to:

1.7.5.1 promptly providing to the Authority on request such documents and information as such bodies may reasonably require to manage the pension rights of and aspects of any onward transfer of any person engaged or employed by the Contractor or any Sub-contractor in the provision of the Services on the expiry or termination of this

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Agreement (including without limitation identification of the LGPS and CSPS Eligible Employees); and

- 1.7.5.2 fully co-operating and assisting (and using reasonable endeavours to procure that the trustees of the Broadly Comparable Scheme shall fully co-operate and assist) with the reasonable requests of such bodies relating to any administrative tasks necessary to deal with the pension rights of and aspects of any onward transfer of any person engaged or employed by the Contractor or any Sub-contractor in the provision of the Services on the expiry or termination of this Agreement.

LGPS

1.8 Participation in the LGPS

- 1.8.1 The *Contractor* undertakes to execute an LGPS Admission Agreement effective on and from the Relevant Transfer Date so that the *Contractor* will become an LGPS Admission Body and all LGPS Eligible Employees shall be admitted to the LGPS with effect on and from the Relevant Transfer Date. The *Contractor* shall remain an LGPS Admission Body for the duration of this Agreement provided that it employs LGPS Eligible Employees who remain eligible for membership of the LGPS. The *Contractor* shall comply with the provisions of the LGPS Admission Agreement to which it is a party in all respects for so long as it remains an LGPS Admission Body.
- 1.8.2 The *Employer* and the *Contractor* shall execute such agreements and use best endeavours to ensure that the Administering Authority executes such agreements (including an LGPS Admission Agreement effective on and from the Relevant Transfer Date) as are required for the *Contractor* to become an LGPS Admission Body.
- 1.8.3 The *Contractor* shall undertake a risk assessment to the satisfaction of the *Employer* and the Administering Authority (in accordance with the requirements of paragraph 6 of Part 3 of Schedule 2 of the LGPS Regulations) to identify the level of risk arising whilst an LGPS Admission Body by reason of the *Contractor's* insolvency, winding up or liquidation.
- 1.8.4 The *Contractor* shall procure that it shall as soon as reasonably practicable obtain and implement any indemnity or bond or guarantee required by the LGPS Admission Agreement.
- 1.8.5 The costs the Parties reasonably incurred or incur in connection with the negotiation, preparation, execution and continued compliance of the LGPS Admission Agreement (including any actuarial fees and costs arising under the LGPS Admission Agreement) and any related pension documents under Paragraphs 1.8.1 and 1.8.4 above shall be borne by the Employer. For the avoidance of doubt, if the LGPS Admission Agreement requires these costs to be paid by the Contractor, the Contractor shall be reimbursed by the Employer.
- 1.8.6 The *Contractor* undertakes to the *Employer* not to, without the consent in writing of the *Employer* (which shall not be unreasonably withheld or delayed, or subject to unreasonable conditions) consent to instigate, encourage or assist any event which could impose on the *Employer* acting as Scheme Employer or the Administering Authority or the Fund a cost in respect of any LGPS Pensionable Employee which would not have arisen otherwise or which is greater than the

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cost which would have been payable had that consent, instigation, encouragement or assistance not been given.

- 1.8.7 Except where paragraph 1.9.3 of this Annex applies, the *Contractor* shall not automatically enrol or re-enrol for the purposes of the Pensions Act 2008 any LGPS Eligible Employees in any pension scheme other than the LGPS.

1.9 LGPS Membership

- 1.9.1 On the assumption that the *Contractor* has executed the LGPS Admission Agreement in accordance with Paragraph 1.8.1 above on and from the Relevant Transfer Date the *Contractor* shall procure that LGPS Eligible Employees shall be offered continued membership of the LGPS and shall continue to accrue benefits in accordance with the provisions governing the LGPS.

- 1.9.2 The *Contractor* shall procure that so long as it remains an LGPS Admission Body in the Fund it shall award benefits (where permitted) to the LGPS Eligible Employees in circumstances where the LGPS Eligible Employees would have received such benefits had they still been employed by the Employer. Where such benefits are of a discretionary nature, they shall be awarded on the basis of the Employer's written policy in relation to such benefits effective at the Relevant Transfer Date (which shall be provided by the Employer to the *Contractor* upon request).

- 1.9.3 If during this Agreement the *Contractor* ceases to comply with its obligations in this Paragraph 1.9 in respect of the LGPS Eligible Employees the *Contractor* shall meet the terms of any applicable legislation, directions, orders or codes of practice or guidance or policies issued by any Regulatory Body to achieve the following objectives:

1.9.3.1 to provide access to future service benefits that are Broadly Comparable to those provided for the LGPS Eligible Employees in the LGPS at the relevant time ("Broadly Comparable Scheme"); and

1.9.3.2 to provide the opportunity, where relevant, to transfer pension rights which are fully funded on a past service reserve basis (using methods and assumptions that are consistent with those used for ongoing funding for the purpose of the Fund) from the Fund to the Broadly Comparable Scheme.

1.10 Funding

- 1.10.1 The *Contractor* shall pay and be liable to pay on or before each relevant due date for payment such employer and employee contributions and other payments as are required from time to time in accordance with the LGPS Admission Agreement and/or LGPS Regulations in order to fund the liabilities in respect of all pensionable service in the Fund attributable to the LGPS Eligible Employees before and after the Relevant Transfer Date as required in the opinion of the Fund Actuary using assumptions he considers appropriate.

- 1.10.2 Subject to paragraphs 1.10.5, 1.10.6 and 1.10.7, if at any time during the term of this Agreement the Administering Authority, pursuant to the LGPS Admission Agreement or the LGPS Regulations, requires the *Contractor* or any Sub-Contractor to pay employer contributions or payments to the Fund in aggregate in excess of the Initial Contribution Rate, the excess of employer contributions above the Initial Contribution Rate (the "**Excess Amount**") shall be paid by the *Contractor* or the Sub-Contractor, as the case may be, and the *Contractor* or any

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Sub-Contractor (as the case may be) shall be reimbursed in accordance with paragraph 1.10.8.

1.10.3 Subject to paragraphs 1.10.5, 1.10.7 and 1.10.9, if during the term of this Agreement, the Administering Authority, pursuant to the LGPS Admission Agreement or the LGPS Regulations, requires the *Contractor* or any Sub-Contractor to pay employer contributions or payments to the Fund in aggregate below the Initial Contribution Rate, the *Contractor* shall or shall procure that the Sub-Contractor shall reimburse the *Employer* an amount equal to A–B (the “**Shortfall Amount**”) in accordance with paragraph 1.10.9 where:

A = the amount which would have been paid if contributions and payments had been paid equal to the Initial Contribution Rate; and

B = the amount of contributions or payments actually paid by the *Contractor* or Sub-Contractor, as the case may be, to the Fund.

1.10.4 Subject to paragraphs 1.10.5, 1.10.6 and 1.10.8, where the Administering Authority obtains an actuarial valuation and a revised rates and adjustment certificate under the LGPS Regulations and/or the terms of the LGPS Admission Agreement when the LGPS Admission Agreement ceases to have effect and the *Contractor* or any Sub Contractor is required to pay any revised contribution or payment to the Fund representing any exit payment under Regulation 64 of the LGPS Regulations (including any actuarial fees and costs incurred in calculating such exit payments) (the “**Exit Contribution**”), such contribution or payment shall be paid by the *Contractor* or any Sub Contractor (as the case may be) and the *Contractor* or any Sub Contractor (as the case may be) shall be reimbursed in accordance with paragraph 1.10.8.

1.10.5 The *Contractor* shall and shall procure that any Sub-Contractors shall at all times be responsible for the following:

1.10.5.1 any employer contributions relating to the costs of early retirement benefits arising on redundancy or as a result of business efficiency under Regulation 30(7) of the LGPS Regulations or otherwise other than where the *Employer* has entered into a contractual commitment to make the individual LGPS Eligible Employee redundant before the Relevant Transfer Date or on termination or expiry of this Agreement;

1.10.5.2 any payment of Fund benefits on the grounds of ill health or infirmity of mind or body and any associated costs unless such grounds of ill health or infirmity of mind or body were diagnosed by a recognised medical practitioner and the results were notified to the *Employer* prior to the Relevant Transfer Date;

1.10.5.3 any employer contributions relating to the costs of flexible retirement where the actuarial reduction is waived in whole or in part or a cost neutral reduction is not applied with the consent of the *Contractor* or any relevant Sub-Contractor;

1.10.5.4 any employer contributions relating to the costs of enhanced benefits made at the discretion of the *Contractor* or any relevant Sub-Contractors including without limitation under Regulation 31 of the LGPS Regulations or otherwise;

1.10.5.5 any increase to the employer contribution rate resulting from the award of pay increases by the *Contractor* or relevant Sub-Contractors in respect of all or any of the LGPS Eligible Employees in excess of

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the pay increases assumed in the Fund's most recent actuarial valuation; and

- 1.10.5.6 to the extent not covered above, any other costs arising out of or in connection with the exercise of any discretion or the grant of any consent under the LGPS Regulations by the *Contractor* or any relevant Sub Contractors where a member does not have an absolute entitlement to that benefit under the LGPS.
- 1.10.6 For the purposes of calculating the Exit Contribution or Excess Amount, any part of an Exit Contribution or Excess Amount, as the case may be, which is attributable to any matters for which the Contractor or Sub-Contractors are responsible for under paragraph 1.10.5 shall be disregarded.
- 1.10.7 For the purpose of calculating the Shortfall Amount, any increase in the contributions or payments which are attributable to matters which are the *Contractor's* or relevant Sub-Contractor's responsibility for under paragraph 1.10.5 shall be disregarded.
- 1.10.8 Where an Excess Amount or an Exit Contribution is paid by the *Contractor* or any Sub-Contractor, the *Contractor* shall, subject to paragraph 1.10.10, forthwith as the liability to make the payment arises, invoice the *Employer* for payment of the Excess Amount or Exit Contribution and the *Employer* shall make payment to the *Contractor* or any Sub-Contractor of the required amount within twenty (20) Business Days of receipt of the invoice.
- 1.10.9 Where a Shortfall Amount is payable by the *Contractor* or any Sub Contractor, the *Contractor* shall or shall procure that the Sub Contractor, forthwith as the liability arises, notify the *Employer* of the Shortfall Amount, subject to paragraph 1.10.10, and shall make payment to the Authority of the required amount within twenty (20) Business Days of the notification.
- 1.10.10 If there is a dispute about the amount of payments due under paragraphs 1.10.2, 1.10.3 or 1.10.4, the *Contractor* and/or the Sub Contractor, as the case may be, and the *Employer* shall co-operate in good faith to reach agreement about the amounts due. If agreement cannot be reached about the amounts due then within 28 days of one party notifying the other that a dispute has arisen, the matter may be referred by either party to an independent actuary agreed by the parties or, failing such agreement within 14 days from the first nomination of an actuary by the *Contractor* and/or the Sub Contractor, as the case may be, or the *Employer* to the other, the independent actuary shall be appointed by the President for the time being of the Institute and Faculty of Actuaries on the application of either the *Contractor* and/or the Sub-Contractor, as the case may be, or the *Employer*. The independent actuary so appointed shall act as expert and not as arbitrator, his decision shall be final and binding on the parties in the absence of manifest error and his costs shall be split equally.
- 1.11 Right of Set Off
- 1.11.1 The *Employer* shall have a right to set off against any payments due to the *Contractor* under this Agreement an amount equal to any overdue employer and employee contributions and other payments (and interest payable under the LGPS Regulations) which the *Contractor* or a Sub-Contractor failed to pay to the Fund under the LGPS Admission Agreement.
- 1.12 LGPS Indemnities

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- 1.12.1 The *Contractor* hereby indemnifies the *Employer* and the Administering Authority on demand from and against all losses suffered or incurred by the *Employer* and/or Administering Authority which arise from any breach by the *Contractor* or a Sub-Contractor of any of the terms of the LGPS Admission Agreement or its termination or expiry (howsoever caused).
- 1.12.2 The *Contractor* undertakes to the *Employer* and the Administering Authority to indemnify and keep indemnified the *Employer* and the Administering Authority from and against all and any losses whatsoever arising out of or in connection with any liability towards the LGPS Eligible Employees arising in respect of any failure by the Contractor or a Sub-Contractor to comply with its obligations under this Annex including but not limited to during any period of membership of the Fund on or after the Relevant Transfer Date. Nothing in this Paragraph shall be construed as providing an indemnity in respect of:
- 1.12.2.1 Beckmann Liabilities which have transferred in relation to LGPS Eligible Employees pursuant to the Employment Regulations; or
- 1.12.2.2 any equalisation of benefits required in relation to any of the LGPS Eligible Employees' guaranteed minimum pensions in the LGPS (as defined in the Pension Schemes Act 1993).
- 1.12.3 The indemnities in this Paragraph shall survive termination of this Agreement.

CSP Schemes

- 1.13 Participation in the CSP Schemes
- 1.13.1 The *Contractor* undertakes to enter into the CSPS Admission Agreement.
- 1.13.2 The *Contractor* and the *Employer*:
- 1.13.2.1 undertake to do all such things and execute any documents (including the CSPS Admission Agreement) as may be required to enable the *Contractor* to participate in the CSP Schemes in respect of the CSPS Fair Deal Employees;
- 1.13.3 The *Contractor* and the *Employer* agree
- 1.13.3.1 that the arrangements under Paragraph 1.13.1 of this Annex include the body responsible for the CSP Schemes notifying the *Employer* if the Contractor breaches any obligations it has under the CSPS Admission Agreement;
- 1.13.3.2 notwithstanding paragraph 1.13.3.1 of this Annex, the *Contractor* shall notify the *Employer* in the event that it breaches any obligations it has under the CSPS Admission Agreement and when it intends to remedy such breaches; and
- 1.13.3.3 that the *Employer* shall be entitled to terminate this Agreement in the event that the *Contractor*:
- (a) commits an irremediable breach of the CSPS Admission Agreement; or
- (b) commits a breach of the CSPS Admission Agreement which, where capable of remedy, it fails to remedy within a reasonable time and in any event within 28 days of the date

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of a notice giving particulars of the breach and requiring the *Contractor* to remedy it.

1.13.4 The *Employer* shall bear its own costs and all costs that the *Contractor* reasonably incurs in connection with the negotiation, preparation, execution and continued compliance of documents to facilitate the *Contractor* participating in the CSP Schemes, including without limitation MyCSP's on-boarding costs, any actuarial fees and any costs associated with obtaining an indemnity or bond or guarantee.

1.14 Future Service Benefits

1.14.1 **Where;**

1.14.1.1 Part A of Schedule I is used or where Part B of Schedule I is used and employees pre-transfer are participating or eligible to participate in the CSP Schemes, the *Contractor* shall procure that the CSPA Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the CSP 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 CSPA Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of CSP Schemes for service from (and including) the Relevant Transfer Date.

1.14.1.2 Part B of Schedule I is used and employees pre-transfer are participating in a broadly comparable pension scheme and If the CSPA Fair Deal Employees are re-joining the CSP Schemes the Contractor shall procure that the CSPA Fair Deal Employees shall be admitted to the relevant section of the CSP Schemes that they became eligible to join on the Relevant Transfer Date and shall accrue benefits in accordance with the provisions governing the relevant section of the CSP Schemes for service from (and including) the Relevant Transfer Date

1.14.2 The *Contractor* undertakes that should it cease to participate in the CSP Schemes for whatever reason at a time when it has CSPA Eligible Employees, that it will, at no extra cost to the *Employer*, provide to any CSPA Fair Deal Employee who immediately prior to such cessation remained an CSPA Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the *Employer* in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are Broadly Comparable to those provided by the CSP Schemes at the relevant date. The *Contractor* must supply to the Employer details of its (or its Sub-contractor's) Broadly Comparable scheme and provide a full copy of the valid certificate of broad comparability covering all CSPA Fair Deal Employees, as soon as it is able to do so.

1.14.3 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.

1.15 Funding

1.15.1 The *Contractor* undertakes to pay to the CSP Schemes all such amounts as are due under the CSPA Admission Agreement and shall deduct and pay to the CSP Schemes such employee contributions as are required by the CSP Schemes.

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1.15.2 The *Contractor* shall indemnify and keep indemnified the *Employer* on demand against any claim by, payment to, or loss incurred by the CSP Schemes in respect of the failure to account to the CSP Schemes for payments received and the non-payment or the late payment of any sum payable by the *Contractor* to or in respect of the CSP Schemes

1.16 CSPS Indemnity

1.16.1 The *Contractor* undertakes to the *Employer* to indemnify and keep indemnified the *Employer* on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the CSPS Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under and/or participation in an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the CSP Schemes For the avoidance of doubt, the provisions of this Paragraph of this Annex to Schedule I, shall survive termination of this Agreement.

1.16.2 The *Employer* undertakes to the *Contractor* to indemnify and keep indemnified the *Contractor* on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the CSPS Fair Deal Employees arising in respect of service before the Relevant Transfer Date which relate to the payment of benefits under and/or participation in an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the CSP Schemes. For the avoidance of doubt, the provisions of this Paragraph of this Annex to Schedule I, shall survive termination of this Agreement.

1.17 Bulk Transfer Obligations in relation to any Broadly Comparable Scheme

1.17.1 Where the *Contractor* has set up a Broadly Comparable pension scheme in accordance with the provisions of Paragraph 1.14 above of this Annex, the *Contractor* agrees to:

1.17.1.1 fully fund any such broadly comparable pension scheme in accordance with the funding requirements set by that broadly comparable pension scheme's actuary or by the Government Actuary's Department for the period ending on the Service Transfer Date;

1.17.1.2 instruct any such broadly comparable pension scheme's actuary to, and to provide all such co-operation and assistance in respect of any such broadly comparable pension scheme as the Replacement Contractor and/or the *Employer* may reasonably require, to enable the Replacement Contractor to participate in the CSP Schemes in respect of any CSPS Fair Deal Employee that remain eligible for New Fair Deal protection following a Service Transfer

1.17.1.3 allow, in respect of any CSPS Fair Deal Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such broadly comparable pension scheme into the CSP Schemes on a day for day service basis and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal, for the avoidance of doubt should the amount offered by the broadly comparable pension scheme be less than the amount required by the CSP Schemes to fund day for day service ("**the Shortfall**"), the Contractor agrees to pay the Shortfall to the CSP Schemes as required, provided that in the

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absence of any agreement between the *Contractor* and any Sub-contractor, the Shortfall shall be paid by the *Contractor*; and

- 1.17.1.4 indemnify the Employer on demand for any failure to pay the Shortfall as required under Paragraph 1.17.1.3 above.

The obligations in this Paragraph shall survive termination of this Agreement.

1.18 Subsequent Transfers

1.18.1 The *Contractor* shall:

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

1.18.1.2 provide all such co-operation and assistance as the Replacement Contractor and/or the *Employer* 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.

1.18.1.3 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 Contractor or the *Employer*, 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* (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.

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ANNEX 2: LIST OF NOTIFIED SUBCONTRACTORS

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CONTRACT SCHEDULE J

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"** in accordance with the Security Requirements and the Security Policy, the occurrence of:
- (a) any unauthorised access to or use of the service, the Employer Premises, the Sites, the Contractor System and/or any ICT, information or data (including the Confidential Information and the Employer Data) used by the *Employer* and/or the *Contractor* 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 Data), including any copies of such information or data, used by the *Employer* and/or the *Contractor* 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 *Contractor*, its IPR or its business or which the *Contractor* has indicated to the *Employer* that, if disclosed by the *Employer*, would cause the *Contractor* significant commercial disadvantage or material financial loss;
- "Confidential Information"** the *Employer's* Confidential Information and/or the *Contractor's* 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*.
- "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

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Commercially Sensitive Information;

"Contractor Equipment"	the hardware, computer and telecoms devices and equipment supplied by the <i>Contractor</i> or its Subcontractors (but not hired, leased or loaned from the <i>Employer</i>) for the provision of the <i>service</i> ;
"Contractor Software"	software which is proprietary to the <i>Contractor</i> , including software which is or will be used by the <i>Contractor</i> for the purposes of providing the <i>service</i> ;
"Contractor System"	the information and communications technology system used by the <i>Contractor</i> in performing the <i>service</i> including the Software, the <i>Contractor</i> Equipment and related cabling (but excluding the <i>Employer</i> 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 <i>Employer</i> , 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> 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> computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the <i>Employer</i> or the <i>Contractor</i> in connection with this contract which is owned by or licensed to the <i>Employer</i> by a third party and which interfaces with the <i>Contractor</i> System or which is necessary for the <i>Employer</i> to receive the <i>service</i> ;
"Environmental"	the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issues by the Information

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"Information Regulations"	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 Rights" or "IPRs"	(a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights 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; (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 (c) all other rights having equivalent or similar effect in any country or jurisdiction;
"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> 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,

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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 "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> may notify to the <i>Contractor</i> from time to time
"Security Tests"	shall have the meaning set out in paragraph 2.4.1 of Part 2 of this Contract Schedule J (Security Management Plan);
"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> 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"	shall have the meaning set out in ISO/IEC 27001 and as agreed

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- "Applicability"** by the parties during the procurement phase;
- "Standards"** the British or international standards, *Employer'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*.

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 10.4.3.3 of this schedule;

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- 10.3.2.6 complies with the Security Requirements; and
 - 10.3.2.7 complies with the *Employer's* ICT standards.
 - 10.3.3 The references to standards, guidance and policies set out in paragraph 10.3.2 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 Confidential Information and the Employer 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

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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

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and amend the ISMS and Security Management Plan at no additional cost to the *Employer*. 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* 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

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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*.

10.5 Compliance with ISO/IEC 27001

10.5.1 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.

10.5.2 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* in its absolute discretion may waive the requirement for certification in respect of the relevant parts.

10.5.3 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.

10.5.4 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.

10.5.5 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.

10.6 Breach of Security

10.6.1 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.

10.6.2 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:

10.6.2.1 immediately take all reasonable steps necessary to:

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- (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

- 10.6.2.2 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

PART A

Introduction

The Department for Education is required to protect all of its assets required for the effective conduct of its business. People, property and information are considered to be Departmental assets.

Objectives and Scope

Protective security is provided through the implementation of a range of policies and procedures (some of which are governed by legislation). They are in place to manage the preservation of assets as part of the delivery of business processes. Examples of protective security policies/procedures are:

- IT security policy
- Health and Safety policy (including fire and bomb instructions)
- HR recruitment procedures (including pre-employment checks on prospective employees to ensure their suitability)
- National Security Vetting procedures (ensuring that individuals handling sensitive information are reliable)
- Business Continuity plans (to provide a framework for the recovery of critical functions in the event of a crisis)

This list is not exhaustive.

Protective Security Policy

Protective security policies must address the relevance, the level and nature of threats to which assets are exposed. To ensure that assets are protected against compromise it is important that any protective security policy or practice meets the following objectives:

- take into account existing legislation including the Freedom of Information Act
- is based on a risk assessment approach
- deals with the prevailing threats
- adds value by reducing the risks to assets
- is effectively coordinated and complimentary to existing controls to protect against other types of threat
- is incremental, i.e. applies security controls proportionate to the value of the assets involved
- is just, open and reasonable, where they impinge on the lives of employees
- is credible and workable, user-friendly, understood, respected and supported by all individuals required to use them
- is cost effective and responsive to the needs of the organisation, and not any more intrusive to on-going business and operations than is necessary
- reflects the 'need to know' principle (i.e. information is not shared wider than is necessary in order to protect the security of that information or the assets to which it refers).

Introduction

The Department for Education is a complex organisation with a wide range of services to deliver. Each of these services requires an appropriate level of resilience to be implemented so that they can continue to be delivered even in the event of a significant disruption. Some services may need to be restored within a few hours whilst some can be delayed for a few weeks.

Policy Scope

This policy applies to the whole of the Department for Education and its Executive Agencies across all sites.

The policy does not apply to the wider Education sector, such as Department for Education sponsored Arm's Length Bodies (ALBs), schools or external third parties, such as other government departments (OGDs) or private companies that provide a service to the Department. However, the Department is required to seek assurance that ALBs (such as Ofsted) and third party suppliers have effective Business Continuity plans in place to maintain services contracted out to them.

Policy Objectives

The Permanent Secretary fully supports the commitment to a business continuity management system (BCMS). This policy outlines how the BCMS will be developed, implemented, maintained and reviewed.

The implementation of this policy will enable the department to meet its ¹Security Policy Framework commitments and ensure that the organisation can continue to deliver its business critical services within an acceptable timeframe following a disruption.

The department will develop, implement, maintain and review a BCMS by:

- ensuring that business continuity roles and responsibilities are clearly defined and staff equipped to fulfil them;
- ensuring there are effective arrangements in place to identify and mitigate business continuity threats and risks to critical assets including: people, information, IT, premises and equipment;
- ensuring that adequate and proportionate crisis management, incident management and business recovery arrangements and plans are in place to respond to and recover from incidents;
- developing suitable business continuity plans for business critical processes;
- regularly reviewing continuity requirements and plans to ensure that they reflect the current needs of the department;
- conducting regular testing/exercising and maintenance of the recovery arrangements and business continuity plans in accordance with agreed exercising and maintenance schedules;
- providing appropriate levels of training and awareness for staff, especially for those with business continuity responsibilities;
- ensuring that an appropriate level of staff resource is in place to effectively manage the BCMS and ensure the arrangements remain fit-for-purpose; and
- ensuring regular meetings between subject matter experts to continually develop and implement a proven capability to manage and recover from disruptions

The BCM Policy is owned by the Departmental Security Officer and approved by the Permanent Secretary. It is reviewed by the Departmental Security Unit annually.

¹Mandatory Requirement 4 [Managing and recovering from incidents] of the [Cabinet Office Security](#)

Policy Framework.

Roles and Responsibilities

See the [business continuity roles and responsibilities page](#).

All staff should:

- familiarise themselves with their Directorate's planned response to an incident or disruption (the Business Continuity Plan, or BCP); and
- be aware that they may be asked to play a role in the response should the BCP need to be invoked and ensure they know what this role will be.

Business Continuity Roles

Key staff and teams within the Department have specific business continuity (BC) roles and responsibilities. These are detailed below:

As the Accounting Officer, the **Permanent Secretary** has overall responsibility for BCM within the Department for Education. During incidents that cause disruption to departmental business, the Permanent Secretary chairs the **Gold Team** the crisis management team that provides the strategic direction for business recovery.

Each **Director General** is responsible for ensuring that their Directorate has a BCP in place that is regularly maintained and exercised at least annually, and must sign off their Directorate plan after any updates. Along with the Permanent Secretary, Director Generals are members of the Gold Team and provide the strategic direction for business recovery during incidents.

Additional Gold Team members:

- Director, Finance and Commercial - responsible for finance matters and corporate services
- Director, People and Change - responsible all internal comms and staff welfare activity;
- Director, Strategy, Performance and Private Office - responsible for managing the impact of an incident on departmental strategy, overseeing communications with the public and ensuring Ministers are accounted for and able to continue their activities (supported by the Principal Private Secretary)
- Chief Executive, Education Funding Agency - responsible for delivery matters (funding)
- Head of News - responsible for public relations activity during an incident and managing the Press

Directors and Deputy Directors

Directors and Deputy Directors must ensure that the critical functions of their Group/Division are included in the Directorate BCP and that arrangements are implemented within their Group/Division to recover those functions. Directors and Deputy Directors must also ensure that their staff are aware of and are rehearsed in the Directorate's response and that arrangements are in place to account for staff during incidents (e.g. staff registers and phone trees).

BC Coordinators for each Directorate have been nominated by Director Generals. The role of the BC Coordinator is to coordinate planning activities on behalf of the Director General and to liaise with Directors and Deputy Directors to update/maintain plans. The BC Coordinator is also responsible for coordinating testing and awareness/training for their Directorate.

Heads of Site are responsible for ensuring that incident management arrangements are implemented at their respective locations. During an incident, the Head of Site takes on the role of

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Silver Recovery Manager and manages the incident affecting their site.

As the Silver Recovery Manager, the Head of Site will liaise with the Emergency Services, Property Asset Management Unit (PAMU), People and Change (PaC), the Internal Comms and News teams and IT Group to manage the incident and will provide liaison between the business (Directorates) and the incident management activities of **Bronze Teams** to facilitate recovery. The Silver Recovery Manager also provides status reports to the Gold Team.

The **Core Emergency Response Group** (CERG) has responsibility for planning and leading the Departmental response to incidents which affect the schools and children's services. CERG is formed whenever there is an incident which impacts on the sector. Depending on the type of incident, CERG is made up of representatives from policy areas, Comms (Internal and News) teams, IT Group and the Departmental Security Unit (DSU) as required.

The role of **Human Resources** (HR) is to ensure staff receive timely communications about the incident, prepare policies on staff arrangements during incidents e.g. special leave, counselling/welfare, pay etc, and to assist with staff welfare activity at sites that are affected.

IT Group is responsible for IT Disaster Recovery planning that supports business requirements. During incidents, IT Group staff are responsible for maintaining or recovering the IT services.

Finance Group has responsibility for the policy on emergency funding and advise the Gold Team and/or Silver Recovery Manager on financial issues resulting from incidents.

The role of **Property Asset Management Unit** (PAMU) is to implement incident management planning arrangements at their respective locations and to manage any incidents affecting the Department's buildings e.g. power cuts, air-con failure, leaks etc. With Health and Safety colleagues, PAMU also has a responsibility to ensure safe evacuation and assembly of staff and to consider staff safety during incidents.

The **Departmental Security Officer** (DSO) has overall responsibility for the Business Continuity programme within Department for Education and is accountable to the Permanent Secretary. The DSO is supported by the **Business Continuity Team** (BCT): the Business Continuity Team Leader (BCTL) and the Business Continuity Manager (BCM). The BCT is part of the **Departmental Security Unit** (DSU), which is a shared service covering both DfE and the Department for Communities and Local Government (DCLG). The BCTL supports the DSO in providing leadership and direction on business continuity matters across the departments. The BCM co-ordinates all business continuity planning work, including drafting high-level documentation e.g. policy, strategy, plan templates and exercise programmes. The BC Team are also responsible for managing the training and awareness programme across the organisations providing proportionate and appropriate training for staff with BCM, Crisis Management and Incident Management responsibilities and BCM awareness for all staff.

Departmental Security Unit (DSU) - Business Continuity Team

Business Continuity Team Leader **REDACTED**

Business Continuity Manager **REDACTED**

Business Continuity Coordinators

Each Directorate and Executive Agency has a nominated contact for their business continuity planning matters. Listed below are the contact details for the BC Coordinators for each Directorate and Agency:

Children's Services and Departmental Strategy Directorate **REDACTED**

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Education Standards Directorate REDACTED
Infrastructure and Funding Directorate REDACTED
Finance and Commercial Group REDACTED
Legal Advisors Office REDACTED
Private Office REDACTED
National College for Teaching and Leadership (NCTL) REDACTED
Education Funding Agency (EFA) REDACTED
Standards Testing Agency (STA) REDACTED

SECURITY POLICY**PART B**

Ministry of JUSTICE

Corporate Security Policy**Policy Statement**

The Ministry of Justice adheres to the HMG Security Policy Framework (SPF) and complies with its mandatory requirements, establishing a clear framework across MOJ for the identification, assessment and management of security risks in a way that:

- Is clear, available and understood by staff and delivery partners
- Is embedded into business plans and processes
- Enables business operations whilst providing protection, and
- Provides a basis for enforcement and assurance
- Complies with relevant legislation

Our security arrangements are designed to

- protect staff and those who use or visit our premises, or provide services on our behalf, from injury or harm;
- protect the Department's property and equipment from loss or damage;
- maintain the confidentiality, availability and integrity of information; and thereby
- enable and maintain service delivery and public confidence.

We will do this by identifying the threats, assessing the associated risks and introducing proportionate protective measures.

Who does it apply to?

This policy statement establishes the general security framework for the whole of the Ministry of Justice including its agencies and arms length bodies.

Each business area (group, agency or arms length body) must establish arrangements for addressing each element of the Security Policy Framework:

1. Governance and security approaches
 - Roles, accountability and responsibilities
 - Risk management
 - Culture, education and awareness
 - Managing and recovering from incidents
2. Security of Information
 - Information policy
 - Valuing and classifying assets
 - Risk assessment and accreditation of IT systems
 - Technical controls
 - Procedural measures
 - Delivery partners and 3rd Party Suppliers
 - Managing and reporting security incidents

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3. Personnel Security
 - Recruitment checks and national security vetting
 - Ongoing personnel security management
 - appeals
4. Physical security and counter-terrorism
 - Security risk assessment
 - Internal controls
 - Building and perimeter security
 - Preparing for critical incidents
 - Responding to critical incidents

The SPF is available on the Cabinet Office web-site at: <http://www.cabinetoffice.gov.uk/resource-library/security-policy-framework>

A schedule describing corporate arrangements for each of these mandatory requirements will be maintained on the MOJ intranet. This framework includes separate policies dealing with:

- information security;
- IT security
- security breach;
- counter-terrorist protective security;
- business continuity; and
- criminal record checking.

The MOJ intranet also provides more detailed guidance on standard procedures for staff.

Agencies and arms length bodies (ALBs) are expected to comply with this corporate framework but may establish their own arrangements tailored to operational needs, and should supplement it with local policy/guidance for any business-specific risk.

Some controls such as those for IT security systems and national security vetting will be managed centrally.

Compliance with SPF is mandatory but where, on an exception basis, business areas consider that a requirement should not apply, or where local arrangements do not comply with the SPF or MOJ arrangements, the variation should be agreed by the relevant Accounting Officer and reported in annual governance processes.

Business areas should also ensure that control requirements are understood and complied with by any contractor or third party entrusted with protectively marked or business critical information and with unsupervised access to our property.

Counter-Terrorist Protection Policy

This policy should be read in conjunction with the HMG Security Policy Framework, MOJ's corporate security policy, the corporate business continuity policy, and local emergency procedures.

The Ministry of Justice is committed to protecting its staff, visitors, information, buildings and other assets from terrorist attack. The focus will be on prevention but will also provide for effective response. We will achieve this by:

- monitoring and regularly reviewing threats;
- classifying sites according to risk levels;
- implementing baseline security measures appropriate to the threats with arrangements for enhancing protection as the response level increases;
- raising awareness to maintain vigilance and reporting of potential problems;
- ensuring clear allocation of responsibility for implementation of baseline measures, crisis management and business continuity; and
- arranging compliance checking with provision of assurance to the Executive Management Board and Permanent Secretary.

Roles and responsibilities

The Departmental Security Officer (DSO) will communicate advice on threats, including changes in UK threat assessment and HMG 'response levels' to business areas via their security officers. The DSO will advise the Permanent Secretary of actions taken if there is any change in response level.

Security officers, liaising with estates teams and business representatives, must undertake local risk assessment, checking compliance with baseline standards and determining appropriate levels of protection for sites. These assessments must have regard to the impact on the business/site, informed by assessment of threat, likelihood and vulnerability. Such assessments will normally include consideration of both terrorist and other threats.

Risk Assessment

All MOJ sites are to be assessed as to whether they are at low, medium or high risk from terrorist attack, using HMG guidelines. Sites assessed as being at moderate risk must assess and document the threat and set out how this is mitigated by site security specification and operational controls. All locations, regardless of assessed level, must have a local Counter-terrorist plan detailing how they will vary operational controls according to changes in the *response level*. The level of operational controls should reflect the risk classification of the site, with "moderate risk" sites requiring more robust arrangements than "low risk" sites. Corporate Security Branch can provide advice on CT Plans to Local Security Officers.

Protection

Protection against terrorism should be proportionate and include proactive and preventive measures such as patrolling to deter reconnaissance, CCTV monitoring, physical strengthening/stand-off measures, vetting checks, as well as reactive operational measures during periods of heightened response, and emergency response plans that protect people and assets in the event of an attack.

Incident Response

All business areas/sites must have clear emergency response arrangements to cover the response to direct or indirect impact from a terrorist threat or attack. These arrangements will normally be incorporated within Fire & Incident Control and business continuity arrangements and should include arrangements for liaising with emergency services and for communicating with staff.

Staff must familiarise themselves with local procedures and comply with any instruction from the Fire & Incident Control Officer.

Co-ordination

MOJ's Corporate Business continuity arrangements will be used to co-ordinate across MOJ for events that affect more than one business area. Co-ordination will be supported by the Corporate Security

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and Business Continuity team who will provide liaison with the Civil Contingencies Secretariat. For incidents having a significant effect on delivery of MOJ's front-line services (courts, tribunals, prisons), the co-ordination role may be taken by the Strategic Co-ordination Group (Gold), chaired by NOMS Gold Commander.

Personnel security

Those with access to information or other assets that may be of value to terrorists, including close proximity or access to high profile public figures, should be assessed for the need for national security clearance in accordance with vetting procedures.

Testing and exercising

Counter-terrorist plans should be tested periodically. Plans for medium risk sites should be tested at least once every two years and for low risk sites every 3-5 years as part of general business continuity testing and exercising.

Assurance

Assurance of the adequacy of arrangements and compliance with this policy will be covered by the annual Governance Statement, supplemented by SRMO compliance returns and periodic review of risk and contingency arrangements by management teams.

Information Security Policy

Information security supports the preservation of the confidentiality, integrity and availability of information:

- Confidentiality: Ensuring information is only accessible by those authorised to have access;
- Integrity: Safeguarding the accuracy and completeness of information and processing methods;
- Availability: Ensuring that authorised users have access to information and associated assets when required.

The Ministry of Justice regards the protection of its information as vital in order to meet its key objectives, in maintaining public and supplier confidence that the information we hold will be kept secure, to ensure the continuity of government services and systems, and to ensure that we contribute to the effectiveness of arrangements for maintaining the security of shared systems such as the Government Secure Intranet.

The Ministry of Justice recognises the importance of complying with the statutory requirement for information security in order to protect those who entrust their information, including sensitive personal data to us and protect its reputation with the public, the judiciary, other public sector organisations and voluntary and private sector organisations. The Ministry of Justice aims to be exemplary in complying with the Human Rights Act 1998, the Data Protection Act 1998 and the Freedom of Information Act 2000, for which it is the lead department.

To this end the Ministry of Justice is committed to achieving best practice in the way we manage information security by complying with the mandatory requirements relating to information security and assurance contained in the Security Policy Framework and supporting HMG Information Assurance Standards.

Our approach to Information Assurance will be based on the ownership of information risks by Information Asset Owners within the business. It is not the sole responsibility of central service providers (IT Services and IT suppliers) though these will play their part in delivering the required security where this is best done centrally, or by security staff, whose role is to provide advice. The Ministry of Justice will aim to realise the benefits of a business oriented approach to information security in terms of informed decision making, resource savings, efficiency and reputation. A member of the Executive Management Board is designated as Ministry of Justice's Senior Information Risk Owner (SIRO).

This high level policy statement is supported by a suite of policies on various aspects of IT and information security.

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ANNEX 2

SECURITY MANAGEMENT PLAN

Security Management Plan to be provided within 20 days of contract award

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CONTRACT SCHEDULE K

11. CONTRACT SCHEDULE K - MANAGEMENT AND PERFORMANCE INFORMATION

11.1 Management Information

11.1.1 The *Contractor* submits the management information to the *Employer* as set out in and in accordance with the Service Information.

11.2 Open Book

11.2.1 For the purpose of this paragraph 11.2, Contract Year has the meaning given to it in Contract Schedule O.

11.2.2 The *Contractor* shall provide to the *Employer*, on request by the *Service Manager*, full details of:

11.2.2.1 its financial records relating to the contract;

11.2.2.2 cash flow, balance sheet and profit and loss for the contract; and

11.2.2.3 evidence to substantiate any internal recharges and apportionment of corporate overheads in relation to the contract.

11.2.3 Without prejudice to the parties' respective rights and obligations in relation to audit access or the provision of information under this contract, the *Contractor* shall provide to the *Employer*, its authorised agents, and any auditor appointed by the *Employer* access to:

11.2.3.1 inspect and take copies from the *Contractor's* records relating to the contract; and

11.2.3.2 such personnel as are required by the audit team to provide oral or written explanation of any queries or issues,

for the purposes of verifying the accuracy of, and any omission from, all information provided to the *Employer* by the *Contractor* in relation to payments made pursuant to this contract.

11.2.4 Subject to Contract Schedule Q, the *Employer* shall be entitled to conduct an open book review no more frequently than once in each Contract Year as set out in the remainder of this paragraph 11.2.

11.2.5 For the purposes of planning the open book review, the *Contractor* shall afford the *Employer*, not later than six (6) months prior to the review, access to relevant documentation and personnel as are required to determine the systems in place and the data and other requirements, and the dates by which the relevant accounts and records must be made available for the open book review.

11.2.6 To support the open book review, the *Contractor* shall:

11.2.6.1 no later than sixty (60) Working Days after the end of each Contract Year provide to the Authority a statement created by the *Contractor* setting out the actual payments, revenues, and returns received by the *Contractor* in relation to the provision of the Service, and the actual costs (including capital costs, financing costs and ongoing revenue expenditure) incurred in relation to the provision of the Service and certified annual accounts (the "Annual Financial Statement");

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- 11.2.6.2 on the request of the *Employer*, promptly make available the results of any regulatory/statutory review and shall provide access for the *Employer* to the regulatory/statutory auditors to discuss any actual or suspected error with respect to amounts charged to the *Employer* under this contract; and
 - 11.2.6.3 provide from its external auditors a letter in a form reasonably specified by the *Employer* setting out the external auditor's confirmation that the Annual Financial Statement represents a true and fair view of the accounts relating to the contract.
 - 11.2.7 The *Employer* and the *Contractor* shall bear their own costs with respect to any inspections or verification exercises carried out pursuant to this paragraph 11.2, save that if any open book review reveals any overpayment by the *Employer* to the *Contractor*, or any underpayment by the *Contractor* to the *Employer*, the *Contractor* shall reimburse the *Employer* for the *Employer's* costs and expenses incurred in the open book review (and make good the overpayment or underpayment together with interest thereon at the rate of two per cent (2%) per annum above the Bank of England's base rate for the time being in force (calculated from the date of the over or under payment)).
 - 11.2.8 Where the *Contractor* identifies through any inspections or verification exercises that it has incurred an under payment by the *Employer* due to the *Contractor*, it shall advise the *Employer* in writing of the amount together with any supporting evidence of the under payment the *Employer* reasonably requires where the *Employer* agrees there has been an underpayment the *Employer* shall pay the *Contractor* the amount of the under payment provided that the *Employer* shall not be responsible for any under payments to the *Contractor* which relate to Service provided more than 6 months prior to the identification by the *Contractor*.
 - 11.2.9 Neither the *Contractor* nor any Sub-Contractors shall be entitled to be repaid any expenses or costs incurred in complying with its obligations under this paragraph 11.2.
 - 11.2.10 The open book review provisions set out in this paragraph 11.2 shall also apply in respect of Sub-Contractors and the *Contractor* shall ensure that its subcontracts with Sub-Contractors contain provisions which enable the *Employer* to exercise its open book review process in respect of that Sub-Contractor.
- 11.3 Audit rights
 - 11.3.1 Where a Task Order states that the *Employer* requires a technical audit of the relevant works, the *Employer* may undertake or procure the undertaking of a technical audit of the works following their completion.
 - 11.3.2 Following the technical audit, if the *Employer* is not satisfied that the relevant works have been completed in accordance with the relevant Task Order and this Contract, the *Employer* may:
 - 11.3.2.1 notify the *Contractor* of the reasons for this and the *Contractor* shall, as soon as possible after receipt of such notification, complete or procure the completion of the relevant works in accordance with the relevant Task Order and this Contract;
 - 11.3.2.2 require all future New Works to be subject to technical audits until further notice and charge the cost of such additional audits to the *Contractor*, and/or

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- 11.3.2.3 withhold any Charges which relate to the relevant works until the works have been completed in accordance with the relevant Task Order and this Contract or, if Charges have already been paid, the *Employer* shall be entitled to set off such Charges against the next *application for payment*.

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CONTRACT SCHEDULE L

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

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CONTRACT SCHEDULE M

13. **CONTRACT SCHEDULE M - NOT USED**

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CONTRACT SCHEDULE N

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 the Price List.

14.1.2.5 Rates means, in respect of works covered by the bespoke schedule of rates set out in the Price List, the rates set out as such in the Price List, and, in respect of other works, the resource 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

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- 14.2.1.1 New Works shall all be authorised in accordance with the Employer's –Employer's New Works and Approvals Process. New Works may be required by the *Employer*.
- 14.2.1.2 The *Employer* 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 project management is required in the Task Order).
- 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 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* 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

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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 Maintenance

the 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 Not used.

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. 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

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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 Employer's 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* 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

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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.

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ANNEX 1
EMPLOYER'S NEW WORKS AND APPROVALS PROCESS

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CONTRACT SCHEDULE O

15. CONTRACT SCHEDULE O – PAYMENT MECHANISM (ORIGINAL SERVICE)

15.1 Definitions

Actual Significant Data	is the Baseline Significant Data which has been validated by the <i>Contractor</i> during the Verification Period in accordance with paragraph 15.7 of this Contract Schedule O.
Adjustment Date	the date at which indexation is to be applied on each anniversary of the <i>starting date</i> for the Original Service. 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.
Baseline Significant Data	is the figures within the Baseline Significant Data Category as set out in the data pack for the Original Service provided to the <i>Contractor</i> prior to the Contract Date.
Baseline Significant Data Category	is the net internal area square meterage.
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.
Mobilisation Milestone	is a milestone to be achieved during mobilisation for the Original Service as identified as such in this Contract Schedule O.
Milestone Payment	is an amount due in respect of each Mobilisation Milestone as identified as such in this Contract Schedule O.
Mobilisation Payment	is an amount due in respect of mobilisation services provided prior to the date on which the Original Service are to be provided for Phase 1, Phase 2 and Phase 3.
Monthly Disbursement	is the amount of disbursements, if any, paid by the <i>Contractor</i> on behalf of the <i>Employer</i> (excluding any VAT) within the Previous Contract Month “n-1” and which are identified within the Service Information for the Original Service as a disbursement that the <i>Contractor</i> may reclaim from the <i>Employer</i> for reimbursement.
Monthly Payment	is the amount due at each assessment date calculated in accordance with this Contract Schedule O.
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.

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Payment Index	is the index identified in Contract Schedule A – Contract Data Part One.
Phase	is Phase 1, Phase 2 or Phase 3.
Phase 1	is the Affected Properties with a Service Commencement Date of 22 January 2018 identified as such in the Service Information for the Original Service.
Phase 2	is the Affected Properties with a Service Commencement Date of 22 January 2018 identified as such in the Service Information for the Original Service.
Phase 3	is the Affected Properties with a Service Commencement Date of 1 April 2018 identified as such in the Service Information for the Original Service.
Previous Contract Month(n-1)	is the calendar month, referred to as “n-1” during the <i>service period</i> for the Original Service immediately prior to the relevant Contract Month “n”.
Significant Data Discrepancy	<p>is a variation between the Baseline Significant Data and the Actual Significant Data in a Baseline Significant Data Category which, across all Affected Properties for the Original Service, is greater than 5%, provided that a variation between the Baseline Significant Data and the Actual Significant Data shall not be taken into account for the purpose of determining whether there is a Significant Data Discrepancy where the variation:</p> <ul style="list-style-type: none">a) was reasonably foreseeable;b) could have been identified by a desktop survey; and/orc) does not have a material and adverse effect on the cost of providing the Original Service.
Total Price for Tasks	<p>is the sum of:</p> <ul style="list-style-type: none">a) the total price for Tasks included in the bespoke schedule of rates in the cost model within the Original Service Price List, calculated by applying the price detailed in the bespoke schedule of rates (which shall be inclusive travel, overhead and profit) to each Task and deducting the relevant Comprehensive Liability Threshold; andb) the total price for all other Tasks, calculated by applying the rates for time and materials in the cost model within the Original Service Price List (which shall be inclusive of travel, overhead and profit) to each Task and deducting the relevant Comprehensive Liability Threshold.
Un-Indexed Monthly Payment	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

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calculated as follows:

- 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 Original Service Price List for the relevant Contract Year plus the cost of compensation 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.

Verification Period (Original Service) is the period from the *starting date* to 1 September 2018.

15.2 CALCULATION OF THE MOBILISATION PAYMENT

15.2.1 The Mobilisation Payment is comprised of:

- 15.2.1.1 REDACTED for Phase 1 & 2;
- 15.2.1.2 REDACTED N/A
- 15.2.1.3 REDACTED for Phase 3.

15.2.2 Each part of the Mobilisation Payment relating to a Phase is comprised of Milestone Payments which relate to Mobilisation Milestones, as set out in the table below:

Mobilisation Milestone	Milestone Payment for Phase 1	Milestone Payment for Phase 2	Milestone Payment for Phase 3
Milestone 1: Submission of Mobilisation Plan	REDACTED	N/A	REDACTED
Milestone 2: Submission of Asset Register to the Integrator	REDACTED	N/A	REDACTED
Milestone 3: Submission of PPM Schedule	REDACTED	N/A	REDACTED
Milestone 4: Resourcing and management	REDACTED	N/A	REDACTED
Milestone 5: Submission of service plans/contract plans	REDACTED	N/A	REDACTED
Milestone 6: Completion of all Acceptance Test and interfaces with Integrator	REDACTED	N/A	REDACTED

Mobilisation Payment	REDACTED	REDACTED	REDACTED
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15.2.3 The relevant Milestone Payment is payable as follows:

- 15.2.3.1 50% of the relevant Milestone Payment is payable on achievement of the Mobilisation Milestone;
- 15.2.3.2 20% of the relevant Milestone Payment is payable on achievement of all Mobilisation Milestones for the relevant Phase;
- 15.2.3.3 30% of the relevant Milestone Payment is payable on achievement of all KPIs with a score of “amber” or above for a period of four (4) Contract Months after the date on which the *Service* starts to be provided in respect of the relevant Phase.

15.2.4 A Mobilisation Milestone is achieved when it is accepted by the *Employer* in accordance with the acceptance testing process set out in Annex 1 to this Contract Schedule O. For the avoidance of doubt, the acceptance testing process shall apply in relation to each of the three Phases.

15.3 CALCULATION OF THE MONTHLY PAYMENT FOR THE ORIGINAL SERVICE

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

$$MP_n = IMP_n + UMP_n + MD_{n-1} + TO_{n-1} - PD_{n-1} \tag{1}$$

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 in relation to the Original Service evidenced by invoices;
- TO_{n-1} is the Total Price for Tasks in relation to the Original Service 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

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Performance Information) in respect of the Original Service .

Monthly Payment at Final Contract Month

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

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

15.3.3 The terms are consistent with those given above.

Monthly Payment following Final Contract Month

15.3.4 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.

15.3.5 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.

CALCULATION OF THE INDEXED MONTHLY PAYMENT (IMPn)

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

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

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.

15.3.7 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.

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CALCULATION OF THE PERFORMANCE DEDUCTION (PDn)

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

15.3.9 The monthly adjustment in relation to performance deduction for the Contract Month “n” (PDn) is the sum of the performance deductions for Month “n” for failure against the KPI for each aspect of performance of the Original Service in that month (PDKPIsn), calculated in accordance with the following formula:

$$PD_n = \sum PD_{KPIsn} \tag{6}$$

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

$$PD_{KPIsn} = KSD_n \times R \tag{7}$$

where:

PDKPIsn is the aggregate of the performance deductions for each of the KPI, against the KPI for each aspect of performance of the Original Service, 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 in relation to the Original Service, this will either be 1, 1.5, 1.75 or 2 and determined in accordance with mechanism below.

RATCHET

15.3.12 A ratchet will apply to the total value of KPI deductions for each aspect of performance for frequent or repeated failure of to achieve the KPI threshold in respect of the Original Service (the “Ratchet”).

15.3.13 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 threshold stated in the Performance Adjustment Schedule.

15.3.14 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.

15.3.15 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 be taken to be one (1).

15.3.16 Ratchet for ‘Consecutive Failure’:

15.3.16.1 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.

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15.3.16.2 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.

15.3.16.3 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.

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

15.3.17.1 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.

15.3.17.2 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.

15.3.17.3 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.

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.

15.4 NOT USED

15.5 EXTENSION TO SERVICE PERIOD

15.5.1 Where the *Service Manager* instructs an extension to the *service period*, the Prices for the compensation event shall:

15.5.1.1 be calculated on a pro-rata basis using the Prices in the Price List and adjusted for indexation using the Payment Index; and

15.5.1.2 be apportioned to the Monthly Payment as part of the Un-Indexed Monthly Payment.

15.6 BEDDING IN PERIOD

15.6.1 The *Contractor* will be expected to be fully mobilised for the Original Service prior to the *starting date*. As such deductions in respect of the Original Service will apply from the *starting date* in respect of the Original Service and no bedding in period will apply.

15.7 ASSET VERIFICATION

15.7.1 During the Verification Period (**Original Service**), the Contractor shall compare the Actual Significant Data against the Baseline Significant Data in each Baseline Significant Data Category.

15.7.2 Where the *Contractor* identifies any variations between the Actual Significant Data and the Baseline Significant Data in a Baseline Significant Data Category, including but not limited to any variations which it considers to be a Significant Data Discrepancy, it shall promptly notify the *Service Manager* in writing and report these at the next monthly performance meeting.

15.7.3 Within one Contract Month of the end of the Verification Period (**Original Service**), the Contractor shall notify the *Service Manager* whether there is any Significant Data Discrepancy in the Baseline Significant Data Category and, subject to paragraphs 15.7.4 and 15.7.5, the fixed costs in the Price List shall be adjusted (upwards or downwards) by the difference

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between the Baseline Significant Data and the Actual Significant Data to reflect the change in cost of providing the Services.

15.7.4 Any adjustment (upwards or downwards) to the fixed costs in the Price List pursuant to paragraph 15.7.3 shall be calculated:

- 15.7.4.1 on an open book basis;
- 15.7.4.2 to reflect Actual Significant Data; and
- 15.7.4.3 taking account of all reasonable and proper costs.

15.7.5 No adjustment (upwards or downwards) shall be made to the fixed costs in the Price List pursuant to paragraph 15.7.3 in respect of costs which have already been accounted for.

15.7.6 For the avoidance of doubt, a maximum of one adjustment can be made pursuant to this paragraph 15.7, being in respect of a Significant Data Discrepancy in the Baseline Significant Data Category and no adjustment shall be made (and no additional costs shall be payable by the *Employer*) in respect of the *Contractor's* obligation to update the asset register, as required by the Service Information.

15.7.7 Where an adjustment (upwards or downwards) is made to the fixed costs in the Price List pursuant to paragraph 15.7.3 and there has been an overpayment or underpayment in respect of Services already provided prior to the adjustment:

15.7.7.1 where there has been an overpayment, the *Contractor* shall reimburse the *Employer* a sum equal to the overpayment within 2 Months following the end of the *Verification Period (Original Service)* or may offset such sum against payments due from the *Employer* to the *Contractor*, or

15.7.7.2 where there has been an underpayment, the *Employer* shall reimburse the *Contractor* within 2 Months following the end of the *Verification Period (Original Service)*.

15.8 TRANSFORMATION CARRY COSTS

15.8.1 The "Transformation Carry Costs" means, in relation to the Original Service, the difference, on a monthly basis, between:

- 15.8.1.1 The costs to employ the Transferring Former Contractor Employees and/or Transferring Employer Employees (or any person that replaces a Transferring Former Contractor Employee and/or a Transferring Employer Employee within four months of the starting date) from the Relevant Transfer Date; and
- 15.8.1.2 the costs to employ staff used by the Contractor in order to deliver the new OCS Operational Solution referred to in the Contractor's tender proposal

in each case in connection with the delivery of the Original Service only, and such costs shall include but not be limited to:

- (a) annual salary
- (b) annual national insurance cost
- (c) annual pension cost
- (d) holiday entitlement
- (e) annual life insurance cost
- (f) annual sick pay entitlement
- (g) maternity/paternity costs
- (h) any other cost arising directly from the contract of employment of the Transferring Former Contractor Employee and/or Transferring Employer

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Employee (or any person that replaces a Transferring Former Contractor Employee and/or a Transferring Employer Employee within four months of the *starting date*).

- 15.8.2 The “Relevant Phase Commencement Date” means either 22 January 2018 (in respect of Phase 1 Affected Properties and Phase 2 Affected Properties (as identified in the Service Information) which have a Service Commencement Date of 22 January 2018) or 1 April 2018 (in respect of Phase 3 Affected Properties (as identified in the Service Information) which have a Service Commencement Date of 1 April 2018).
- 15.8.3 The Employer and the Contractor agree that the Contractor shall recover the Transformation Carry Costs plus profit and overhead (plus VAT) in addition to the Monthly Payment until the OCS Operational Solution at each of the Phase 1, Phase 2 and Phase 3 Affected Properties is fully implemented. Irrespective of the foregoing, the total sum payable to the Contractor in respect of the Transformation Carry Costs shall in any event be no less than REDACTED plus profit and overhead (plus VAT).
- 15.8.4 In order to maintain continuity of service and minimise inconvenience to service users, the Employer requires the Contractor to schedule the transformation from the inherited workforce operating model to the OCS Operational Solution at each of the Phase 1, Phase 2 and Phase 3 Affected Properties so as to complete by the end of the 4th Contract Month after the Relevant Phase Commencement Date.
- 15.8.5 The Employer acknowledges and agrees that the Contractor has estimated the total Transformation Carry Costs to be REDACTED plus profit and overhead (plus VAT) if the transformation to the OCS Operational Solution at each of the Phase 1, Phase 2 and Phase 3 Affected Properties is completed within the first 4 Contract Months after the Relevant Phase Commencement Date. Further to paragraph 15.8.3, the total sum payable to the Contractor in respect of the Transformation Carry Costs shall in any event be no less than REDACTED plus profit and overhead (plus VAT). The Employer shall therefore pay the Contractor the sum of REDACTED plus profit and overhead (plus VAT) in addition to the Monthly Payment for each of the first 4 Contract Months following the *starting date*.
- 15.8.6 The Contractor shall use reasonable endeavours to ensure that the transformation to the OCS Operational Solution at each of the Phase 1, Phase 2 and Phase 3 Affected Properties is effective on or before the 1st day of the 5th Contract Month following the Relevant Phase Commencement Date. However, the Employer agrees that the Contractor shall continue to receive the Transformation Carry Costs plus profit and overhead (plus VAT) (or a proportional part thereof if the transformation to the OCS Operational Solution is partly implemented) in addition to the Monthly Payment if the Contractor is unable to fully implement the OCS Operational Solution at each or any of the Phase 1, Phase 2 or Phase 3 Affected Properties on or before the 1st day of the 5th Contract Month following the Relevant Phase Commencement Date as a result of any act, omission, delay or instruction of the Employer (or any of the *Employer’s* employees, consultants, contractors, sub-contractors or agents).
- 15.8.7 For the avoidance of doubt, the Contractor shall not be entitled to receive any further Transformation Carry Costs following the completion of the transformation from the inherited workforce operating model to the OCS Operational Solution.

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ANNEX 1 ACCEPTANCE

1. GENERAL

1.1 The *Contractor* shall undertake the following acceptance tests in relation to Mobilisation Milestone 1 (Submission of Mobilisation Plan), Mobilisation Milestone 2 (Submission of Asset Register to the Integrator), Mobilisation Milestone 3 (Submission of PPM) and Mobilisation Milestone 6 (Completion of all Acceptance Test and interfaces with Integrator):

1.1.1 testing for completeness and accuracy of documentation;

1.1.2 testing for compliance with the Service Information;

1.2.3 testing for compliance with the *Employer's* asset hierarchy and location hierarchy.

1.2 The *Contractor* shall undertake the following acceptance tests in relation to Mobilisation Milestone 5 (Submission of service plans/contract plans):

1.2.1 configuration testing, which shall involve testing of processes and functions, integration and interfaces and reporting;

1.2.2 technical testing, which shall involve testing of storage arrangements, performance including volume and stress testing, back-up, restore and disaster recovery arrangements and compliance with policies;

1.2.3 service operation testing, which shall involve testing of printing and distribution of reports and other physical outputs, business continuity arrangements, access control and security arrangements, service management, operations management, performance management and physical security compliance;

1.2.4 compliance with business rules and processes, which shall involve testing of processes for the recipient of notification of events, processes for the dispatch of relevant operatives to site, processes for the tracking and tracing of dispatched events, processes for managing exceptions to the standard processes, processes for the provision of information to support the assessment and calculation of KPIs, processes from receipt of Task Orders to issue of payment applications including self-certification processes, cost validation processes and controls, compliance with audit function processes and controls, processes relating to information management, processes relating to co-ordination of works, processes relating to health and safety compliance and safe systems of work compliance and for ensuring the continued accreditation of the *Contractor* and its sub-contractors and management of *compensation events*;

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- 1.2.5 documentation testing, which shall involve testing of the performance management system, programme management strategy and plan, change management strategy and plan, communication strategy and plan, technical architecture documentation, applications architecture documentation, software documentation, security solution documentation, administration procedures, the services manual and the cost model; and
 - 1.2.6 delivery testing which shall involve testing of end-to-end information flows, the operation of all processes and the full delivery of the Services, processes for remediation of any failures identified and completion of a risk management accreditation document set which is accredited by the *Employer*.
- 1.3 The *Contractor* shall undertake the following acceptance tests in relation to Mobilisation Milestone 4 (Resourcing and management) in order to test the readiness of *Contractor* personnel to operate systems and processes required to deliver the Services, which shall involve testing of:
- 1.3.1 training strategy and plan;
 - 1.3.2 training material;
 - 1.3.3 confirmation of training being completed in respect of all relevant staff; and
 - 1.3.4 satisfactory identification of training to be delivered after the Services have commenced; and
 - 1.3.5 that staff are mobilised and ready to deliver the Services.

2. TESTING RESPONSIBILITIES

- 2.1 The *Contractor* shall appoint a test manager with single point responsibility for:
- 2.1.1 adherence to the procedures set out in this Annex;
 - 2.1.2 coordinating all acceptance tests; and
 - 2.1.3 recording in a single test results register the results of all acceptance tests.
- 2.2 The *Contractor* shall:
- 2.2.1 produce a testing strategy and acceptance strategy (in accordance with the Mobilisation Plan), describing:
 - 2.2.1.1 Mobilisation Milestones and associated milestone dates;

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- 2.2.1.2 acceptance tests to be conducted for each Mobilisation Milestone in accordance with paragraph 1 above;
- 2.2.1.3 detailed acceptance criteria which must be achieved for each acceptance test and which comply with the acceptance criteria set out in paragraph 3 below;
- 2.2.1.4 means of testing and test methods to be used for each acceptance test;
- 2.2.1.5 process for obtaining *Employer* confirmation of the results of each acceptance test and achievement of each Mobilisation Milestone;
- 2.2.1.6 process for recording acceptance test results; and
- 2.2.1.7 consequences of and resulting steps to be taken by the *Contractor* arising from failure to achieve any Mobilisation Milestone by the associated milestone date;
- 2.2.2 produce a test plan for each Mobilisation Milestone, describing the specific arrangements and sequence for undertaking the acceptance tests associated with that Mobilisation Milestone;
- 2.2.3 produce test scripts for each acceptance test that describe how achievement will be demonstrated to the *Employer*;
- 2.2.4 review the testing strategy, acceptance strategy, test plans and test scripts with the *Employer* and amend as agreed with the *Employer*;
- 2.2.5 undertake acceptance tests in accordance with the test plans and test scripts;
- 2.2.6 agree the results of acceptance tests with the *Employer*; and
- 2.2.7 document the results of acceptance tests.

3. ACCEPTANCE CRITERIA

- 3.1 A Mobilisation Milestone shall be achieved where it is accepted by the *Employer* as having met the acceptance criteria set out in the table below, unless the *Employer* expressly agrees in writing that the Mobilisation Milestone has otherwise been achieved.

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Mobilisation Milestones	Key Deliverables:	Milestone Date	Acceptance Criteria
Milestone 1: Submission of Mobilisation Plan	Delivery by the <i>Contractor</i> of a proposed Mobilisation Plan which is generic to all three Phases, incorporating the <i>Employer's</i> comments and <i>Contractor</i> delivery of a written notice and all supporting evidence confirming successful delivery and testing of the matters and processes set out in paragraph 2 of this Annex.	6 th October 2017	Written approval by the <i>Employer</i> of the Mobilisation Plan.
Milestone 2: Submission of Asset Register to the Integrator	Provision by the <i>Contractor</i> of an initial asset register suitable for uploading to the integrator for approval and delivery of a written notice and all supporting evidence confirming successful delivery and testing of the matters and processes set out in paragraph 2 of this Annex.	10 th November 2017	Written approval by the <i>Employer</i> of the asset register.
Milestone 3: Submission of PPM Schedule	Delivery by the <i>Contractor</i> of a planned services schedule in the required format incorporating the <i>Employer's</i> comments and delivery of a written notice and all supporting evidence confirming successful delivery and testing of the matters and processes set out in paragraph 2 of this Annex.	8 th December 2017	Written approval by the <i>Employer</i> of the planned services schedule.
Milestone 4: Resourcing and management	All <i>Contractor Personnel</i> required to provide the <i>Service</i> are in place and available to fulfil their roles and delivery of a written notice and all supporting evidence confirming successful delivery and testing of the matters and processes set out in paragraph 2 of this Annex.	22 nd January 2018	Written confirmation by the <i>Employer</i> that the <i>Contractor</i> has delivered the items in column 2 of this table.

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Milestone 5: Submission of service plans/contract plans	Delivery by the <i>Contractor</i> of a written notice and all supporting evidence confirming successful delivery and testing of the matters and processes set out in paragraph 2 of this Annex.	22 nd January 2018	Written confirmation by the <i>Employer</i> that the <i>Contractor</i> has delivered the items in column 2 of this table.
Milestone 6: Completion of all Acceptance Test and interfaces with Integrator	Successful completion of two trail processing runs for all property occupancy expenditure to the satisfaction of the <i>Employer</i> together with evidence confirming successful delivery and testing of the matters and processes set out in paragraph 2 of this Annex.	12 th January 2018	Written confirmation by the <i>Employer</i> that the key deliverables meet requirements in terms of accuracy and quality

3.2 If in the reasonable opinion of the *Employer*, the results of an acceptance test show that the acceptance criteria for a Mobilisation Milestone have not been met, the *Contractor's* test manager shall promptly convene a meeting with the *Service Manager* to agree the degree of fault and corresponding consequences and steps in accordance with the following table:

Degree of failure	Definition	Consequences and Resulting Steps
Critical	Material and critical impact upon operation of the <i>Service</i> in the reasonable opinion of the <i>Employer</i> .	Mobilisation Milestone is not achieved and Milestone Payment cannot be paid until failure is rectified and acceptance test repeated successfully. <i>Contractor</i> must produce a plan and timescale for rectification and repeat acceptance test.
Major	Material but non-critical impact upon operation of the <i>Service</i> in the reasonable opinion of the <i>Employer</i> .	Mobilisation Milestone is not achieved and Milestone Payment cannot be paid until failure is rectified and acceptance test repeated successfully. <i>Contractor</i> must produce a plan and timescale for rectification and repeat acceptance test.
Moderate	Services do not work as intended (in the reasonable opinion of the <i>Employer</i>) but a <i>Contractor</i> work-around acceptable to the <i>Employer</i> exists.	Mobilisation Milestone is achieved and Milestone Payment can be paid. <i>Contractor</i> must produce a plan and timescale for rectification and repeat acceptance test.

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Minor	Non-material impact upon operation of the <i>Service</i> in the reasonable opinion of the <i>Employer</i> .	Mobilisation Milestone is achieved and Milestone Payment can be paid. <i>Contractor</i> must produce a plan and timescale for rectification and repeat acceptance test.
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3.3 The *Contractor* shall undertake all necessary steps as identified in the table above including rectifying the failure and undertaking repeat acceptance tests at no additional cost.

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CONTRACT SCHEDULE P

16. CONTRACT SCHEDULE P – TUPE SURCHARGE

16.1 Introduction

16.1.1 [Subject to Contract Schedule Q], 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 (or any person that replaces a Transferring Former Contractor Employee and/or a Transferring Employer Employee within four months of the *starting date*) 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:

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- 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

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- 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 not be adjusted.
- 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.
- 16.6 Redundancy Surcharge
- 16.6.1 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*, whose consent shall not be unreasonably withheld or delayed.
- 16.6.2 The *Contractor* shall mitigate the effects of any Redundancy Surcharge by:
- 16.6.2.1 redeploying such people where it is practicable for the *Contractor* to do so; or
- 16.6.2.2 where redeployment is not practicable, taking such reasonable mitigation steps to minimise the costs of redundancy where practicable; and
- 16.6.2.3 complying with the law and any reasonable instructions from the *Service Manager*.
- 16.6.3 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) (or any person that replaces a Transferring Former Contractor Employee and/or a Transferring Employer Employee within four months of the *starting date*) within 12 months of the *starting date*.
- 16.6.4 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.

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- 16.6.5 On receipt of the *Contractor's* calculation of the Redundancy Surcharge in accordance with paragraph 16.6.4 the *Service Manager* shall either:
- 16.6.5.1 notify the *Contractor* in writing of acceptance of the Redundancy Surcharge relating to the Relevant Transfer; and/or
 - 16.6.5.2 request further information/evidence; and/ or
 - 16.6.5.3 request a meeting to discuss/clarify the evidence provided.
- 16.6.6 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.
- 16.6.7 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.
- 16.6.8 On agreement of the Redundancy Surcharge the Prices shall be changed accordingly.
- 16.6.9 If the effect of making Transferring Former Contractor Employees and/or Transferring Employer Employees redundant in accordance with paragraph 16.6 is to reduce the total Defined Cost in relation to the Original Service or the Additional Service after the Additional Service Steady State Commencement Date, the Prices shall not be reduced to take account of any such reduction in the total Defined Cost

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CONTRACT SCHEDULE Q

ADDITIONAL SERVICE

17. CONTRACT SCHEDULE Q – ADDITIONAL SERVICE

17.1 Definitions

Additional Service Initial Period	is the period from the starting date for the Additional Service until (but excluding) the Additional Service Steady State Commencement Date or if earlier, the date of termination of this Agreement (as a whole) or of the Additional Service pursuant to paragraph 17.5.3(b).
Additional Service Steady State Commencement Date	is 0001 hours on 1 October 2018 (subject to paragraph 17.5.6 below)
Additional Service Steady State Period	is that part of the <i>service period</i> for the Additional Service commencing on the Steady State Commencement Date
Additional Service Price List	is the Price List for the Additional Service agreed and adopted pursuant to paragraph 17.5
Adjustment Date	the date at which indexation is to be applied on each anniversary of the Additional Service Steady State Commencement Date. 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	is defined in Contract Schedule O.
Contract Month(n)	is defined in Contract Schedule O..
Contract Month(n-2)	is the calendar month preceding the Previous Contract Month(n-1)
Contract Year	is defined in Contract Schedule O.
Delivered Service	is the Additional Service which the Contractor provides pursuant to this agreement during the Verification Period (Additional Service) (including pursuant to Task Orders)
Indexed Monthly Payment	is an amount due which forms part of the Monthly Payment for the Additional Service and is calculated in accordance with the formula for the Indexed Monthly Payment identified in this Contract Schedule Q.
Initial Payment	is the sum of REDACTED
Mobilisation Payment	is the sum of REDACTED
Monthly Disbursement	is the amount of disbursements, if any, paid by the <i>Contractor</i> on behalf of the <i>Employer</i> (excluding any VAT) within the Previous Contract Month “n-1” and which are identified within the Additional Service Service Information as a disbursement that the <i>Contractor</i> may reclaim from the <i>Employer</i> for reimbursement
Monthly Payment	is the amount due in respect of the Additional Service at each assessment date calculated in accordance with this Contract

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Schedule Q.

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 during the Additional Service Steady State Period.

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 *service period* for the Additional Service immediately prior to the relevant Contract Month “n”.

Reconciliation Sum means, in respect of the calculation of the Monthly Payment for each Contract Month after the first two Contract Months until (and including) the second month of the Additional Service Steady State Period, the sum arrived at by deducting from an amount equal to the actual Defined Cost plus the Fee plus the Transitional Cost in respect of Contract Month(n-2), an amount equal to the Initial Payment in respect of Contract Month(n-2), which sum for the avoidance of doubt may be less than zero and where less than zero shall be expressed as a negative number.

Service Matrix is the services matrix forming part of Part B of Contract Schedule D (Service Information)

Total Price for Tasks is the Defined Cost plus the Fee in the Additional Service Initial Period and in the Additional Service Steady State Period, is the sum of:

- a) the total price for Tasks included in the bespoke schedule of rates in the cost model within the Additional Service Price List, calculated by applying the price detailed in the bespoke schedule of rates (which shall be inclusive travel, overhead and profit) to each Task and deducting the relevant Comprehensive Liability Threshold; and
- b) the total price for all other Tasks, calculated by applying the rates for time and materials in the cost model within the Additional Service Price List (which shall be inclusive of travel, overhead and profit) to each Task and deducting the relevant Comprehensive Liability Threshold.

Transitional Cost is either: (a) the costs incurred as set out on the Transitional Cost Plan, plus REDACTED; or, where the Transitional Cost Plan is not agreed (b) the reasonable out of pocket costs of the Contractor (without double counting and/or double recovery between these costs, the Defined Cost and the Fee) properly incurred in connection with the transition to full Additional Service provision during the Additional Service Initial Period, excluding any group overhead and any cost which falls to be paid pursuant to any other provision of this Agreement plus REDACTED

Transitional Cost Plan means the plan agreed between the *Employer* and the *Contractor* in respect of Transitional Cost pursuant to

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paragraph 17.8 (Transitional Cost Plan)

Un-Indexed Monthly Payment 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:

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 Additional Service Price List for the relevant Contract Year plus the cost of compensation 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.

Verification Period (Additional Service) is the period of four months from the *starting date* for the Additional Service

17.2 Additional Service Provisions

17.2.1 Subject to the terms of this Contract Schedule Q, the provisions of this agreement shall apply equally to the Additional Service as they do to the Original Service. The terms of this Contract Schedule Q shall supplement the remaining provisions of this agreement and have effect only in relation to the Additional Service.

17.2.2 The additional contract clauses set out in this paragraph 17.2.2 shall apply in respect of the Additional Service.

Supplement to NEC3 TSC clause 20	20.3	Insert a new Clause 20.3 as follows: During the Additional Service Initial Period, the <i>Contractor</i> advises the <i>Service Manager</i> on the practical implications of the Accepted Plan and on subcontracting arrangements.
	20.4	Insert a new Clause 20.4 as follows: The <i>Contractor</i> prepares forecasts of the total Defined Cost and the Transitional Cost for the whole of the Additional Service during the Additional Service Initial Period in consultation with the <i>Service Manager</i> and submits them to the <i>Service Manager</i> . Forecasts are prepared at the intervals stated in the Contract Data from (and including) the <i>starting date</i> for the Additional Service until the end of the Additional Service Initial Period. An explanation of the changes made since the previous forecast is submitted with each forecast.

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- 20.5 Insert a new Clause 20.5 as follows:
- The Contractor submits on each assessment date until (and including) the second month of the Additional Service Steady State Period, a reconciliation of the Defined Cost plus Fee plus Transitional Cost in respect of the Additional Service (excluding Task Orders and compensation events) during Contract Month_{n-2} (including supporting evidence from the records to be maintained in accordance with Clause 52.2) against the forecast submitted
- 20.6 In respect of the Additional Service, the Contractor prepares
- (a) forecasts of the total Defined Cost and the Transitional Cost for the whole of the service during the Additional Service Initial Period at intervals no longer than monthly; and
- (b) forecasts of the final total of the Prices for the whole of the Additional Service at intervals no longer than monthly on and following the Additional Service Steady State Commencement Date.
- Supplement to NEC3 TSC clause 26 26.2 Insert a new Clause 26.2A as follows:
- In relation to the Additional Services Interim Period, existing Subcontractors of the Former Contractor who are to be appointed as Subcontractors of the *Contractor* are not submitted to the *Service Manager* for acceptance and the provisions of Clause 26.3 and 26.4 shall not apply to such Subcontractors.
- Supplement to NEC3 TSC clause 26 26.4 Insert a new Clause 26.4 as follows:
- In respect of subcontracts to take effect in respect of the Additional Service to be provided during the Additional Service Initial Period, the *Contractor* submits the proposed contract data for each subcontract for acceptance to the *Service Manager* if:
- an NEC contract is proposed and
 - the *Service Manager* instructs the *Contractor* to make the submission.
- A reason for not accepting the proposed contract data is that their use will not allow the *Contractor* to Provide the Service.
- Supplement to NEC3 Clause 40 40.7 Insert a new Clause 40.7 as follows:
- When the *Service Manager* assesses the cost incurred by the *Employer* in repeating a test or inspection after a Defect is found, he does not include the *Contractor's* cost of carrying out the repeat test or inspection.
- 50.8 Insert a new Clause 50.8 as follows:
- No later than 30 days after the end of each Contract Month that falls within the Additional Service Initial Period, the *Contractor* submits to the *Service Manager* its calculation of the Reconciliation Sum for that Contract Month, calculated by reference to the accounts and records which the *Contractor* is required to keep.

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Supplement to
NEC3 TSC
clause 52

52.2

Insert a new Clause 52.2 as follows:

The Contractor keeps these records in respect of the Additional Service provided during the Additional Service Initial Period:

- accounts of payments of Defined Cost
- accounts of payments of Transitional Cost
- proof that the payments have been made
- communications about and assessments of compensation events for Subcontractors and
- other records as stated in the Service Information.

52.3

Insert a new Clause 52.3 as follows:

The Contractor allows the Service Manager to inspect at any time within working hours the accounts and records which he is required to keep.

Supplement to
NEC3 Clause
65

65.4

Insert a new Clause 65.4 as follows:

The changes to the forecast amount of the Prices for the Additional Service during the Additional Service Initial Period are included in the notification implementing a compensation event in respect of the Additional Service Initial Period.

Supplement to
NEC Clause
91

91.9

Insert a new Clause 91.9 as follows:

The Contractor may terminate if it is entitled to do so in terms of paragraph 17.5.3(b) of Contract Schedule Q (R34), provided that any such termination shall be in respect of the Additional Service only.

Supplement to
NEC Clause
92

92.3

Insert a new Clause 92.3 as follows:

Where the Employer terminates the Additional Service in accordance with Clause 91.8.7, or the Contractor terminates the Additional Service in accordance with Clause 91.9, this agreement continues in accordance with its terms in respect of the Original Service and the provisions of Clauses 92 and 93 apply only in respect of the Additional Service.

Supplement to
NEC3 Clause
93 (Option A)

93.2

Amend limb A4 in Clause 93.2 as follows:

"A4 The direct fee percentage applied to any excess of the total of the Prices at the Contract Date or, in respect of the Additional Services, at the Additional Services Steady State Commencement Date, over the Price for Services Provided to Date."

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Supplement to X19.6
X19

Insert a new Clause X19.6 as follows:

In respect of Task Orders related to the Additional Service during the Additional Service Initial Period:

- the Contractor and the Service Manager consult every month during the Additional Service Initial Period so that any Task Orders for planned activities requiring additional resource (by reference to the Accepted Plan) in the subsequent Contract Month falling within the Additional Service Initial Period) can be issued by the Service Manager no later than five Working Days prior to the start of such Contract Month; and
- the Contractor submits a Task Order Programme to the Service Manager within two Working Days where the task Order relates to ad hoc requests for additional resource (by reference to the Accepted Plan) for the Additional Service submitted during the Additional Service Initial Period.

Supplement to X20.7
X20

Insert a new Clause X20.7 as follows:

In respect of the Additional Service, the Contractor reports to the Service Manager:

- from the *starting date* for the Additional Service until the end of the *service period* for the Additional Service, the management and performance information required by Contract Schedule K; and
- from the date falling three months after the *starting date* for the Additional Service until the end of the *service period* for the Additional Service, his performance against each of the Key Performance Indicators.

Reports are provided at monthly intervals and clearly separate information in respect of the Additional Service from information in respect of the Original Service.

Supplement to 11.2.4A
Contract
Schedule K

Insert a new paragraph 11.2.4A as follows:

The Employer shall be entitled to conduct an open book review in respect of the Additional Service separately from any open book review of the Original Service. An Additional Service open book review can be carried out on or after the end of the Verification Period (Additional Service) and thereafter no more frequently than once in each Contract Year as set out in the remainder of this paragraph 11.2. The Contractor keeps separate the accounts and records which this contract requires him to keep in respect of the Additional Service and the Original Service.

17.3 MONTHLY PAYMENT

17.3.1 Calculation Of The Monthly Payment For The Additional Service During The Additional Service Initial Period

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- (a) Subject to paragraph 17.3.1(b), the Monthly Payment in respect of the Additional Service for each Contract Month during the Additional Service Initial Period is an amount equal to:

the Initial Payment,

plus the Total Prices for Tasks which have reached Task Completion during the Previous Contract Month (if any)

plus the Reconciliation Sum in respect of Contract Month(n-2).

- (b) The Contractor shall be entitled to issue an invoice for the Mobilisation Payment on or after the *starting date*. Following the Service Manager's receipt of a valid VAT invoice in respect of the Mobilisation Payment, the Mobilisation Payment shall be treated as a certified payment.

17.3.2 Calculation Of The Monthly Payment For The Additional Service During The Additional Service Steady State Period

- (a) The Monthly Payment, MP_n, for the Additional Service in respect of a Contract Month “n” shall be calculated in accordance with the following formula:

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

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 Price for Tasks relative to the Additional Service 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 respect of the Additional Service in accordance with clause X20 (Management and Performance Information); and
- RS_{n-2} in the first two months of the Steady State Additional Service Period, is the Reconciliation Sum for Contract Month(n-2).

Monthly Payment at Final Contract Month

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

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

- (c) The terms are consistent with those given above.

Monthly Payment following Final Contract Month

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- (d) 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.
- (e) 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.

CALCULATION OF THE INDEXED MONTHLY PAYMENT (IMPn)

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

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

where:

- CPI_o Is:
- a) for the first Adjustment Date, the Payment Index for the Contract Month commencing at the Additional Service Steady State Commencement 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.

- (g) 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.

CALCULATION OF THE PERFORMANCE DEDUCTION (PDn)

- (h) The monthly performance deductions shall be a maximum of the Monthly Total Value at Risk for the relevant Contract Month.
- (i) The monthly adjustment in relation to performance deduction for the Contract Month “n” (PDn) is the sum of the performance deductions for Month “n” for failure against the KPI for each aspect of performance in relation to the Additional Service in that month (PDKPIsn), calculated in accordance with the following formula:

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

(j) 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 Additional Service 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.

RATCHET

- (k) A ratchet will apply to the total value of KPI deductions for each aspect of performance for frequent or repeated failure of to achieve the KPI threshold in relation to the Additional Service (the “Additional Service Ratchet”).
- (l) The Additional Service 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 threshold stated in the Performance Adjustment Schedule.
- (m) The Additional Service 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.
- (n) 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 Additional Service Ratchet will be taken to be one (1).
- (o) Additional Service Ratchet for ‘Consecutive Failure’:
- (i) A repetition ratchet of 1.5 will be applied if any aspect of performance has failed the KPI for two (2) consecutive months the Additional Service Ratchet will apply to the deduction for the second month.
 - (ii) A repetition ratchet of 1.75 will be applied if any aspect of performance has failed the KPI for three (3) consecutive months the Additional Service Ratchet will apply to the deduction for the third month.
 - (iii) A repetition ratchet of 2 will be applied if any aspect of performance has failed the KPI for four (4) consecutive months the Additional Service Ratchet will apply to the deduction for the fourth and every subsequent consecutive month.

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- (p) Additional Service Ratchet for 'Failure over a 12 month period':
- (i) If in any 12 month rolling period the KPI for an aspect of performance is failed three (3) times an Additional Service Ratchet of 1.5 will be applied to the deduction for the month in which the third occurrence occurs.
 - (ii) If in any 12 month rolling period the KPI for a Service is failed four (4) or five (5) times an Additional Service Ratchet of 1.75 will be applied to the deduction for the month in which the fourth and fifth occurrence occurs.
 - (iii) If in any 12 month rolling period the KPI for a service is failed more than six (6) times an Additional Service Ratchet of 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.
- (q) 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 Additional Service Ratchet would apply the deduction and Additional Service Ratchet resulting in the highest deductions will be used.

17.4 SERVICE VERIFICATION

- 17.4.1 During the Verification Period (Additional Service), the Contractor shall monitor and compare the Delivered Service against the Service Matrix.
- 17.4.2 Where the *Contractor* identifies any differences or variations between the Delivered Service and the Service Matrix, it shall promptly notify the *Service Manager* in writing and report these at the next monthly performance meeting, and shall indicate whether or not it considers any of these to be material and/or likely to impact on the Prices.
- 17.4.3 The Contractor shall notify the Service Manager within two weeks of the end of the Verification Period (Additional Service) whether it considers it is appropriate to update the Service Matrix as a result any differences or variations between the Delivered Service and the Service Matrix during the Verification Period (Additional Service) due to permanent, recurring, consistent or underlying factors (but not, for the avoidance of doubt, where such differences or variations were simply as a result of the mobilisation of the Contractor or normal bedding in or transition activities). If the Contractor considers an update appropriate it shall provide a draft updated Service Matrix to the Service Manager at the time of the notification. Where no notification is received from the Contractor, the Service Manager may, to the extent it considers it appropriate, provide the Contractor with an updated Service Matrix to reflect any such differences of variations.
- 17.4.4 During the two week period following receipt of any draft updated Service Matrix pursuant to paragraph 17.4.3, the Contractor and the Service Manager shall consult to seek to agree the terms of any changes to be made to the Service Matrix. Where such agreement is reached, the Service Matrix shall be deemed updated to reflect the terms of such agreement, such changes to take effect from the Additional Service Steady State Commencement Date or on earlier date agreed between the Parties. Where such agreement is not reached within that two week period, the Service Manager shall confirm in writing within a further two week period whether the Service Matrix is to remain as set out in Contract Schedule D, Part B or is to be updated and, if it is to be updated, the terms of such updated Service Matrix. Any updated Service Matrix shall take effect from the Steady State Commencement Date or if earlier on

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expiry of the period specified by the Service Manager in its notification of the updated Service Matrix, such period to be not less than one month.

17.5 ADDITIONAL SERVICE PRICE LIST AND TENDERED TOTAL OF THE PRICES

17.5.1 The Employer shall provide the Contractor with a contract cost model from which the Price List can be developed, on or before four weeks after the *starting date* for the Additional Service.

17.5.2 The Contractor shall provide the Service Manager with its proposed Price List no later than two weeks after expiry of the Verification Period (Additional Service), developed using the contract model provided pursuant to paragraph 17.5.1, on an open book basis, by reference to the Service Matrix and the Defined Costs incurred during the Verification Period (Additional Service).

17.5.3 The Service Manager and the Contractor shall seek to agree the Additional Service Price List (and resultant tendered total of the Prices for the remainder of the service period for the Additional Service) during the period of four weeks after the issue of the Contractor's proposed document under paragraph 17.5.2. In the event that the Contractor and the Service Manager:

- (a) reach agreement on the terms of a proposed Price List (whether in the form provided by the Contractor or as updated following discussions) the agreed document shall be adopted as the Additional Service Price List, including the tendered total of the Prices for the Additional Service. Such updated Price List shall take effect from the Additional Service Steady State Commencement Date; or
- (b) are unable to reach such agreement within said four week period or if later by 1 October 2018:
 - (i) the Employer shall have the right, on not less than two months written notice
 - (ii) the Contractor shall have the right, on not less than eight months written notice

in either case issued in accordance with Clause 90.1, to terminate the provision of the Additional Service pursuant to this Agreement. A termination certificate in respect of termination pursuant to this paragraph 17.5.3(b) shall be issued on the expiry of such notice period and not on receipt of the notice.

17.5.4 Where paragraph 17.5.3(b) applies but no notice to terminate has been served or such a notice has been served but the notice period has not yet expired, the Contractor shall continue to provide the Additional Service in accordance with this agreement, and the Additional Service Initial Period shall be deemed to continue.

17.6 TRANSFER OF EMPLOYMENT

17.6.1 Where notice of termination of the employment of any of the Former Contractor Personnel by reason of redundancy was given prior to the Effective Date, the Employer shall indemnify the Contractor against all claims, demands, liabilities, compensation, damages, losses, penalties and fines and all legal, professional and other costs and expenses that may arise.

17.6.2 The Employer shall indemnify the Contractor against all claims, demands, liabilities, compensation, damages, losses, penalties and fines and all legal, professional and other costs and expenses arising in relation to any claim by any Transferring Former

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Contractor Employee or Additional Service Transferring Employee that he has a right, pursuant to a Relevant Transfer, to enhanced pension benefits on redundancy or early retirement in respect of his participation prior to the Effective Date and to such Relevant Transfer in an occupational pension scheme (as defined in the Pension Schemes Act 1993).

17.6.3 Each party shall:

- (a) within 5 days on becoming aware of any claim under this Clause 17.6 in respect of which they are indemnified or any facts or circumstances that might give rise to such a claim notify the indemnifying party in writing with such details of the relevant claim, facts or circumstances as are then available to it; and
- (b) promptly provide all information available in relation to any such claim, facts or circumstances to the indemnifying party and shall ensure that the indemnifying party shall be kept fully informed and shall be provided on request with all information available and copies of all correspondence and documentation relating to such claim.

17.7 AD HOC ADDITIONAL WORK

If, during the Additional Services Initial Period, the *Contractor* becomes aware of ad hoc requirements for additional work that it is not appropriate to treat as a Task Order, the *Contractor* logs the additional work requirement on the Helpdesk and follows up with a phone call to the *Service Manager*.

17.8 TRANSITIONAL COST PLAN

Within a month of the *starting date* for the Additional Service the *Contractor* provides the *Employer* and the *Service Manager* with a draft Transitional Cost Plan setting out his proposed activities as a prudent contractor to transition to a fixed price lump sum contract provision of the Additional Services from the Additional Service Steady State Commencement Date. The *Employer* and Contractor discuss the draft plan and seek to agree the Transitional Cost Plan as soon as reasonably practicable. Where the draft plan is agreed, it is adopted as the Transitional Cost Plan.

The *Employer* and the *Contractor* consult during each Contract Month to agree any necessary updates and adjustments and the Transitional Cost Plan is updated to reflect such agreement.