Crown Commercial Service

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

traffic management technology framework schedule 4E – template call off agreement (INCORPORATING THE nec3 supply contract), contract data and z clauses

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**Date..................................**

**FORM OF AGREEMENT**

**Incorporating the NEC3 Supply Contract**

**Between**

**.......................................................................................................................................**

**And**

**.......................................................................................................................................**

**For the provision of**

 **……………………………………………………………………………………………………………………………………**

1. SUPPLY CONTRACT ANNEX A - FORM OF AGREEMENT

**THIS AGREEMENT BY DEED is made the [..................]day of [.......................]**

**PARTIES:**

1. **[CONTRACTING AUTHORITY NAME]** **[**[which is a company registered in **[ ]**under company number **[ ]**and whose registered office is at] [whose offices are located at] [ADDRESS] **OR [**acting as part of the Crown] (the "**Purchaser**"); and

2. **[FRAMEWORK SUPPLIER NAME]** which is a company incorporated in and in accordance with the laws of **[ ]** (Company No. **[ ]** whose registered office address is at **[ ]**(the "**Supplier**").

**BACKGROUND**

1. 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 traffic management technology and associated services for the benefit of public sector bodies.
2. The *Supplier* was appointed to the framework and executed the framework agreement (with reference number **RM1089**) which is dated *[insert date of framework agreement with the Supplier]* (the “**Framework Agreement**”).
3. On the *[insert date of issue of tender]* the *Purchaser*[, acting as part of the Crown,] invited the *Supplier* along with other framework suppliers to tender for the *Purchaser’s* traffic management technology and associated services requirements in accordance with the Call Off Procedure (as defined in the Framework Agreement).

*[Include text in square brackets if Purchaser is a Crown Body]*

1. On the *[insert date of tender response]* the *Supplier* submitted a tender response and was subsequently selected by the *Purchaser* to provide the *goods* and/or *services*.
2. The *Supplier* has agreed to supply and/or provide the *goods* and/or *services* in accordance with this agreement and the Framework Agreement.

**IT IS AGREED AS FOLLOWS:**

1. **Definitions and Interpretation**

## This agreement (the “Call Off Contract”) incorporates the conditions set out below of:

* The core clauses of the:

[NEC3 Supply Contract (April 2013)]

[the clauses for main Option [A] [B] [C] [D] [E] [F] [G],] **[delete as applicable]**

[dispute resolution Option [W1] [W2],] **[delete as applicable]**

[secondary Options **[list applicable X clauses]**

[Y(UK)1, Y(UK)2, Y(UK)3] **[delete as applicable]**

and option Z (being the amendments identified in the Contract Data),

which are supplemented and amended in accordance with such information and supplementary provisions as are provided in the Contract Schedules.

Together the “Conditions”

## The “Contract Schedules” means any one, or all, of the annexes appended to this Call Off Contract.

1. **Entire Agreement**

2.1. This Call Off Contract is the entire agreement between the parties in relation to the *goods* and/or *services* 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 Call Off Contract in reliance on any arrangements, understandings, agreements, statements, representations or warranties other than those expressly set out in this Call Off Contract.

2.3 Nothing in this Clause 2 shall exclude liability in respect of misrepresentations made fraudulently.

1. **Documents**

3.1 The documents forming part of this Call Off Contract are:

1. this form of agreement duly executed by the Parties [as a deed]
2. the Conditions
3. the Contract Data
4. the Goods Information **[delete as applicable]**
5. **[insert reference to applicable pricing document e.g. activity schedule, price list or similar]**
6. **[insert reference to any other documents which should form part of the call off contract]**

**[Delivered** [as a deed] on the date of this document.] ***=***

***[Insert execution clause for Contracting Authority]***

|  |  |
| --- | --- |
| OPTION 1a *[execution under seal]*Executed as a deed by **[Contracting Authority]** by affixing his common seal in the presence of: | )) |
|  | [Select Directors or Authorised Signatory options below] |
|  | Director or Authorised Signatory |
|  |  |
|  | Director/Secretary or Authorised Signatory |
| OPTION 1b Executed as a deed by [**Contracting Authority]** acting by: | *))* |
|  | [Select Directors or Authorised Signatory options below] |
|  | Director or Authorised Signatory |
|  |  |
|  | Director/Secretary or Authorised Signatory |

**[Customer guidance concerning the options for how a company may need to sign can be obtained from Crown Commercial Service. Contracting Authorities will need to check with the relevant company as to which option is required].**

1. SUPPLY CONTRACT ANNEX B - CONDITIONS OF CONTRACT

NEC3 SUPPLY Contract (April 2013) Core Clauses.

**[***The terms and conditions of contract applied at call-off for the Traffic Management Technology 2 Framework Agreement are the core clauses of the NEC Supply Contract.*

*Access to the NEC suite of contracts, including* **guidance** *and membership details can be found via the NEC Website:* [*https://www.neccontract.com/*](https://www.neccontract.com/)

*Additionally, Crown Commercial Service has worked together with NEC to provide discounted* **access to** *the suite of contracts.  Further information can be found on the TMT2 Framework Agreement Webpage:*

[*http://ccs-agreements.cabinetoffice.gov.uk/contracts/rm1089*](http://ccs-agreements.cabinetoffice.gov.uk/contracts/rm1089)

*Customers are able to select the most appropriate optional Z clauses and include additional Z clauses that meet their requirement.***]**

1. **SUPPLY CONTRACT ANNEX C - CONTRACT DATA PARTS ONE AND TWO**

Contract Data

Part 1 - Data provided by the Purchaser

|  |
| --- |
| Part one – Data provided by the Purchaser |
| 1 General | * The *conditions of contract* are the core clauses and the clauses for Options … . of the NEC3 Supply Contract April 2013.
 |
|  | * The *goods* are [….]
 |
|  | * The *services* are [….]
 |
|  | * The *Purchaser* is [….]

Name [….]Address [….] |
|  | * The *Supply Manager* is [….]

Name [….]Address [… .] |
|  | The *Adjudicator* is the person chosen by the Parties from the list of Adjudicators published by the Chartered Institute of Arbitrators. |
|  | * The *Goods Information* is in [….]
 |
|  | * The Supply Requirements as part of the Goods Information is in [….]
 |
|  | * The *language of this contract is* [….]
* The *law of the contract* is the law of
* The *period* for reply is [two] weeks
* The *Adjudicator* nominating body is the Chartered Institute of Arbitrators.
* The following matters will be included in the Risk Register

  |
| 3 Time | * The *starting date* is
* The *Supplier* submits revised programmes at intervals no longer than [….] weeks.
 |
| 4 Testing and Defects | * The *defects date* is weeks after Delivery.

*[If HE requires a “lifetime guarantee” for specific items, approval should be sought from the contract policy owner to extend the* defects date *and use Option X17 - see below]** The *defect correction* period is [4] weeks except that
* The *defect correction* *period* for [ ] is [ ] weeks.
* The *defect correction period* for [ ] is [ ] weeks.
* The *defect access* period is [ ] days except that
* The *defect access period* for [ ] is [ ]
* The *defect access period* for [ ] is [ ]
 |
| 5 Payment | * The *currency* of this *contract* is the pound sterling (£).
* The *assessment interval* is weeks (not more than five)
* The *interest rate* is [….] % per annum (not less than 2) above the rate of the bank
 |
| 8 Risks, liabilities, indemnities and insurance | * The minimum limit of indemnity for insurance in respect of loss of or damage to property (except the goods, plant and materials and equipment) and liability for bodily injury to or death of a person (not an employee of the *Supplier)* caused by activity in connection with this contract for any one event is £10,000,000 (Ten Million Pounds).
* The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the *Supplier* arising out of and in the course of their employment in connection with this contract for any one event is [ ].
* The *Supplier’s* liability to the *Purchaser* for indirect or consequential loss including loss of profit, revenue and goodwill is limited to [ ].
* For any one event, the *Supplier’s* liability to the *Purchaser* for loss of or damage to the *Purchaser’s* property is limited to [ ].
* The *Supplier’s* liability for Defects due to his design which are not notified before the last *defects date* is limited to [ ].
* The *Supplier’s* total liability to the *Purchaser* for all matters arising under or in connection with this contract, other than the excluded matters, is limited to [ ]. *[No limitations of the Supplier’s liability should be accepted without prior approval from the model contract policy owner]*
* The end of *liability date* is [ ] years after Delivery of the whole of the *goods* and services.
* The *Supplier* provides additional insurance against claims made against the *Supplier* arising out of his failure to use the skill and care normally used by professionals providing services similar to the *services*

Cover/indemnity is £10,000,000 (Ten Million Pounds) for any one eventThe *Supplier* maintains this insurance from the *starting date* until the *end of liability date*.The minimum limit of indemnity applies in the aggregate in any one period of insurance for claims arising out of pollution or contamination.*[Include if Supplier* *carries out significant elements of design]* |
| Optional statements | **If the *tribunal* is arbitration** * The arbitration procedure is the Chartered Institute of Arbitrators’ Arbitration Rules (2000).
* The place where arbitration is to be held is [ ]
* The person or organisation who will choose an arbitrator
	+ if the Parties cannot agree a choice or
	+ if the *arbitration* *procedure* does not state who selects an arbitrator is

**If the *Purchaser* is to state the delivery date of the goods and services*** The *delivery date* of the goods and services is

goods and services *delivery date [ ] [ ]***If no programme is identified in part two of the Contract Data*** The *Supplier* is to submit a first programme for acceptance within [ ] weeks of the Contract Date

**If the *Supplier* is not to bring the goods to the Delivery Place more than one week before the Delivery Date*.**** The *Supplier* does not bring the goods to the Delivery Place more than one week before the Delivery Date.

**If the period in which payments are made is not three weeks*** The period within which payments are made is 30 days

**If there are additional *Purchaser’s* risks**[Customer’s do **not** need to include potential TUPE transfers here as there are indemnities contained in Annex G – Staff Transfer]* These are additional *Purchaser’s* risks

1 2 3 **If the *Purchaser* is to provide any of the insurances stated in the Insurance Table*** The *Purchaser* provides these insurances from the Insurance Table

|  |  |
| --- | --- |
| 1.Insurance against |  |
| Cover/indemnity is |  |
| The deductibles are |  |
| 2. Insurance against |  |
| Cover/indemnity is |  |
| The deductibles are |  |

**If additional insurances are to be provided*** The *Purchaser* provides these additional insurances

|  |  |
| --- | --- |
| 1.Insurance against |  |
| Cover/indemnity is |  |
| The deductibles are |  |
| 2. Insurance against |  |
| Cover/indemnity is |  |
| The deductibles are |  |

* The *Supplier* provides these additional insurances

|  |  |
| --- | --- |
| 1.Insurance against |  |
| Cover/indemnity is |  |
| The deductibles are |  |
| 2. Insurance against |  |
| Cover/indemnity is |  |
| The deductibles are |  |

 |
| If Option X1 is used*[Not normally used for contracts of less than 18-24 months’ duration]* | * The proportion used to calculate the Price Adjustment Factor is 1.0 linked to the Retail Prices Index - All Items Table RP02 published by the National Statistical Office.
* The base date for indices is [….]

*[Insert date of tender return. If a different index is to be used, approval must be sought from the model contract policy owner]* |
| If Option X2 is used | * A change in the *law of the contract* is a compensation event if it occurs after the Contract Date
 |
| If Option X3 is used | * The *Purchaser* will pay for the items listed below in the currencies stated

|  |  |  |
| --- | --- | --- |
| Items | other currency | total maximum payment in the currency |
|  |  |  |
|  |  |  |
|  |  |  |

* The *exchange rates* are those published in the Financial Times on the assessment date when the payment in another currency is included in the amount due.
 |
| If Option X7 is used | * Delay damages for Delivery are

|  |  |
| --- | --- |
| Delivery of | amount per day |
|  | for |
|  | for |
|  | for |

 |
| If Option Z11 is used | * The *end date* is [ ]
 |
| If Option X12 is used | * The *Client* is

Name Address * The *Client’s* objective is
* The Partnering Information is in
 |
| If Option X13 is used | * The amount of the performance bond is [ ]
 |
| If Option X14 is used  | * The amount of the advanced payment is [ ]
* The *Supplier* repays the instalments in assessments starting not less than [ ] weeks after the Contract Date.
* The instalments are [ ] (either an amount or a percentage of the payment otherwise due)
* An advanced payment bond is/is not required.
 |
| If Options X17 is used | * The amounts for low performance damages are

|  |  |
| --- | --- |
| amount | performance level |
|  | for |
|  | for |
|  | for |
|  | for |

 |
|  |
| If Option X20 is used (but not if Option X12 is also used) | * The *incentive schedule* for Key Performance Indicators is in [ ]
* A report of performance against each Key Performance Indicator is provided at intervals of [ ] months.
 |
| If Clause Z22 is used and the *Purchaser* is to pay any charges made and is paid any interest paid by the *project bank* | * The *Purchaser* is to pay any charges made and is paid any interest paid by the *project bank.*
 |
| If Option Y(UK)3 is used |

|  |  |
| --- | --- |
| * **term**
 |  **person or organization** |
|   |  |
|  |  |
|  |  |
|  |  |
|  |  |

 |
| If Clause Z22 and Y(UK)3 are both used |

|  |  |
| --- | --- |
| * **term**
 |  **person or organization** |
|  The provisions of Clause Z22 | Named Suppliers |
|  |  |
|  |  |
|  |  |
|  |  |

 |
| If Option Z is used | * The *additional conditions* of contract are [….]
 |
| If Clause Z33 is used  | * the *Supplier* provides *collateral warranty agreements* in favour of [ ].
* the Supplier procures *collateral warranty agreements* from the following Subsuppliers:
* [ ]
* in favour of the following parties [ ]
 |

|  |
| --- |
| Part two – Data provided by the *Supplier* |
|  | Completion of the data in full, according to the Options chose, is essential to create a complete contract. |
|  |  |
| Statements given in all contracts | * The *Supplier* is

NameAddress |
|  | * The following matters will be included in the Risk Register

[ ][ ][ ]* The percentage *for overheads and profit* added to the Defined Cost is [ ] %
* The *price schedule* is in [ ]
* The tendered total of the Prices is £[ ].
 |
| Optional statements | **If the *Supplier* is to provide Goods Information for his design*** The Goods Information for the *Supplier’s* design is in [ ]

**If the *Supplier* restricts access by the *Supply Manager* and Others to work being done for this contract*** The restrictions to access for the *Supply Manager* and Others to work being done for this contract are
 |
|  | **If a programme is to be identified in the Contract Date*** The programme identified in the Contract Data is [….]

**If the *Supplier* is to decide the *delivery date* of the goods and services*** The *delivery date* of the goods and services is

*goods and services delivery date**[ ] [ ]* |
| If Clause Z22 is used  | * The *project bank* is [….]
* *named suppliers* are [….]
 |
| If Clause Z24, Z36 and Z37 used |

|  |  |  |
| --- | --- | --- |
| party | rating agency | *credit rating* |
| [*Supplier*] | ………………..….. | ……………………… |
| [Consortium Member] | …………………… | ……………………… |
| [Guarantor] | …………………… | ……………………… |

* The *credit ratings* at the Contract Date and the rating agencies issuing them are
 |

1. SUPPLY CONTRACT ANNEX D – OPTIONAL Z CLAUSES

|  |  |
| --- | --- |
| **Clause Z1**  | **Corrupt practices**Z1.1 The *Supplier* does not * offer or give to any person in the service of the *Purchaser* any gift or consideration of any kind as an inducement or reward in relation to the obtaining or execution of this contract or any other contract with the *Purchaser* or for showing favour or disfavour to any person in relation to this contract or any other contract with the *Purchaser* or
* enter into this contract or any other contract with the *Purchaser* if, in connection with this contract or any such other contract, commission has been paid or an agreement for the payment of commission has been made by him or on his behalf or to his knowledge.

Z1.2 A failure to comply with this condition is treated as the Supplier having substantially failed to comply with this contract. |
| **Clause Z2**  | **Euro (e) functionality**Z2.1 The Supplier Provides the Goods:* so that the *Purchaser* is not prejudiced by the implementation of the Euro,
* in such a way as to comply with all legal requirements applicable to the Euro in the United Kingdom, including the rules on conversion and rounding set out in the EC Regulation 1103/97,
* so that they are capable of utilising all symbols and codes adopted by the EU Commission in relation to the Euro and
* in accordance with the *Purchaser*‘s requirements both for Sterling and for the Euro.
 |
| **Clause Z3**  | **Recovery of sums due from *Supplier****[Option for Crown Bodies]*Z3.1 Where under this contract any sum of money is recoverable from or payable by the *Supplier*, such sum may be deducted from or reduced by the amount of any sum or sums then due or which at any time after may become due to the *Supplier* under this contract or any other contract with any Department or Office of Her Majesty's Government*.**[Alternative option for non Crown Bodies]*Z3.1 Where under this contract or any other contract between the *Supplier* and the *Purchaser* any sum of money is recoverable from or payable by the *Supplier*, such sum may be deducted from or reduced by the amount of any sum or sums then due or which at any time after may become due to the *Supplier* under this contract or any other contract with the *Purchaser*. [delete one of above options] |
| **Clause Z4** *[Include Z4.3 if required]* | **Assignment** Z4.1 The *Supplier* does not assign, transfer or charge the benefit of this contract or any part of it or any benefit or interest under it without the prior agreement of the *Purchaser*. 1. Z4.2 The *Purchaser*’s ability to assign this contract or any part of it or any benefit or interest under it is unrestricted.
2. Z4.3 If requested by the *Purchaser*, the *Supplier* executes an agreement in a form specified by the *Purchaser* to novate the benefit and burden of this contract to
* another Department or Office of Her Majesty's Government,
* an organisation established to take over the *Purchaser’*s functions or part of them
* a local authority or
* any other body (including private sector body) exercising similar functions

 The novation agreement is in the form set out in the Goods Information or such other form as the *Purchaser* may reasonably require. |
| **Clause Z5**  | **Discrimination**Z5.1 The *Supplier* does not discriminate directly or indirectly or by way of victimisation or harassment against any person contrary to the Equality Act 2010, any predecessor statute of it or any amendment or re-enactment of it from time to time (the “Discrimination Acts”). Z5.2 In Providing the Goods and Services, the *Supplier* co-operates with and assists the *Purchaser* to satisfy its duty under the Discrimination Acts to eliminate unlawful discrimination and to promote equality of opportunity between persons of different racial groups and between disabled people and other people.Z5.3 Where any employee or Subsupplier employed by the *Supplier* is required to carry out any activity alongside the *Purchaser*’s employees in any premises, the *Supplier* ensures that each such employee or Subsupplier complies with the *Purchaser*’s employment policies and codes of practice relating to discrimination and equal opportunities.Z5.4 The *Supplier* notifies the *Purchaser* in writing as soon as he becomes aware of any investigation or proceedings brought against the *Supplier* under the Discrimination Acts in connection with this contract and* provides any information requested by the investigating body, court or tribunal in the timescale allotted,
* attends (and permits a representative from the *Purchaser* to attend) any associated meetings,
* promptly allows access to any relevant documents and information and
* cooperates fully and promptly with the investigatory body, court or tribunal.

Z5.5 The *Supplier* indemnifies the *Purchaser* against all costs, charges, expenses (including legal and administrative expenses) and payments made by the *Purchaser* arising out of or in connection with any investigation or proceedings under the Discrimination Acts resulting from any act or omission of the *Supplier* or any of his staff.Z5.6 The *Supplier* includes in the conditions of contract for each subcontract obligations substantially similar to those set out above. |
| **Clause Z6**  | **Disclosure of information**Z6.1 A Disclosure Request is a request for information relating to this contract received by the *Purchaser* pursuant to the Freedom of Information Act 2000, the Environmental Information Regulations 2004 or otherwise.Z6.2 The *Supplier* acknowledges that the *Purchaser* may receive Disclosure Requests and that the *Purchaser* may be obliged (subject to the application of any relevant exemption and, where applicable, the public interest test) to disclose information (including commercially sensitive information) pursuant to a Disclosure Request. Where practicable, the *Purchaser* consults with the *Supplier* before doing so in accordance with the relevant Code of Practice. The *Supplier* uses its best endeavours to respond to any such consultation promptly and within any deadline set by the *Purchaser* and acknowledges that it is for the *Purchaser* to determine whether or not such information should be disclosed.1. Z6.3 When requested to do so by the *Purchaser*, the *Supplier* promptly provides information in its possession relating to this contract and assists and co-operates with the *Purchaser* to enable the *Purchaser* to respond to a Disclosure Request within the time limit set out in the relevant legislation.
2. Z6.4 The *Supplier* promptly passes any Disclosure Requestwhich it receives to the *Purchaser*. The *Supplier* does not respond directly to a Disclosure Request unless instructed to do so by the *Purchaser*.

Z6.5 The *Supplier* acknowledges that the *Purchaser* is obliged to publish the provisions of this contract in accordance with the Cabinet Office Efficiency Reform Group Guidance Procurement Policy Note entitled “Published guidance on implementing requirements for greater transparency in central Government procurement and contracting” (or any later revision) except to the extent that any information in it is exempt from disclosure pursuant to the Freedom of Information Act 2000. The *Purchaser* consults with the *Supplier* before deciding whether information is exempt, but the *Supplier* acknowledges that the *Purchaser* has the final decision. The *Supplier* co-operates with and assists the *Purchaser* to publish this contract in accordance with the *Purchaser’s* obligation. |
| **Clause Z7** *[Use these clauses in whole or part as appropriate for the contract being prepared]* | **Data Protection** Z7.1 (1) The Data Protection Acts are the Data Protection Act 1998 (as amended) and any other laws or regulations relating to privacy or personal data.(2) Personal Data is information collected by the *Supplier* on behalf of the *Purchaser* in relation to this contract, which relates to living individuals who can be identified* from that information or
* from that information combined with other details in (or likely to come into) the possession of the *Purchaser*.

Z7.2 For the purposes of this contract and the Data Protection Acts * the *Purchaser* is the Data Controller and
* the *Supplier* is the Data Processor.

Z7.3 The *Supplier* processes the Personal Data in accordance with (and so as not to put the *Purchaser* in breach of) the Data Protection Acts and only to the extent necessary for the purpose of performing his obligations under this contract.Z7.4 The *Supplier* has in place for as long as it holds the Personal Data* appropriate technical and organisational measures (having regard to the nature of the Personal Data) to protect the Personal Data against accidental, unauthorised or unlawful processing, destruction, loss, damage, alteration or disclosure and
* adequate security programmes and procedures to ensure that unauthorised persons do not have access to the Personal Data or to any equipment used to process the Personal Data.

Z7.5 The *Supplier* immediately notifies the *Purchaser* if it receives * a request from any person whose Personal Data it holds to access his Personal Data or
* a complaint or request relating to the *Purchaser*’s obligations under the Data Protection Acts.

Z7.6 The *Supplier* assists and co-operates with the *Purchaser* in relation to any complaint or request received, including:* providing full details of the complaint or request,
* complying with the request within the time limits set out in the Data Protection Acts and in accordance with the instructions of the *Purchaser* and
* promptly providing the *Purchaser* with any Personal Data and other information requested by him.
 |
|  | Z7.7 The *Supplier* complies with the requirements of the *Purchaser* in relation to the storage, dispatch and disposal of Personal Data in any form or medium.Z7.8 The *Supplier* immediately notifies the *Purchaser* on becoming aware of any breach of this clause or of the Data Protection Acts.Z7.9 The *Supplier* does not process Personal Data outside the European Economic Area (the “**EEA**”) without the prior written agreement of the *Purchaser*. Z7.10 If the *Supplier* becomes aware that Personal Data will be transferred or processed outside the EEA, the *Supplier* sends the *Purchaser* details of:* the Personal Data which will be processed outside the EEA;
* the countries where the Personal Data will be processed;
* any Subsuppliers or other third parties who will be processing and/or receiving Personal Data outside the EEA; and
* proposals to ensure *Supplier* will provide adequate levels of protection and safeguards of the Personal Data that will be processed outside the EEA to ensurecompliance with the Data Protection Acts.

Z7.11 Where the *Purchaser* agrees to the *Supplier* processing or transferring Personal Data outside the EEA, *the Supplier* complies with the instructions of the *Purchaser* and provides an adequate level of protection to any Personal Data in accordance with the Data Protection Acts.  |
| **Clause Z8**  | **Conflict of interest**Z8.1 The *Supplier* does not take an action which would cause a conflict of interest to arise in connection with this contract. The *Supplier* notifies the *Purchaser* if there is any uncertainty about whether a conflict of interest may exist or arise.Z8.2 The *Supplier* immediately notifies the *Purchaser* of any circumstances giving rise to or potentially giving rise to conflicts of interest relating to the *Supplier* and or the *Purchaser* (including without limitation its reputation and standing), of which it is aware or anticipates may justify the *Purchaser* taking action to protect its interests.  |
| **Clause Z9** | **Official Secrets Act**Z9.1 The Official Secrets Act 1989 applies to this contract from the *starting date* until the defects date or earlier termination. Z9.2 The *Supplier* notifies his employees and Subsuppliers of their duties under the Official Secrets Act 1989.Z9.3 A failure to comply with this clause is treated as a substantial failure by the *Supplier* to comply with his obligations.[Z9.4 The *Supplier* complies with the staff vetting and training requirements stated in the Goods Information *[delete Z9.4 if not required]* |
| **Clause Z10**  | **Records and Audit Access**Z10.1 The *Supplier* keeps documents and information obtained or prepared by the *Supplier* or any Subsupplier in connection with this contract for a period of *[6/12]* years after the *end date*. *[select 6 or 12 years as appropriate – 6 years for simple contracts, 12 years for deeds]*Z10.2 The *Supplier* permits the *Purchaser,* Comptroller, Auditor General and any other auditor appointed by the *Purchaser* to examine documents held or controlled by the *Supplier* or any subsupplier.1. Z10.3 The *Supplier* provides such oral or written explanations as the *Purchaser* or the Comptroller and Auditor General considers necessary.

Z10.4 The *Supplier* acknowledges that, for the purpose of examining and certifying the *Purchaser*’s accounts or any examination pursuant to Section 6(1) of the National Audit Act 1983, the Comptroller and Auditor General or any other auditor appointed by the *Purchaser* may examine documents held or controlled by the *Supplier* or any Subsupplier and may require the *Supplier* to provide such oral or written explanations as he considers necessary. The *Supplier* promptly complies with any such requirements at his own cost. 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 *Supplier* and the carrying out of an examination under Section 6(3)(d) of the National Audit Act 1983 in relation to the *Supplier* is not a function exercisable under this contract. The *Supplier* permits the Comptroller and Auditor General to examine documents held or controlled by the *Supplier* or any Subsupplier. The *Supplier* provides such oral or written explanations as the Comptroller and Auditor General considers necessary. |
| **Clause Z11** *[If a right to extend the* end date *is not required, delete this clause and insert “Not used”]* | **Extension of the *end date***Z11.1 The *Purchaser* may notify the *Supplier* that the *end date* is to be delayed by one year.Z11.2 The *Purchaser* does not notify the *Supplier* of any delay to the *end date* later than 6 months before the *end date*. |
| **Clause Z12**  | **Appointment of *Adjudicator***Z12.1 The *Adjudicator*’s appointment under the NEC3 Adjudicator’s Contract (April 2013) includes the following additional condition of contract: “The Adjudicator complies, and takes all reasonable steps to ensure that any persons advising or aiding him comply, with the Official Secrets Act 1989. Any information concerning the Contract obtained by either the Adjudicator or any person advising or aiding him is confidential, and may not be used or disclosed by the Adjudicator or any such person except for the purposes of this Agreement.” |
| **Clause Z13**  | **Confidentiality**Z13.1 A new Clause 70.3 is added as follows:* “The *Supplier* keeps (and ensures that his employees and Subsuppliers keep) confidential and does not:
* disclose to any person the terms of this contract nor
* use (except for the purposes of this contract) or disclose to any person any confidential or proprietary information (including Personal Data) provided to or acquired by the *Supplier* in the course of Providing the Goods and Services

except that the *Supplier* may disclose information* to his legal or other professional advisers,
* to his employees and Subsuppliers as needed to enable the *Supplier* to Provide the Goods and Services,
* where required to do so by law or by any professional or regulatory obligation or by order of any court or governmental agency, provided that prior to disclosure the *Supplier* consults the *Purchaser* and takes full account of the *Purchaser*’s views about whether (and if so to what extent) the information should be disclosed,
* which it receives from a third party who lawfully acquired it and who is under no obligation restricting its disclosure,
* which is in the public domain at the time of disclosure other than due to the fault of the *Supplier* or
* with the consent of the *Purchaser*.”

Z13.2 The *Supplier* may only disclose the *Purchaser*’s confidential information to its personnel who are directly involved in Providing the Goods and Services and who need to know the information, and shall ensure that such personnel are aware of and shall comply with these obligations as to confidentiality. Z13.3 The *Supplier* may only disclose the *Purchaser*’s confidential information to its personnel who need to know the information, and shall ensure that its 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 of the *Supplier*’s personnel causes or contributes (or could cause or contribute) to the *Supplier* breaching its obligations as to confidentiality under or in connection with this contract, the *Supplier* 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 of the *Supplier*’s personnel, the *Supplier* shall provide such evidence to the *Purchaser* as the *Purchaser* may reasonably require (though not so as to risk compromising or prejudicing the case) to demonstrate that the *Supplier* is taking appropriate steps to comply with this clause, including copies of any written communications to and/or from the *Supplier*’s personnel, and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with the *Supplier*’s personnel in connection with obligations as to confidentiality. Z13.4 At the written request of the *Purchaser*, the *Supplier* shall procure that those members of the *Supplier*’s personnel identified in the *Purchaser*’s notice signs a confidentiality undertaking prior to commencing any work in accordance with this contract. Z13.5 Where the *Purchaser* supplies the *Supplier* with press cuttings provided to the *Purchaser* under the terms of the *Purchaser*’s licence with the Newspaper Licensing Agency (“NLA”), the *Supplier* does not reproduce the cuttings or forward them to any third party unless the *Supplier* has first entered into an agreement with NLA authorising it to do so. |
| **Clause Z14**  | **Publicity**Z14.1 The *Supplier* may publicise this contract only with the *Purchaser’s* written agreement. |
| **Clause Z15**  | **Parent Company Guarantee**Z15.1 If required by the *Supply Manager*, the *Supplier* gives to the *Purchaser* a parent company guarantee. If the Parent Company Guarantee was not given by the Contract Date, it is given to the *Purchaser* within four weeks of the Contract Date. Guarantees are provided for:* a standalone company – the Controller,an unincorporated JV (“more than one party”) – the Controller of each Consortium Member or
* an incorporated JV – the Controller of each Consortium Member.

In all cases it is for the *Purchaser* to decide (in its discretion) whether it will accept a Parent Comnpany Guarantee from a company other than the ultimate holding company.15.2 A failure to comply with this condition is treated as the *Supplier* having substantially hindered the *Purchaser* or Others. |
| **Clause Z16***[Include if Purchaser’s liability is limited]* | **The *Purchaser*’s liability**Z16.1 The *Purchaser’*s total liability to the *Supplier* for all matters arising under of in connection with this contract, other than the excluded matters, is limited to £[ ], and applied in contract, tort or delict or otherwise to the extent allowed under the *law of the contract.* Z16.2 The excluded matters are the amounts payable to the *Supplier* as stated in this contract for * the total of the Prices.

Z16.3 The *Purchaser*’s liability to the *Supplier* is limited to that proportion of the *Supplier*’s losses for which the *Purchaser* is responsible under this contract. |
| **Clause Z17** *[The period should be 12 years if the contract is executed as a deed and 6 years in other cases]* | ***Purchaser’s* Codes of Conduct**Z17.1 The *Supplier* complies (and ensures that any person employed by him or acting on his behalf complies) with the *Purchaser’s* Anti Bribery Code of Conduct and Anti Fraud Code of Conduct, collectively “the Codes”. The *Supplier* complies with the Codes until the *delivery date* and the latest date for the correction of Defects after Delivery and with * paragraph 4 of the *Purchaser’s* Anti Bribery Code of Conduct
* paragraph 3 of the *Purchaser*’s Anti Fraud Code of Conduct
1. for a period of *[6/12]* years after the later of the end of the *delivery date* and the latest date for the correction of Defects after Delivery.

Z17.2 A failure to comply with this condition is treated as the Supplier having substantially hindered the *Purchaser* or Others. |
| **Clause Z18**  | **Prevention of fraud and bribery****[Guidance note: The first option for this Clause Z18 is only for use by Highways England. All other Customers must use the second option. Delete as applicable]**[Z18.1 The *Supplier* 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.

Z18.2 In this clause Z18, Prohibited Act meansany of the following:* 1. to directly or indirectly offer, promise or give any person working for or engaged by the *Purchaser* a financial or other advantage to:
		1. induce that person to perform improperly a relevant function or activity; or
		2. reward that person for improper performance of a relevant function or activity;
	2. 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;
	3. committing any offence:
		1. under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or
		2. under legislation creating offences concerning fraud; or
		3. at common law concerning fraud; or

committing (or attempting or conspiring to commit) fraud.]**OR**[Z18.1 The *Supplier* 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.

Z18.2 During the *services period* the *Supplier* does not:* commit a Prohibited Act; and/or
* do or suffer anything to be done which would cause the *Purchaser* or any of the *Purchaser’s* employees, consultants, suppliers, sub-suppliers or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements

Z18.3 During the *services period* the *Supplier*:* establishes, maintains and enforces, and requires that its SubSuppliers 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 *Purchaser* on request;
* provides and maintains and where appropriate enforces an anti-bribery policy (which shall be disclosed to the *Purchaser* on request) to prevent it and any *Supplier’s* employees or any person acting on the *Supplier's* behalf from committing a Prohibited Act.

Z18.4 The *Supplier* immediately notifies the *Purchaser* in writing if it becomes aware of any breach of clause Z18.1, or has reason to believe that it has or any of the its employees or SubSuppliers 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.

Z18.5 If the *Supplier* makes a notification to the *Purchaser* pursuant to clause Z18.4, the *Supplier* responds promptly to the *Purchaser's* enquiries, co-operates with any investigation, and allows the *Purchaser* to audit any books, records and/or any other relevant documentation in accordance with this contract.Z18.6 If the *Supplier* breaches Clause Z18.3, the *Purchaser* may by notice require the *Supplier* to remove from Providing the Service any *Supplier* employee whose acts or omissions have caused the *Supplier*’s breach.Z18.7 In this Clause Z18, Prohibited Act meansany of the following:* 1. to directly or indirectly offer, promise or give any person working for or engaged by the *Purchaser* a financial or other advantage to:
		1. induce that person to perform improperly a relevant function or activity; or
		2. reward that person for improper performance of a relevant function or activity;
	2. 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;
	3. committing any offence:
		1. under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or
		2. under legislation creating offences concerning fraud; or
		3. at common law concerning fraud; or

committing (or attempting or conspiring to commit) fraud.] |
| **Clause Z19**  | **Reporting: Small and Medium Enterprises**Z29.1 In this Clause Z19 SME is* a Subsupplier or
* a subsupplier to a Subsupplier

and is a company that* is autonomous
* is a European Union company not owned or controlled by a non-European Union parent company,
* for a medium sized enterprise (medium class) employs fewer than 250 staff, has turnover no greater than 50 million Euros and does not have a balance sheet greater than 43 million Euros
* for a small sized enterprise (small class) employs fewer than 50 staff and has turnover no greater than 10 million Euros and does not have a balance sheet greater than 10 million Euros
* for a micro sized enterprise (micro class) employs fewer than 10 staff and has turnover no greater than 2 million Euros and does not have a balance sheet greater than 2 million Euros

Z19.2 For each SME employed, the *Supplier* reports to the *Purchaser* each quarter from the *starting date* until the *delivery date* and the latest date for the correction of Defects after Delivery* the name of the SME,
* the class of the SME (medium, small or micro),
* the value of the contract undertaken by the SME,
* the monthly amounts paid to the SME in the quarter and
* the aggregated value paid to the SME since the *starting date*.

 Z19.3 The *Supplier* acknowledges that the *Purchaser* may* publish the information supplied under Z19.2, along with the *Supplier’s* name and this contract name and
* pass the information supplied under this clause Z19 to any Government Department who may then publish it along with the names of the SMEs, the *Suppliers* name and this contract name.

Z19.4 The *Supplier* ensures that the conditions of contract for each subSupplier who is an SME include* a term allowing the *Purchaser* to publish the information supplied under Z19.2 and
* obligations substantially similar to those set out in this clause Z19.
1. Z19.5 The *Supplier* further ensures that the conditions of contract for each subsupplier include a requirement that the conditions of contract for any subsupplier engaged by the subsupplier who is an SME include obligations substantially similar to those set out in Z19.4.

Z19.6 The *Supplier* keeps accounts and records of his charges and expenses and allows the *Purchaser* to inspect them at any time within working hours.  |
| **Clause Z20***[Include if project bank account drafting being used]* | **Payment for subcontracted goods and services**Z20.1 In assessing the amount due at an assessment date, the amount due for *goods* and *services* provided by a Subsupplier (other than a Named Supplier) is retained from the *Supplier* unless, at the assessment date, the *Supplier* has paid the Subsupplier for the *goods* and *services*.Z20.2 An amount retained is included in the amount due at the assessment date after the *Supplier* has paid the Subsupplier for the *goods* and *services*.Z20.3 When submitting an invoice, the *Supplier* demonstrates that payment has been made for the amount due included in the invoice in respect of goods or services provided by a Subsupplier. |
| **Clause Z21**  | **Fair payment**Z21.1 The *Supplier* assesses the amount due to a Subsupplier without taking into account the amount assessed under this contract.Z21.2 The *Supplier* includes in the contract with each Subsupplier* a period for payment of the amount due to the Subsupplier not greater than 19 days after the date on which payment becomes due under this contract. The amount due includes, but is not limited to, payment for work which the Subsupplier has completed from the previous assessment date up to the current assessment date in this contract,
* a provision requiring the Subsupplier to include in each subsubcontract the same requirement, except that the period for payment is to be not greater than 23 days after the date on which payment becomes due under this contract and
* a provision requiring the Subsupplier to assess the amount due to a subsubsupplier without taking into account the amount paid by the *Supplie*r.

Z21.3 The *Supplier* notifies non-compliance with the timescales for payment through the Efficiency and Reform Group Supplier Feedback Service. The *Supplier* includes this provision in each subcontract, and requires Subsuppliers to include the same provision in each subsubcontract. |
| **Clause Z22 – Option A***[Include Z22 Option A if a project bank account is being used and the call off contract is a sub contract]**[Where Option A applies, delete Option B and Annexes 1 and 2 at the bottom of this document]* | **Project Bank Account**Z22.1 Option Y(UK)1 from the NEC3 Supply Contract (April 2013) applies to this contract. Z22.2 A new Clause Y1.4A added as follows:“The *Purchaser*  may:* propose that another Supplier signs the Joining Deed. The *Supplier* accepts the proposal if the addition of the other Supplier to the project bank account arrangement is practicable”.
* notify the *Supplier* that payments under this contract will no longer be made using the Project Bank Account. This notice is a compensation event. Within one week of the *Purchaser’s* notice, the *Supplier* notifies the Named Suppliers that the Project Bank Account is no longer to be used and proposes an alternative method to ensure that the Named Suppliers receive payments in accordance with their contracts”.
 |
| **Clause Z22 – Option B****Definitions***[Include Z22 Option B if a project bank account is being used and the call off contract is the main contract]**[Option B is based on, but applies instead of, Option Y(UK)1, see Z22.15 below]**[Where Option B applies, delete Option A]* | Z22.1 (1) The Authorisation is a document authorising the *project bank* to make payments to the *Supplier* and the Named Suppliers.(2) Named Suppliers are *named suppliers* and any Suppliers who have signed the Joining Deed.(3) Project Bank Account is the account used to receive payments from the *Purchaser* and the *Supplier* and make payments to the *Supplier* and Named Suppliers.(4) A Supplier is a person or organisation (other than the*Supplier*) who has a contract to* provide some of the *goods*
* provide a service necessary to Provide the Goods and Services

(5) Trust Deed is an agreement in the form set out in the contract which contains provisions for administering the Project Bank Account.(6) Joining Deed is an agreement in the form set out in the contract under which a Supplier joins the Trust Deed. |
| **Project Bank Account** | Z22.2 The *Supplier* establishes the Project Bank Account with the *project bank* within three weeks of the Contract Date. |
|  | Z22.3 Unless stated otherwise in the Contract Data, the *Supplier* pays any charges made and is paid any interest paid by the *project bank*. The charges and interest by the *project bank* are not included in the assessment of the amount due. |
|  | Z22.4 The *Supplier* submits to the *Purchaser* for acceptance details of the banking arrangements for the Project Bank Account. A reason for not accepting the banking arrangements is that they do not provide for payments to be made in accordance with this contract. The *Supplier* provides to the *Purchaser* copies of communications with the *project bank* in connection with the Project Bank Account. |
|  | Z22.4A The *Purchaser*  may * propose that another Supplier signs the Joining Deed. The *Supplier* accepts the proposal if the addition of the other Supplier to the project bank account arrangement is practicable
* notify the *Supplier* that payments under this contract will no longer be made using the Project Bank Account. This notice is a compensation event. Within one week of the *Purchaser’s* notice, the *Supplier* notifies the Named Suppliers that the Project Bank Account is no longer to be used and proposes an alternative method to ensure that the Named Suppliers receive payments in accordance with their contracts.
 |
| **Named Suppliers** | Z22.5 The *Supplier* includes in his contracts with Named Suppliers the arrangements in this contract for the operation of the Project Bank Account and Trust Deed. The *Supplier* notifies the Named Suppliers of the details of the Project Bank Account and the arrangements for payment of amounts due under their contracts. |
|  | Z22.6 The *Supplier* submits proposals for adding a Supplier to the Named Suppliers to the *Purchaser* for acceptance. A reason for not accepting is that the addition of the Supplier does not comply with the Goods Information. The *Purchaser,* the *Supplier* and the Supplier sign the Joining Deed after acceptance. |
| **Payments** | Z22.7 On or before each assessment date, the *Supplier* submits to the *Purchaser* an application for payment, and shows in the application the amounts due to Named Suppliers in accordance with their contracts. |
|  | Z22.8 Within the time set out in the banking arrangements to allow the *project bank* to make payment to the *Supplier* and Named Suppliers in accordance with the contract:* the *Purchaser* makes payment to the Project Bank Account of the amount which is due to be paid under the contract and
* the *Supplier* makes payment to the Project Bank Account of any amount which the *Purchaser* has notified the *Supplier* he intends to withhold from the certified amount and which is required to make payment to Named Suppliers.
 |
|  | Z22.9 The *Supplier* prepares the Authorisation, setting out the sums due to Named Suppliers as assessed by the *Supplier* and to the *Supplier* for the balance of the payment due under the contract. After signing the Authorisation, the *Supplier* submits it to the *Purchaser* no later than four days before the final date for payment. The *Purchaser* signs the Authorisation and submits it to the *project bank* no later than one day before the final date for payment. |
|  | Z22.10 The *Supplier* and Named Suppliers receive payment from the Project Bank Account of the sums set out in the Authorisation as soon as practicable after the Project Bank Account receives payment. |
|  | Z22.11 A payment which is due from the *Supplier* to the *Purchaser* is not made through the Project Bank Account. |
| **Effect of payment** | Z22.12 Payments made from the Project Bank Account are treated as payments from the *Purchaser* to the *Supplier* in accordance with this contract or from the *Supplier* or Subsupplier to Named Suppliers in accordance with their contracts as applicable. A delay in payment due to a failure of the *Supplier* to comply with the requirements of this clause is not treated as late payment under this contract. |
|  | Z22.13 The *Purchaser*, the *Supplier* and *named suppliers* sign the Trust Deed before the first assessment date. |
|  | Z22.14 If either party notifies the other of termination, no further payment is made into the Project Bank Account. |
|  | Z22.15 Option Y(UK)1 from the NEC Supply Contract does not apply |
| **Clause Z23** | **Subcontracting**Z23.1 Before * appointing a proposed Subsupplier or
* allowing a Subsupplier to appoint a proposed subsubsupplier

the *Supplier* submits to the *Purchaser* for acceptance * a European Single Procurement Document (as described in regulation 59 of the Public Contracts Regulations 2015) in respect of the proposed Subsupplier or subsubsupplier or
* other means of proof that none of the mandatory or discretionary grounds for exclusion referred to in regulation 57 of the Public Contracts Regulations 2015 applies to the proposed Subsupplier or subsubSupplier.

Z23.2 The *Supplier* does not appoint the proposed Subsupplier (or allow the Subsupplier to appoint the proposed subsubsupplier) until the *Purchaser* has accepted the submission. A reason for not accepting the submission is that it shows that there are grounds for excluding the proposed Subsupplier or subsubsupplier under regulation 57 of the Public Contracts Regulations 2015.Z23.3 If requested by the *Purchaser*, the *Supplier* provides further information to support, update or clarify a submission under clause Z23.1. Z23.4 If, following the acceptance of a submission under clause Z23.2, it is found that one of the grounds for excluding the Subsupplier or subsubsupplier under regulation 57 of the Public Contracts Regulations 2015 applies, the *Purchaser* may instruct the *Supplier* to * replace the Subsupplier or
* require the Subsupplier to replace the subsubsupplier.
 |
| **Clause Z24** | **Merger, takeover or change control**In clauses Z24, Z36 [Financial Distress] and Z37 [Change of Control – new guarantee]* **Change of Control** is an event where a single person (or group of persons acting in concert)
* acquires Control of the *Supplier* or
* acquires a direct or indirect interest in the relevant share capital of the *Supplier* and as a result holds or controls the largest direct or indirect interest in (and in any event more than 25% of) the relevant share capital of the *Supplier*,
* **Consortium Member** is an organisation or person which is a member of a group of economic operators comprising the *Supplier*, whether as a participant in an unincorporated joint venture or a shareholder in a joint venture company,
* **Control** has the meaning set out in section 1124 of the Corporation Tax Act 2010,
* **Controller** is the single person (or group of persons acting in concert) that
* has Control of the *Supplier* or aConsortium Member or
* holds or controls the largest direct or indirect interest in the relevant share capital of the *Supplier* or aConsortium Member,
* **Credit Rating Threshold** means the minimum credit rating  for the *Consultant*, a Consortium Member or a proposed guarantor, such credit rating being set out at Annex 2 to Schedule 16 of the Framework Agreement.
* **Guarantor** is a person who has given a Parent Company Guarantee to the *Puchaser* and
* **Parent Company Guarantee** is a guarantee of the *Supplier’s* performance in the form set out in the Goods Information.

Z24.2 A Change of Control does not happen without the prior agreement of the *Supply Manager,* and if a Change of Control occurs without the *Supply Manager’s* prior consent, then the *Purchaser* may treat the Change of Control as the *Supplier* having substantially hindered the *Purchaser* or Others.Z24.3 The *Supplier* notifies the *Supply Manager* immediately if a Change of Control has occurred or is expected to occur.Z24.4 If the Change of Control will not allow the *Supplier* to perform its obligations under this contract, the *Purchaser* may treat the Change of Control as the *Supplier* having substantially hindered the *Purchaser* or Others.Z24.5 The *Supplier* notifies the *Supply Manager* immediately of any material change in * the direct or indirect legal or beneficial ownership of any shareholding in the *Supplier.* A change is material if it relates directly or indirectly to a change of 3% or more of the issued share capital of the *Supplier,* or
* the composition of the *Supplier.* A change is material if it
* directly or indirectly affects the performance of this contract by the *Supplier* or
* is considered substantial in accordance with Regulation 72(8) of the Public Contract Regulations 2015.

Z24.6 The *Supplier* notifies the *Supply Manager* immediately of any change or proposed change in the name or status of the *Supplier*. Z24.7 In this clause Z24 a* Change of Control in relation to,
* material change in the ownership of shares in or
* change in the name or status of

a Consortium Member is treated as a change relating to the *Supplier.* |
| **Clause Z25**  | **Intellectual Property Rights**Z25.1   Intellectual Property Rights are any current and future legal and equitable interests in patents, trademarks, design rights, copyright, know-how and other similar rights, whether or not registered or capable of registrationZ25.2 All Intellectual Property Rights in documents and other materials created by or on behalf of the *Purchaser* in connection with the contract are the property of the *Purchaser* or the Crown. Z25.3   The *Supplier* hereby assigns to the *Purchaser* all present and future Intellectual Property Rights in all documents and other materials created by or on behalf of the *Supplier* or any Subsupplierin performing its obligations under, or otherwise in connection with, the contract.  The *Supplier* obtains from Subsuppliers equivalent rights over the documents and other materials prepared by the Subsuppliers.  This assignment takes effect either on the *starting date* or as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Intellectual Property Rights, as appropriate. Z25.4   Background IPR means Intellectual Property Rights owned by the *Supplier*, a Subsupplier or a third party and which are not assigned to the *Purchaser* pursuant to clause Z25.3.  In respect of Background IPR, the *Supplier* grants a non-exclusive, world-wide, perpetual, irrevocable, royalty free licence (including the right to sub-licence) to the *Purchaser* to use the Background IPR for all purposes of the *Purchaser*.  Each licence granted under this clause Z25.4 by the *Supplier* survives the termination or expiry of this contract and cannot be terminated by the *Supplier* or its assignees.  The *Supplier* obtains from the Subsuppliers or third parties equivalent rights over Background IPR owned by the Subsuppliers or third partiesZ25.5   The *Purchaser* grants to the *Supplier,* or procures the direct grant to the *Supplier* of, a non-exclusive, non-transferable, revocable licence to use all Intellectual Property Rights and Background IPR owned (or capable of being so licensed or procured without cost) by the *Purchaser* and reasonably required by the *Supplier* in order to Provide the Goods and Services.  Any such licence is granted for the duration of this contract solely to enable the *Supplier* to comply with its obligations under this contract. |
| **Clause Z26** | **Currency of contract**Z26.1 Payments are in the *currency* of this contract unless otherwise stated in this contract |
| **Clause Z27** | **Changes to rates and prices**Z27.1 The Parties may at any time agree a reduction to the Prices in the Price List.Z27.2 The reduced rates or Prices apply to any *goods* delivered after the reduction is agreed.Z27.3 If the *Supplier* does not agree a reduction requested by the *Purchaser,* the *Purchaser* may terminate the *Supplier’s* obligation to Provide the Goods and Services by notifying the *Supplier*. |
| **Clause Z28**  | **Termination and omission of work**Z28.1 If the *Supply Manager* instructs a change to the Goods Information which involves the omission of part of the *goods* or *services*, the *Purchaser* may engage other people to carry out the part omitted. The instruction is assessed as a compensation event, except that if the instruction is given for insolvency or a default by the *Supplier*, the assessment includes a deduction of the forecast additional cost to the *Purchaser* of completing the *goods* or *services*.Z28.2 The following are treated as the Supplier having substantially failed to comply with this contract• a key resource needed by the *Supplier* to Provide the Goods and Services is no longer available and the *Supplier* does not propose an alternative resource acceptable to the *Purchaser*, or• the *Supplier*‘s performance as measured in accordance with the current edition of the [Highways Englands’s Collaborative Performance Framework (or any replacement for it)] is below the *failure level*.[**Compilier note:** add relevant performance measurement model here]. |
| **Clause Z29**  | Not Used |
| **Clause Z30**  | **Termination - PCRs, Regulation 73**Z30.1 The *Purchaser* may terminate the *Supplier*‘s obligation to Provide the Goods and Services if one of the mandatory or discretionary grounds for exclusion referred to in regulation 57 of the Public Contracts Regulations 2015 applied to the *Supplier* at the *starting date*. This is treated as a termination because of a substantial failure of the *Supplier* to comply with his obligations.Z30.2 The *Purchaser* may terminate the *Supplier*‘s obligation to Provide the Goods and Services if* this contract has been subject to substantial modification which would have required a new procurement procedure pursuant to regulation 72 of the Public Contracts Regulations 2015 or
* the Court of Justice of the European Union declares, in a procedure under Article 258 of the Treaty on the Functioning of the European Union, that a serious infringement of the obligations under the European Union Treaties and the Public Contracts Directive has occurred.
* If the modification or infringement was due to a default by the *Supplier*, this is treated as a termination because of a substantial failure of the *Supplier* to comply with his obligations.
 |
| **Clause Z31**  | **Value Added Tax (VAT) Recovery**Z31.1 Where under this contract any amount is calculated by reference to any sum which has been or may be incurred by any person, the amount shall include any VAT in respect of that amount only to the extent that such VAT is not recoverable as input tax by that person (or a member of the same VAT group) whether by set off or repayment. |
| **Clause Z32***[Delete if not relevant]*  | **Energy Efficiency Directive**Z32.1 The *Supplier* includes in the conditions of contract for each Subsupplier and subsubsupplier obligations substantially similar to those set out in the Goods Information for * compliance with the Procurement Policy Note 7/14 entitled “Implementing Article 6 of the Energy Efficiency Directive” and

demonstrating to the *Purchaser* how in Providing the Goods and how the Subsupplier and subsubsupplier complies with the requirements of Procurement Policy Note 7/14 entitled “Implementing Article 6 of the Energy Efficiency Directive”. |
| **Clause Z33**  | **Collateral Warranty Agreements**Z33.1 The *Supplier* enters into the *collateral warranty agreements* in the formats appended in the Goods Information in favour of the parties identified in the Contract Data and delivers executed copies in duplicate to the *Purchaser* no later than ten working days after the *Purchaser* has provided the *Supplier* with appropriate *collateral warranty agreements* suitable for execution.Z33.2 The *Supplier* procures from the Subsuppliers identified in the Contract Data *collateral warranty agreements* in the formats appended in the Goods Informaiont in favour of the parties identified in the Contract Data and delivers executed copies in duplicate to the *Purchaser* no later than fifteen working days after the *Purchaser* has provided the *Supplier* with appropriate *collateral warranty agreements* suitable for execution.Z33.3 If the *Supplier* fails to deliver the required *collateral warranty agreements* in the manner and within the time stipulated by this contract, one quarter (1/4) of the amount due (as assessed pursuant to clause 51) is retained in assessments until the *Supplier* has remedied the failure. |
| **Clause Z34** *[MOD contracts only]* | **Access to MOD sites**Z34.1 In this clause only:* “Site” includes any of Her Majesty’s Ships or Vessels and Service Stations; and
* “Officer in charge” includes Officers Commanding Service Stations, Ships’ Masters or Senior Officers, and Officers superintending Government Establishments.

Z34.2 The *Purchaser* issues passes for those representatives of the *Supplier* who are approved for admission to the Site and a representative is not admitted unless in possession of such a pass. Passes remain the property of the *Purchaser* and are surrendered on demand or on completion of the *service*.Z34.3 The *Supplier’*s representatives when employed within the boundaries of a Site comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force for the time being for the conduct of personnel at that Site. When on board ship, compliance is with the Ship’s Regulations as interpreted by the Officer in charge. Details of such rules, regulations and requirements are provided on request to the Officer in charge.Z34.4 The *Supplier* is responsible for the living accommodation and maintenance of its representatives while they are employed at a Site. Sleeping accommodation and messing facilities, if required, may be provided by the *Purchaser* wherever possible, at the discretion of the Officer in charge, at a cost fixed in accordance with current Ministry of Defence regulations. At Sites overseas, accommodation and messing facilities, if required, are provided wherever possible. The status accorded to the *Supplier*‘s personnel for messing purposes is at the discretion of the Officer in charge who, wherever possible, gives his decision before the commencement of this contract where so asked by the *Supplier*. When sleeping accommodation and messing facilities are not available, a certificate to this effect may be required by the *Purchaser* and is obtained by the *Supplier* from the Officer in charge. Such certificate is presented to the *Purchaser* with other evidence relating to the costs of this contract.Z34.5 Where the *Supplier’*s representatives are required by this contract to join or visit a Site overseas, transport between the United Kingdom and the place of duty (but excluding transport within the United Kingdom) is provided for them free of charge by the Ministry of Defence whenever possible, normally by Royal Air Force or by MOD chartered aircraft. The *Supplier* makes such arrangements through the Technical Branch named for this purpose in this contract. When such transport is not available within a reasonable time or in circumstances where the *Supplier* wishes its representatives to accompany material for installation which it is to arrange to be delivered, the *Supplier* makes its own transport arrangements. The *Purchaser* reimburses the *Supplier*’s reasonable costs for such transport of its representatives on presentation of evidence supporting the use of alternative transport and of the costs involved. Transport of the *Supplier*’s representatives locally overseas which is necessary for the purpose of this contract is provided wherever possible by the Ministry of Defence or by the Officer in charge and, where so provided, is free of charge.Z34.6 Out-patient medical treatment given to the *Supplier*’s representatives by a Service Medical Officer or other Government Medical Officer at a Site overseas is free of charge. Treatment in a Service hospital or medical centre, dental treatment, the provision of dentures or spectacles, conveyance to and from a hospital, medical centre or surgery not within the Site and transportation of the *Supplier*’s representatives back to the United Kingdom, or elsewhere, for medical reasons, is charged to the *Supplier* at rates fixed in accordance with current Ministry of Defence regulations.Z34.7 Accidents to the *Supplier*’s representatives which ordinarily require to be reported in accordance with Health and Safety at Work Act 1974 are reported to the Officer in charge so that the Inspector of Factories may be informed.Z34.8 No assistance from public funds, and no messing facilities, accommodation or transport overseas is provided for dependants or members of the families of the *Supplier’*s representatives. Medical or necessary dental treatment may, however, be provided for dependants or members of families on repayment at current Ministry of Defence rates.Z34.9 The *Supplier*, wherever possible, arranges for funds to be provided to its representatives overseas through normal banking channels (e.g. by travellers’ cheques). If banking or other suitable facilities are not available, the *Purchaser*, upon request by the *Supplier* and subject to any limitation required by the *Supplier*, makes arrangements for payments, converted at the prevailing rate of exchange (where applicable), to be made at the Site to which the *Supplier*’s representatives are attached. All such advances made by the *Purchaser* are recovered from the *Supplier.* |
| **Clause Z35** *[MOD contracts only]*  | **MoD DEFCON Requirements**Z35.1 This clause is to incorporate MoD special terms and conditions in the form of DEFCONs and DEFORMs as detailed in [ ] |
| **Clause Z36** | **Financial Distress**Z36.1 In this clause Z36 **Credit Rating** is the *credit rating* or any revised long term credit rating issued by a rating agency accepted by the *Supply Manager* in respect of the *Supplier*, a Consortium Member or any Guarantor.Z36.2 The *Supplier* notifies the *Supply Manager* within one week if any of the following events occurs in relation to the *Supplier*, a Consortium Member or a Guarantor* its Credit Rating falls below the relevant *credit rating*,
* a further fall in its Credit Rating below the relevant *credit rating,*
* it issues a profits warning to a stock exchange or makes any other public announcement about a material deterioration in its financial position or prospects,
* it is subject to a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety,
* it commits a material breach of its covenants to its lenders or
* its financial position or prospects deteriorate to such an extent that it would not meet the Credit Rating Threshold.

Z36.3 If any of the events listed in clause Z36.2 occurs, the *Supply Manager* may require the *Supplier* togive to the *Purchaser* a Parent Company Guarantee from the Controller or an alternative guarantor proposed by the *Supplierc*and accepted by the *Supply Manager* who (in either case)* meets the Credit Rating Threshold and
* has a Credit Rating at least equal to the *credit rating* for the person to whom the event listed in clause Z36.2 has occurred.

Z36.4 The *Supply Manager* may accept a Parent Company Guarantee from the Controller or an alternative guarantor proposed by the *Supplier* who does not comply with clause Z36.3 if the *Supplier* gives to the *Supply Manager* an assurance that the Controller or the alternative guarantor will so comply within [18] months of the *Supply Manager’s* acceptance. If so, the Parties agree a process for reviewing the financial standing of the Controller or the alternative guarantor during that period in order to demonstrate to the *Supply Manager’s* that it will so comply by the end of that period.Z36.5 If* the *Supplier* fails to notify the *Supply Manager* that an event listed in clause Z36.2 has occurred,
* neither the Controller nor any alternative guarantor proposed by the *Supplier* complies with clause Z36.3,
* the *Supplier* does notgive to the *Purchaser* a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Supply Manager* within four weeks of a request from the *Supply Manager* to do so or
* the *Supplier* fails to demonstrate to the *Purchaser* that the Controller or the alternative guarantor accepted by the *Supply Manager* will comply with clause Z36.3 within [18] months of the *Supply Manager’s*  acceptance

the *Purchaser* may treat such failure as the *Supplier* having substantially hindered the *Purchaser* or Others |
| **Clause 37** | **Change of Control – new guarantee**Z37.1 If a Change of Control occurs, the *Supplier* provides to the *Supply Manager** certified copies of the audited consolidated accounts of the Controller for the last three financial years,
* a certified copy of the board minute of the Controller confirming that it will give to the *Purchaser* a Parent Company Guarantee if so required by the *Supply Manager* and
* any other information required by the *Supply Manager* in order to determine whether the Controller
* meets the Credit Rating Threshold and
* has a Credit Rating at least equal to the *credit rating* for the original Guarantor (if there is one) or the *Supplier* (if there is not).

Z37.2 If the Controller does not comply with the tests in clause Z37.1 or (if applicable) does not provide the legal opinion required in clause Z37.6, the *Supplier* may propose an alternative guarantor to the *Supply Manager* for acceptance. The *Supplier* provides to the *Supply Manager* the details set out in clause Z37.1 and (if applicable) the legal opinion required in clause Z37.6 in relation to the proposed alternative guarantor. A reason for not accepting the proposed alternative guarantor is that he does not comply with the tests in clause Z37.1 or (if applicable) does not provide the legal opinion required in clause Z37.6.Z37.3 If so required by the *Supply Manager*, the *Supplier* within four weeks gives to the *Purchaser* a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Supply Manager.* Z37.4 The *Supply Manager* may accept a Parent Company Guarantee from the Controller or an alternative guarantor proposed by the *Supplier* who does not comply with the tests in clause Z37.1 if the *Supplier* gives to the *Supply Manager* an assurance that the Controller or the alternative guarantor will so comply within [18] months of the *Supply Manager’s* acceptance. If so, the Parties agree a process for reviewing the financial standing of the Controller or the alternative guarantor during that period in order to demonstrate to the *Supply Manager* that it will so comply by the end of that period.Z37.5 If* neither the Controller nor any alternative guarantor proposed by the *Supplier* complies with the tests in clause Z37.1 or provides the legal opinion required by clause Z37.6,
* the *Supplier* does notgive to the *Purchaser* a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Supply Manager* within four weeks of a request from the *Supply Manager* to do so or
* the *Supplier* fails to demonstrate to the *Supply Manager* that the Controller or the alternative guarantor accepted by the *Supply Manager* will comply with the tests in clause Z37.1 within [18] months of the *Supply Manager’s* acceptance

the *Purchaser* may treat such failure as the *Supplier* having substantially hindered the *Purchaser* or Others.Z37.6 If the Controller, or any alternative guarantor proposed by the *Supplier*, is not a company incorporated in and subject to the laws of England and Wales, the *Supplier* provides a legal opinion from a lawyer or law firm which is* qualified and registered to practise in the jurisdiction in which the Controller or guarantor is incorporated and
* accepted by the *Supply Manager.*

The legal opinion is addressed to the *Purchaser* on a full reliance basis and the liability of the lawyer or law firm giving the opinion is not subject to any financial limitation unless otherwise agreed by the *Supply Manager.*The legal opinion confirms that the method of execution of the Parent Company Guarantee is valid and binding under applicable local law and in particular covers the matters listed in the Goods Information. |
| **Clause 38**  | **Consortia**Z38.1 Where two or more Consortium Members comprise the *Supplier,* each Consortium Member is jointly and severally liable to the *Purchaser* for the performance of the *Supplier’s* obligations under this contract.Z38.2 If the joint venture arrangement is terminated for any reason, the *Purchaser* may * terminate this contract with immediate effect and
* treat the termination of this contract as the *Supplier* having substantially hindered the *Purchaser* or Others.

Z38.3 Clause 91.1 of the *conditions of contract* is amended by inserting after “the other Party” in each place where it appears (three times) the words “(or, in the case of the *Supplier*, any Consortium Member)”. |
| **Clause Z650** | **Offshoring of data** |
|  | Z650.1 In this clause **Risk Assessment** is a full risk assessment and security review carried out by the *Purchaser* in accordance with [HMG Security Policy Framework (SPF) including HMG IA Standard No. 1 - Technical Risk Assessment, October 2009, Issue No: 3.51 and ICT Offshoring (International Sourcing) Guidance dated July 2011] or any later revision or replacement. |
|  | Z650.2 The *Supplier* does not store any of the *Purchaser*‘s data that is classified as Official or higher in accordance with “Government Security Classifications” dated April 2014 (or any later revision or replacement) * offshore or
* in any way that it could be accessed from an offshore location

 until *the Project Manager has confirmed to the Supplier that* either* the *Purchaser* has gained approval for such storage in accordance with “*Offshoring information assets classified at OFFICIAL” dated November 2015* (or any later revision or replacement) *or*

 such approval is not required. |
|  | Z650.3 The *Supplier* ensures that no premises are used in Providing the Works until * such premises have passed a Risk Assessment or
* the *Project Manager* confirms to the *Supplier* that no Risk Assessment is required.
 |
|  | Z650.4 The *Supplier* complies with a request from the *Project Manager* to provide any information required to allow the *Purchaser* to * gain approval for storing data or allowing access to data from an offshore location in accordance with Z650.2 or
* conduct a Risk Assessment for any premises in accordance with Z650.3.
 |
|  | Z650.5 The *Supplier* ensures that any subcontract (at any stage of remoteness from the *Purchaser*) contains provisions to the same effect as this clause. |
|  | Z650.6 A failure to comply with this condition is treated as a substantial failure by the *Supplier* to comply with his obligations. |

**Annex 1 to Clause Z22 - Trust Deed**

***[This Annex applies only if Option B of Clause Z22 applies. If Option A of Clause Z22 applies, delete this Annex]***

**Annex 1 - Trust Deed**

This agreement is made between the *Purchaser*, the *Supplier* and the Named Suppliers.

Terms in this deed have the meanings given to them in the contract between

……………………………………… and ……………………………………… for ……………………………………… (the *goods and/or* the *services*).

**Background**

The *Purchaser* and the *Supplier* have entered into a contract for the *goods and/or* the *services*.

The Named Suppliers have entered into contracts with the *Supplier* or a SubSupplier in connection with the *goods and/or* the *services*.

The *Supplier* has established a Project Bank Account to make provision for payment to the *Supplier* and the Named Suppliers.

**Agreement**

The parties to this deed agree that

* sums due to the *Supplier* and Named Suppliers and set out in the Authorisation are held in trust in the Project Bank Account by the *Supplier* for distribution to the *Supplier* and Named Suppliersin accordance with the banking arrangements applicable to the Project Bank Account,
* further Named Suppliers may be added as parties to this deed with the agreement of the *Purchaser* and *Supplier*. The agreement of the *Purchaser* and *Supplier* is treated as agreement by the Named Suppliers who are parties to this deed,
* this deed is subject to the law of the contract for the *goods*,
* the benefits under this deed may not be assigned.

**Executed as a deed on** ……………………………………………………………

by

…………………………………………………………… (*Purchaser*)

…………………………………………………………… (*Supplier*)

……………………………………………………………

……………………………………………………………

……………………………………………………………

……………………………………………………………

(Named Suppliers)

**Annex 2 to Clause Z22 - Joining Deed**

***[This Annex applies only if Option B of Clause Z22 applies. If Option A of Clause Z22 applies, delete this Annex]***

This agreement is made between the *Purchaser*, the *Supplier* and …………………………………… (the Additional Supplier).

Terms in this deed have the meanings given to them in the contract between

…………………………… and …………………………… for …………………………… (the *goods and/or* the *services*).

**Background**

The *Purchaser* and the *Supplier* have entered into a contract for the *goods and/or* the *services*

The Named Suppliershave entered into contracts with the *Supplier* or a SubSupplier in connection with the *goods and/or* the *services*.

The *Supplier* has established a Project Bank Account to make provision for payment to the *Supplier* and the Named Suppliers.

The *Purchaser*, the *Supplier* and the Named Suppliers have entered into a deed as set out in Annex 1 (the Trust Deed), and have agreed that the Additional Supplier may join that deed.

**Agreement**

The Parties to this deed agree that

* the Additional Supplier becomes a party to the Trust Deed from the date set out below,
* this deed is subject to the law of the contract for the *goods*.
* the benefits under this deed may not be assigned.

**Executed as a deed on ……………………………………….**

**by**

………………………………………………………… (*Purchaser*)

………………………………………………………… (*Supplier*)

………………………………………………………… (Additional Supplier)

1. SUPPLY CONTRACT ANNEX E – THE goods INFORMATION

[NOTE: PLEASE SEE FRAMEWORK SCHEDULE 2 FOR THE FULL SCOPE OF GOODS AVAILABLE TO CONTRACTING AUTHORITIES. CONTRACTING AUTHORITIES SHOULD POPULATE THE GOODS INFORMATION IN LIGHT OF AND IN ACCORDANCE WITH FRAMEWORK SCHEDULE 2. IT SHOULD DETAIL TYPES OF GOODS THAT YOU REQUIRE TOGETHER WITH DELIVERY DATES, DATA PACK, AND STANDARDS. FURTHERMORE, CONTRACTING AUTHORITIES MUST MAKE SURE THAT THE GOODS INFORMATION CONTAINS ALL OF THE REQUIRED INFORMATION AND REQUIREMENTS ENVISAGED BY THE NEC3 SUPPLY CONTRACT. THE GOODS INFORMATION MUST BE ALIGNED WITH THE NEC3 SUPPLY CONTRACT AND IF EITHER THE CCS OR A CONTRACTING AUTHORITY REQUIRES ADVICE OR GUIDANCE ON COMPILING THE GOODS INFORMATION THEN THE NEC CAN OFFER THIS TRAINING]

[INSERT OR APPEND HERE THE GOODS INFORMATION DEVELOPED DURING THE FURTHER COMPETITION PROCEDURE].

1. SUPPLY CONTRACT ANNEX F – PRICE SCHEDULE

[Insert or append here the Price SCHEDULE]

1. SUPPLY CONTRACT ANNEX G – STAFF TRANSFER

***[Guidance Note: this schedule only contains general provisions on the application of***

***TUPE and related issues and is essentially designed to alert Purchasers to the range of issues that may need to be considered where the entering into of a Call Off Agreement (and/or its subsequent expiry) is likely to entail a TUPE transfer. Purchasers should always take specialist legal advice on the specific TUPE and pensions drafting requirements (e.g. whether the New Fair Deal applies, whether there will be a Relevant Transfer etc) relevant to their project.]***

1. Definitions
	1. In this Annex G, the following definitions shall apply:

|  |  |
| --- | --- |
|  |  |
| **“Supplier’s Final Personnel List”** |  means a list provided by the *Supplier* of all staff who will transfer under the Employment Regulations on the Relevant Transfer Date; |
| **“Supplier’s Provisional Personnel List”** |  means a list prepared and updated by the *Supplier* of all staff who are engaged in or wholly or mainly assigned to the provision of the *service* or any relevant part of the *service* which it is envisaged as at the date of such list will no longer be provided by the *Supplier* |
| **“Employee Liabilities”** | 1. 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:
	1. redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
	2. unfair, wrongful or constructive dismissal compensation;
	3. 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;
	4. compensation for less favourable treatment of part-time workers or fixed term employees;
	5. outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions in relation to payments made by the *Purchaser* or the Replacement Supplier to a Transferring Supplier Employee which would have been payable by the *Supplier* or the Sub-Supplier if such payment should have been made prior to the Service Transfer Date;
	6. claims whether in tort, contract or statute or otherwise;
	7. any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;
 |
| **"New Fair Deal"** |  the revised Fair Deal position set out in the HM Treasury guidance: “Fair Deal for staff pensions: staff transfer from central government” issued in October 2013; |
| **"Notified Sub-Supplier"** |  means a Sub-Supplier identified in Annex 1 of this Contract Annex G to whom Transferring Purchaser’s Employees and/or Transferring Former Supplier 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](http://www.gov.uk/government/publications/principles-of-good-employment-practice) ; |
| **“Replacement Supplier”** |  means any third party provider of Replacement Services appointed by or at the direction of the *Purchaser* from time to time or where the *Purchaser* is providing Replacement Services for its own account, shall also include the *Purchaser* |
| **“Replacement Services”** |  means any services which are substantially similar to any of the *service* and which the *Purchaser* 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 *Purchaser* internally and/or by any third party; |
| **“Replacement Sub-Supplier”** |  means a subSupplier of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any sub-Supplier of any such sub-Supplier); |
| **“Service Transfer”** |  any transfer of the *service* (or any part of the *service*), for whatever reason, from the *Supplier* or any subSupplier to a Replacement Supplier or a Replacement Sub-Supplier  |
| **“Service Transfer Date”** |  means the date of a Service Transfer; |
| **"Staffing Information"** |  means, in relation to all persons identified on the Supplier's Provisional Personnel List or Supplier's Final Personnel List, as the case may be, such information as the *Purchaser* 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 Suppliers or consultants, agency workers or otherwise; details of contracted working hours; the identity of the Purchaser 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 Supplier Employees”** |  means those employees of the *Supplier* and/or the Sub-Suppliers to whom the Employment Regulations will apply on the Service Transfer Date |
| **"Transferring Purchaser Employees"** |  means those employees of the *Purchaser* to whom the Employment Regulations will apply on the Relevant Transfer Date; |

**Interpretation**

Where a provision in this Annex imposes an obligation on the *Supplier* to provide an indemnity, undertaking or warranty, the *Supplier* shall procure that each of its Sub-Suppliers shall comply with such obligation and provide such indemnity, undertaking or warranty to the *Purchaser*, Former Supplier, Replacement Supplier or Replacement Sub-Supplier, as the case may be.

**PART A**

**Transferring Purchaser Employees at commencement of the provision of Services**

1. RelevantTransfers
	1. The *Purchaser* and the *Supplier* agree that:
		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 Purchaser Employees; and
		2. as a result of the operation of the Employment Regulations, the contracts of employment between the *Purchaser* and the Transferring Purchaser Employees (except in relation to any terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Relevant Transfer Date as if originally made between the *Supplier* and/or any Notified Sub-Supplier and each such Transferring Purchaser Employee.
	2. The *Purchaser* shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Purchaser 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 *Purchaser*; and (ii) the *Supplier* and/or any Notified Sub-Supplier (as appropriate).
2. *Purchaser* Indemnities
	1. Subject to paragraph 1 of Part A of this Annex G, the *Purchaser* shall indemnify the *Supplier* and any Notified Sub-Supplier against any Employee Liabilities in respect of any Transferring Purchaser Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
		1. any act or omission by the *Purchaser* occurring before the Relevant Transfer Date;
		2. the breach or non-observance by the *Purchaser* before the Relevant Transfer Date of:
			1. any collective agreement applicable to the Transferring Purchaser Employees; and/or
			2. any custom or practice in respect of any Transferring Purchaser Employees which the *Purchaser* is contractually bound to honour.
		3. any claim by any trade union or other body or person representing the Transferring Purchaser Employees arising from or connected with any failure by the *Purchaser* to comply with any legal obligation to such trade union, body or person arising before the Relevant Transfer Date;
		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:
			1. in relation to any Transferring Purchaser 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
			2. in relation to any employee who is not a Transferring Purchaser 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 *Purchaser* to the *Supplier* and/or any Notified Sub-Supplier 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.
		5. a failure of the *Purchaser* 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 Purchaser Employees arising before the Relevant Transfer Date;
		6. any claim made by or in respect of any person employed or formerly employed by the *Purchaser* other than a Transferring Purchaser Employee for whom it is alleged the *Supplier* and/or any Notified Sub-Supplier as appropriate may be liable by virtue of the Employment Regulations and/or the Acquired Rights Directive; and
		7. any claim made by or in respect of a Transferring Purchaser Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Purchaser Employee relating to any act or omission of the *Purchaser* 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 *Supplier* or any Sub-Supplier to comply with regulation 13(4) of the Employment Regulations.
	2. The indemnities in paragraph 2.1 of Part A of this Annex G shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the *Supplier* or any Sub-Supplier (whether or not a Notified Sub-Supplier) whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities:
		1. arising out of the resignation of any Transferring Purchaser Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the *Supplier* and/or any Sub-Supplier to occur in the period from (and including) the Relevant Transfer Date); or
		2. arising from the failure by the *Supplier* or any Sub-Supplier to comply with its obligations under the Employment Regulations.
	3. If any person who is not identified by the *Purchaser* as a Transferring Purchaser Employee claims, or it is determined in relation to any person who is not identified by the *Purchaser* as a Transferring Purchaser Employee, that his/her contract of employment has been transferred from the *Purchaser* to the *Supplier* and/or any Notified Sub-Supplier pursuant to the Employment Regulations or the Acquired Rights Directive then:
		1. the *Supplier* shall, or shall procure that the Notified Sub-Supplier shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the *Purchaser*; and
		2. the *Purchaser* 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 *Supplier* and/or any Notified Sub-Supplier, or take such other reasonable steps as the *Purchaser* considers appropriate to deal with the matter provided always that such steps are in compliance with *law of the contract*.
	4. If an offer referred to in paragraph 2.3.2 of Part A of this Annex G is accepted, or if the situation has otherwise been resolved by the *Purchaser*, the *Supplier* shall, or shall procure that the Notified Sub-Supplier shall, immediately release the person from his/her employment or alleged employment.
	5. If by the end of the fifteen (15) Working Day period specified in paragraph 2.3.2 of Part A of this Annex G:
		1. no such offer of employment has been made;
		2. such offer has been made but not accepted; or
		3. the situation has not otherwise been resolved,

the *Supplier* and/or any Notified Sub-Supplier may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

* 1. Subject to the *Supplier* and/or any Notified Sub-Supplier acting in accordance with the provisions of paragraphs 2.3 to 2.5 of Part A of this Annex G and in accordance with all applicable proper employment procedures set out in the *law of the contract*, the *Purchaser* shall indemnify the *Supplier* and/or any Notified Sub-Supplier (as appropriate) against all Employee Liabilities arising out of the termination pursuant to the provisions of paragraph 2.5 of Part A of this Annex G provided that the *Supplier* takes, or procures that the Notified Sub-Supplier takes, all reasonable steps to minimise any such Employee Liabilities.
	2. The indemnity in paragraph 2.6 of Part A of this Annex G
		1. shall not apply to:
			1. 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 *Supplier* and/or any Sub-Supplier;

* + - 1. any claim that the termination of employment was unfair because the *Supplier* and/or Notified Sub-Supplier neglected to follow a fair dismissal procedure; and
		1. shall apply only where the notification referred to in paragraph 2.3.1 of Part A of this Annex G is made by the *Supplier* and/or any Notified Sub-Supplier (as appropriate) to the *Purchaser* within six (6) months of the Contract Date.
	1. If any such person as is referred to in paragraph 2.3 of Part A of this Annex G is neither re-employed by the *Purchaser* nor dismissed by the *Supplier* and/or any Notified Sub-Supplier within the time scales set out in paragraph 2.5 of Part A of this Annex G such person shall be treated as having transferred to the *Supplier* and/or any Notified Sub-Supplier and the *Supplier* shall, or shall procure that the Notified Sub-Supplier shall, comply with such obligations as may be imposed upon it under the *law of the contract*.
1. *Supplier* Indemnities and Obligations
	1. Subject to paragraph 3.2 of Part A of this Annex G, the *Supplier* shall indemnify the *Purchaser* against any Employee Liabilities in respect of any Transferring Purchaser Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
		1. any act or omission by the *Supplier* or any Sub-Supplier whether occurring before, on or after the Relevant Transfer Date;
		2. the breach or non-observance by the *Supplier* or any Sub-Supplier on or after the Relevant Transfer Date of:
			1. any collective agreement applicable to the Transferring Purchaser Employees; and/or
			2. any custom or practice in respect of any Transferring Purchaser Employees which the *Supplier* or any Sub-Supplier is contractually bound to honour;
		3. any claim by any trade union or other body or person representing any Transferring Purchaser Employees arising from or connected with any failure by the *Supplier* or any Sub-Supplier to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
		4. any proposal by the *Supplier* or a Sub-Supplier made before the Relevant Transfer Date to change the terms and conditions of employment or working conditions of any Transferring Purchaser Employees on or after their transfer to the *Supplier* or the relevant Sub-Supplier (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 Purchaser 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;
		5. any statement communicated to or action undertaken by the *Supplier* or any Sub-Supplier to, or in respect of, any Transferring Purchaser Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the *Purchaser* in writing;
		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:
			1. in relation to any Transferring Purchaser 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
			2. in relation to any employee who is not a Transferring Purchaser 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 *Purchaser* to the *Supplier* or a Sub-Supplier, 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;
		7. a failure of the *Supplier* or any Sub-Supplier 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 Purchaser Employees in respect of the period from (and including) the Relevant Transfer Date; and
		8. any claim made by or in respect of a Transferring Purchaser Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Purchaser Employee relating to any act or omission of the *Supplier* or any Sub-Supplier in relation to their obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the *Purchaser*'s failure to comply with its obligations under regulation 13 of the Employment Regulations.
	2. The indemnities in paragraph 3.1 of Part A of this Annex G shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the *Purchaser* whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the *Purchaser*’s failure to comply with its obligations under the Employment Regulations.
	3. The *Supplier* shall comply, and shall procure that each Sub-Supplier 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-Supplier shall perform and discharge, all its obligations in respect of the Transferring Purchaser 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 *Purchaser* and the *Supplier*.
2. Information
	1. The *Supplier* shall, and shall procure that each Sub-Supplier shall, promptly provide to the *Purchaser* in writing such information as is necessary to enable the *Purchaser* to carry out its duties under regulation 13 of the Employment Regulations. The *Purchaser* shall promptly provide to the *Supplier* and each Notified Sub-Supplier in writing such information as is necessary to enable the *Supplier* and each Notified Sub-Supplier to carry out their respective duties under regulation 13 of the Employment Regulations.
3. Principles of Good Employment Practice
	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 *Supplier* of employees whose employment begins after the Relevant Transfer Date, and the *Supplier* undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.
	2. The *Supplier* shall, and shall procure that each Sub-Supplier shall, comply with any requirement notified to it by the *Purchaser* relating to pensions in respect of any Transferring Purchaser Employee as set down in:
		1. the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
		2. HM Treasury's guidance “Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
		3. HM Treasury's guidance: “Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues” of June 2004; and/or
		4. The New Fair Deal.
4. Pensions
	1. The *Supplier* shall, and shall procure that each of its Sub-Suppliers shall, comply with the pensions provisions set out in the following Annex.

12/08/2013

**ANNEX TO PART A: PENSIONS**

1. Participation
	1. The *Supplier* undertakes to enter into the Admission Agreement.
	2. The *Supplier* and the *Purchaser*:
		1. undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the *Supplier* to participate in the Schemes in respect of the Fair Deal Employees;
		2. agree that the *Purchaser* is entitled to make arrangements with the body responsible for the Schemes for the *Purchaser* to be notified if the *Supplier* breaches the Admission Agreement;
		3. notwithstanding Paragraph 1.2.2 of this Annex, the *Supplier* shall notify the *Purchaser* in the event that it breaches the Admission Agreement; and
		4. agree that the *Purchaser* may terminate this Call Off Contract for material default in the event that the *Supplier* breaches the Admission Agreement.
	3. The *Supplier* shall bear its own costs and all costs that the *Purchaser* reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the *Supplier* participating in the Schemes.
2. Future Service Benefits
	1. The *Supplier* shall procure that the Fair Deal Employees shall be either admitted into or offered continued membership of the relevant section of the Schemes that they currently contribute to or were eligible to join immediately prior to the Relevant Transfer Date and the *Supplier* shall procure that the Fair Deal Employees shall continue to accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.
	2. The *Supplier* undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the *Purchaser*, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary’s Department or any actuary nominated by the *Purchaser* in accordance with relevant guidance produced by the Government Actuary’s Department as providing benefits which are broadly comparable to those provided by the Schemes at the relevant date.
	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.
3. Funding
	1. The *Supplier* undertakes to pay to the Schemes such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.
	2. The *Supplier* shall indemnify and keep indemnified the *Purchaser* on demand against any claim by, payment to, or loss incurred by the Schemes in respect of the failure to account to the Schemes for payments received and non-payment or the late payment of any sum payable by the *Supplier* to or in respect of the Schemes.
4. Provision of Information
	1. The *Supplier* and the *Purchaser* respectively undertake to each other:
		1. to provide all information which the other party may reasonably request concerning matters:

referred to in this Annex; and

set out in the Admission Agreement

and shall supply such information as expeditiously as possible; and

* + 1. not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other party (not to be unreasonably withheld or delayed).
1. Indemnities
	1. The *Supplier* undertakes to the *Purchaser* to indemnify and keep indemnified the *Purchaser* on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.
2. Purchaser Obligation
	1. The *Supplier* shall comply with the requirements of the Pensions Act 2008 and the Transfer of Employment (Pension Protection) Regulations 2005.
3. Subsequent Transfers
	1. The *Supplier* shall:
		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
		2. provide all such co-operation and assistance as the Replacement Supplier and/or the *Purchaser* may reasonably require to enable the Replacement Supplier 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.
		3. for the period either:
			1. 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
			2. after the date which is two (2) years prior to the date of expiry of this contract,

ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Contract or the *Purchaser*, 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 *Purchaser* (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.

12/08/2013

**PART B**

**Transferring Former Supplier Employees at commencement of the provision of Services**

1. Relevant Transfers
	1. The parties agree that:
		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 Supplier Employees; and
		2. as a result of the operation of the Employment Regulations, the contracts of employment between each Former Supplier and the Transferring Former Supplier 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 *Supplier* and/or Notified Sub-Supplier and each such Transferring Former Supplier Employee.
	2. The *Purchaser* shall procure that each Former Supplier 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 Supplier 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 *Supplier* shall make, and the *Purchaser* shall procure that each Former Supplier makes, any necessary apportionments in respect of any periodic payments.
2. Former Supplier Indemnities
	1. Subject to paragraph 1.2 of Part B of this Annex G, the *Purchaser* shall procure that each Former Supplier shall indemnify the *Supplier* and any Notified Sub-Supplier against any Employee Liabilities in respect of any Transferring Former Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
		1. any act or omission by the Former Supplier arising before the Relevant Transfer Date;
		2. the breach or non-observance by the Former Supplier arising before the Relevant Transfer Date of:
			1. any collective agreement applicable to the Transferring Former Supplier Employees; and/or
			2. any custom or practice in respect of any Transferring Former Supplier Employees which the Former Supplier is contractually bound to honour.
		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:
			1. in relation to any Transferring Former Supplier 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
			2. in relation to any employee who is not a Transferring Former Supplier 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 Supplier to the *Supplier* and/or any Notified Sub-Supplier 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;
		4. a failure of the Former Supplier 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 Supplier Employees in respect of the period to (but excluding) the Relevant Transfer Date;
		5. any claim made by or in respect of any person employed or formerly employed by the Former Supplier other than a Transferring Former Supplier Employee for whom it is alleged the *Supplier* and/or any Notified Sub-Supplier as appropriate may be liable by virtue of this contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
		6. any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Former Supplier 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 *Supplier* or any Sub-Supplier to comply with regulation 13(4) of the Employment Regulations.
	2. The indemnities in paragraph 2.1 of Part B of this Annex G shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the *Supplier* or any Sub-Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:
		1. arising out of the resignation of any Transferring Former Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the *Supplier* or any Sub-Supplier to occur in the period from (and including) the Relevant Transfer Date); or
		2. arising from the failure by the *Supplier* and/or any Sub-Supplier to comply with its obligations under the Employment Regulations).
	3. If any person who is not identified by the *Purchaser* as a Transferring Former Supplier Employee claims, or it is determined in relation to any person who is not identified by the *Purchaser* as a Transferring Former Supplier Employee, that his/her contract of employment has been transferred from a Former Supplier to the *Supplier* and/or any Notified Sub-Supplier pursuant to the Employment Regulations or the Acquired Rights Directive then:
		1. the *Supplier* shall, or shall procure that the Notified Sub-Supplier shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the *Purchaser* and, where required by the *Purchaser*, to the Former Supplier; and
		2. the Former Supplier 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 *Supplier* and/or the Notified Sub-Supplier or take such other reasonable steps as the Former Supplier considers appropriate to deal with the matter provided always that such steps are in compliance with the *law of the contract*.
	4. If an offer referred to in paragraph 2.3.2 of Part B of this Annex G is accepted, or if the situation has otherwise been resolved by the Former Supplier and/or the *Purchaser*, the *Supplier* shall, or shall procure that the Notified Sub-Supplier shall, immediately release the person from his/her employment or alleged employment.
	5. If by the end of the 15 Working Day period specified in paragraph 2.3.2 of Part B of this Annex G:
		1. no such offer of employment has been made;
		2. such offer has been made but not accepted; or
		3. the situation has not otherwise been resolved;

the *Supplier* and/or any Notified Sub-Supplier may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

* 1. Subject to the *Supplier* and/or any Notified Sub-Supplier acting in accordance with the provisions of paragraphs 2.3 to 2.5 of Part B of this Annex G and in accordance with all applicable proper employment procedures set out in the *law of the contract*, the *Purchaser* shall procure that the Former Supplier indemnifies the *Supplier* and/or any Notified Sub-Supplier (as appropriate) against all Employee Liabilities arising out of the termination pursuant to the provisions of paragraph 2.5 of Part B of this Annex G provided that the *Supplier* takes, or shall procure that the Notified Sub-Supplier takes, all reasonable steps to minimise any such Employee Liabilities.
	2. The indemnity in paragraph 2.6 of Part B of this Annex G
		1. shall not apply to:
			1. 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 *Supplier* and/or any Sub-Supplier; or

* + - 1. any claim that the termination of employment was unfair because the *Supplier* and/or Notified Sub-Supplier neglected to follow a fair dismissal procedure; and
		1. shall apply only where the notification referred to in paragraph 2.3.2 of Part B of this Annex G is made by the *Supplier* and/or any Notified Sub-Supplier (as appropriate) to the *Purchaser* and, if applicable, the Former Supplier, within six (6) months of the Contract Date.
	1. If any such person as is described in paragraph 2.3 of Part B of this Annex G is neither re-employed by the Former Supplier nor dismissed by the *Supplier* and/or any Notified Sub-Supplier within the time scales set out in paragraph 2.5 of Part B of this Annex G, such person shall be treated as having transferred to the *Supplier* or Notified Sub-Supplier and the *Supplier* shall, or shall procure that the Notified Sub-Supplier shall, comply with such obligations as may be imposed upon it under the *law of the contract*.
1. Supplier Indemnities and Obligations
	1. Subject to paragraph 3.2  of Part B of this Annex G, the *Supplier* shall indemnify the *Purchaser* and/or the Former Supplier against any Employee Liabilities in respect of any Transferring Former Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
		1. any act or omission by the *Supplier* or any Sub-Supplier whether occurring before, on or after the Relevant Transfer Date;
		2. the breach or non-observance by the *Supplier* or any Sub-Supplier on or after the Relevant Transfer Date of:
			1. any collective agreement applicable to the Transferring Former Supplier Employee; and/or
			2. any custom or practice in respect of any Transferring Former Supplier Employees which the *Supplier* or any Sub-Supplier is contractually bound to honour;
		3. any claim by any trade union or other body or person representing any Transferring Former Supplier Employees arising from or connected with any failure by the *Supplier* or a Sub-Supplier to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
		4. any proposal by the *Supplier* or a Sub-Supplier prior to the Relevant Transfer Date to change the terms and conditions of employment or working conditions of any Transferring Former Supplier Employees on or after their transfer to the *Supplier* or a Sub-Supplier (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 Supplier 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;
		5. any statement communicated to or action undertaken by the *Supplier* or a Sub-Supplier to, or in respect of, any Transferring Former Supplier Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the *Purchaser* and/or the Former Supplier in writing;
		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:
			1. in relation to any Transferring Former Supplier 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
			2. in relation to any employee who is not a Transferring Former Supplier 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 Supplier to the *Supplier* or a Sub-Supplier, 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;
		7. a failure of the *Supplier* or any Sub-Supplier 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 Supplier Employees in respect of the period from (and including) the Relevant Transfer Date; and
		8. any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the *Supplier* or any Sub-Supplier in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Supplier's failure to comply with its obligations under regulation 13 of the Employment Regulations.
	2. The indemnities in paragraph 3.1 of Part B of this Annex G shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Supplier’s failure to comply with its obligations under the Employment Regulations.
	3. The *Supplier* shall comply, and shall procure that each Sub-Supplier 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-Supplier shall perform and discharge, all its obligations in respect of all the Transferring Former Supplier 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 *Supplier* and the Former Supplier.
2. Information
	1. The *Supplier* shall, and shall procure that each Sub-Supplier shall, promptly provide to the *Purchaser* and/or at the *Purchaser*’s direction, the Former Supplier, in writing such information as is necessary to enable the *Purchaser* and/or the Former Supplier to carry out their respective duties under regulation 13 of the Employment Regulations. The *Purchaser* shall procure that the Former Supplier shall promptly provide to the *Supplier* and each Notified Sub-Supplier in writing such information as is necessary to enable the *Supplier* and each Notified Sub-Supplier to carry out their respective duties under regulation 13 of the Employment Regulations.
3. Principles of Good Employment Practice
	1. The *Supplier* shall, and shall procure that each Sub-Supplier shall, comply with any requirement notified to it by the *Purchaser* relating to pensions in respect of any Transferring Former Supplier Employee as set down in:
	2. the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
	3. HM Treasury's guidance “Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
	4. HM Treasury's guidance: “Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues” of June 2004; and/or
	5. the New Fair Deal.
4. Procurement Obligations
	1. Notwithstanding any other provisions of this Part B of this Annex G, where in this Part B the *Purchaser* accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the *Purchaser*'s contract with the Former Supplier contains a contractual right in that regard which the *Purchaser* may enforce, or otherwise so that it requires only that the *Purchaser* must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.
5. Pensions
	1. The *Supplier* shall, and shall procure that each Sub-Supplier shall, comply with the pensions provisions in the following Annex.

12/08/2013

**ANNEX TO PART B: PENSIONS**

1. Participation
	1. The *Supplier* undertakes to enter into the Admission Agreement.
	2. The *Supplier* and the *Purchaser*:
		1. undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the *Supplier* to participate in the Schemes in respect of the Fair Deal Employees;
		2. agree that the *Purchaser* is entitled to make arrangements with the body responsible for the Schemes for the *Purchaser* to be notified if the *Supplier* breaches the Admission Agreement;
		3. notwithstanding Paragraph 1.2.2 of this Annex, the *Supplier* shall notify the *Purchaser* in the event that it breaches the Admission Agreement; and
		4. agree that the *Purchaser* may terminate this Call Off Contract for material default in the event that the *Supplier* breaches the Admission Agreement.
	3. The *Supplier* shall bear its own costs and all costs that the *Purchaser* reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the *Supplier* participating in the Schemes.
2. Future Service Benefits
	1. If the *Supplier* is rejoining the Schemes for the first time, the *Supplier* shall procure that the Fair Deal Employees shall be either admitted to or offered continued membership of the relevant section of the Schemes that they became eligible to join on the Relevant Transfer Date and shall continue to accrue or accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.
	2. If staff have already been readmitted to the Schemes, the *Supplier* shall procure that the Fair Deal Employees shall be either admitted into or offered continued membership of the relevant section of the Schemes that they currently contribute to or were eligible to join immediately prior to the Relevant Transfer Date and the *Supplier* shall procure that the Fair Deal Employees shall continue to accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.
	3. The *Supplier* undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the *Purchaser*, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary’s Department or any actuary nominated by the *Purchaser* in accordance with relevant guidance produced by the Government Actuary’s Department as providing benefits which are broadly comparable to those provided by the Schemes at the relevant date.
	4. 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.
3. Funding
	1. The *Supplier* undertakes to pay to the Schemes such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.
	2. The *Supplier* shall indemnify and keep indemnified the *Purchaser* on demand against any claim by, payment to, or loss incurred by the Schemes in respect of the failure to account to the Schemes for payments received and non-payment or the late payment of any sum payable by the *Supplier* to or in respect of the Schemes.
4. Provision of Information
	1. The *Supplier* and the *Purchaser* respectively undertake to each other:
		1. to provide all information which the other party may reasonably request concerning matters:

referred to in this Annex; and

set out in the Admission Agreement

and shall supply such information as expeditiously as possible; and

* + 1. not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other party (not to be unreasonably withheld or delayed).
1. Indemnities
	1. The *Supplier* undertakes to the *Purchaser* to indemnify and keep indemnified the *Purchaser* on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.
2. Purchaser Obligation
	1. The *Supplier* shall comply with the requirements of the Pensions Act 2008 and the Transfer of Employment (Pension Protection) Regulations 2005.
3. Subsequent Transfers
	1. The *Supplier* shall:
		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
		2. provide all such co-operation and assistance as the Replacement Supplier and/or the *Purchaser* may reasonably require to enable the Replacement Supplier 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.
		3. for the period either:
			1. 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
			2. after the date which is two (2) years prior to the date of expiry of this contract,

ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Contract or the *Purchaser*, 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 *Purchaser* (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.

12/08/2013

**PART C**

**No transfer of employees at commencement of the provision of Services**

1. Procedure in the Event of Transfer
	1. The *Purchaser* and the *Supplier* 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 *Purchaser* and/or any Former Supplier.
	2. If any employee of the *Purchaser* and/or a Former Supplier claims, or it is determined in relation to any employee of the *Purchaser* and/or a Former Supplier, that his/her contract of employment has been transferred from the *Purchaser* and/or the Former Supplier to the *Supplier* and/or any Sub-Supplier pursuant to the Employment Regulations or the Acquired Rights Directive then:
		1. the *Supplier* shall, and shall procure that the relevant Sub-Supplier shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the *Purchaser* and, where required by the *Purchaser*, give notice to the Former Supplier; and
		2. the *Purchaser* and/or the Former Supplier 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 *Supplier* or the Sub-Supplier (as appropriate) or take such other reasonable steps as the *Purchaser* or Former *Supplier* (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*.
	3. If an offer referred to in paragraph 1.2.2 of Part C of this Annex G is accepted (or if the situation has otherwise been resolved by the *Purchaser* and/or the Former Supplier), the *Supplier* shall, or shall procure that the Sub-Supplier shall, immediately release the person from his/her employment or alleged employment.
	4. If by the end of the fifteen (15) Working Day period specified in paragraph 1.2.2
		1. no such offer of employment has been made;
		2. such offer has been made but not accepted; or
		3. the situation has not otherwise been resolved,

the *Supplier* and/or the Sub-Supplier may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

1. Indemnities
	1. Subject to the *Supplier* and/or the relevant Notified Sub-Supplier acting in accordance with the provisions of paragraphs 1.2 to 1.4 of Part C of this Annex G and in accordance with all applicable employment procedures set out in the *law of the contract* and subject also to paragraph 1.4 of Part C of this Annex G, the *Purchaser* shall:
		1. indemnify the *Supplier* and/or the relevant Notified Sub-Supplier against all Employee Liabilities arising out of the termination of the employment of any employees of the *Purchaser* referred to in paragraph 1.2 of Part C of this Annex G made pursuant to the provisions of paragraph 1.4 of Part C of this Annex G provided that the *Supplier* takes, or shall procure that the Notified Sub-Supplier takes, all reasonable steps to minimise any such Employee Liabilities; and
		2. procure that the Former Supplier indemnifies the *Supplier* and/or any Notified Sub-Supplier against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier made pursuant to the provisions of paragraph 1.2 of Part C of this Annex G provided that the *Supplier* takes, or shall procure that the relevant Sub-Supplier takes, all reasonable steps to minimise any such Employee Liabilities.
	2. If any such person as is described in paragraph 1.2 of Part C of this Annex G is neither re employed by the *Purchaser* and/or the Former Supplier as appropriate nor dismissed by the *Supplier* and/or any Sub-Supplier within the fifteen (15) Working Day period referred to in paragraph 1.4 of Part C of this Annex G such person shall be treated as having transferred to the *Supplier* and/or the Sub-Supplier (as appropriate) and the *Supplier* shall, or shall procure that the Sub-Supplier shall, comply with such obligations as may be imposed upon it under the *law of the contract*.
	3. Where any person remains employed by the *Supplier* and/or any Sub-Supplier pursuant to paragraph 1.2 of Part C of this Annex G, all Employee Liabilities in relation to such employee shall remain with the *Supplier* and/or the Sub-Supplier and the *Supplier* shall indemnify the *Purchaser* and any Former Supplier, and shall procure that the Sub-Supplier shall indemnify the *Purchaser* and any Former Supplier, against any Employee Liabilities that either of them may incur in respect of any such employees of the *Supplier* and/or employees of the Sub-Supplier.
	4. The indemnities in paragraph 2.1 of Part C of this Annex G
		1. shall not apply to:
			1. 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, or

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

* + - 1. any claim that the termination of employment was unfair because the *Supplier* and/or Notified Sub-Supplier neglected to follow a fair dismissal procedure; and
		1. shall apply only where the notification referred to in paragraph 1.2.1 of Part C of this Annex G is made by the *Supplier* and/or any Sub-Supplier to the *Purchaser* and, if applicable, Former Supplier within six (6) months of the Contract Date.
1. Procurement Obligations
	1. Where in this Part C of this Annex G the *Purchaser* accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the *Purchaser*'s contract with the Former Supplier contains a contractual right in that regard which the *Purchaser* may enforce, or otherwise so that it requires only that the *Purchaser* must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

12/08/2013

**PART D**

**Employment Exit Provisions**

1. Pre-service Transfer Obligations
	1. The *Supplier* agrees that within twenty (20) Working Days of the earliest of:
		1. receipt of a notification from the *Purchaser* of a Service Transfer or intended Service Transfer;
		2. receipt of the giving of notice of early termination or any partial termination of this contract;
		3. the date which is twelve (12) months before the end of the *service period*; and
		4. receipt of a written request of the *Purchaser* at any time (provided that the *Purchaser* 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 Supplier's Provisional Personnel List, together with the Staffing Information in relation to the Supplier's Provisional Personnel List and it shall provide an updated Supplier's Provisional Personnel List at such intervals as are reasonably requested by the *Purchaser*.

* 1. At least twenty (20) Working Days prior to the Service Transfer Date, the *Supplier* shall provide to the *Purchaser* or at the direction of the *Purchaser* to any Replacement Supplier and/or any Replacement Sub-Supplier:
		1. the Supplier's Final Personnel List, which shall identify which of the Staff are Transferring Supplier Employees; and
		2. the Staffing Information in relation to the Supplier’s Final Personnel List (insofar as such information has not previously been provided).
	2. The *Purchaser* shall be permitted to use and disclose information provided by the *Supplier* under paragraphs 1.1 and 1.2 of Part D of this Annex G for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-Supplier.
	3. The *Supplier* warrants, for the benefit of the *Purchaser*, any Replacement Supplier, and any Replacement Sub-Supplier that all information provided pursuant to paragraphs 1.1 and 1.2 of Part D of this Annex G shall be true and accurate in all material respects.
	4. From the date of the earliest event referred to in paragraphs 1.1.1 to 1.1.3 of Part D of this Annex G, the *Supplier* agrees, that it shall not, and agrees to procure that each Sub-Supplier shall not, assign any person to the provision of the Services who is not listed on the Supplier’s Provisional Personnel List and shall not without the approval of the *Purchaser* (not to be unreasonably withheld or delayed):
		1. replace or re-deploy any Staff listed on the Supplier’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;
		2. make, promise, propose or permit any material changes to the terms and conditions of employment of the Staff (including any payments connected with the termination of employment);
		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;
		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 Supplier's Provisional Personnel List;
		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
		6. terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Personnel List save by due disciplinary process,

and shall promptly notify, and procure that each Sub-Supplier shall promptly notify, the *Purchaser* or, at the direction of the *Purchaser*, any Replacement Supplier and any Replacement Sub-Supplier of any notice to terminate employment given by the *Supplier* or relevant Sub-Supplier or received from any persons listed on the Supplier's Provisional Personnel List regardless of when such notice takes effect.

* 1. During the *service period*, the *Supplier* shall provide to the *Purchaser* any information the *Purchaser* may reasonably require relating to any individual employed, assigned or engaged in providing the Services (subject to any limitations imposed by the Data Protection Legislation) including without limitation the Staffing Information and, upon reasonable request by the *Purchaser* and subject only to any limitation imposed by the Data Protection Legislation, the *Supplier* shall provide, and shall procure that each Sub-Supplier shall provide, the *Purchaser* or, at the direction of the *Purchaser* to a Replacement Supplier and/or any Replacement Sub-Supplier with access (on reasonable notice and during normal working hours) to such employment records as the *Purchaser* reasonably requests and shall allow the *Purchaser* or at the *Purchaser*’s direction, the Replacement Supplier and/or any Replacement Sub-Supplier to have copies of any such documents.
	2. The *Supplier* shall provide, and shall procure that each Sub-Supplier shall provide, all reasonable cooperation and assistance to the *Purchaser*, any Replacement Supplier and/or any Replacement Sub-Supplier to ensure the smooth transfer of the Transferring Supplier 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 Supplier 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 *Supplier* shall provide, and shall procure that each Sub-Supplier shall provide, the *Purchaser* or, at the direction of the *Purchaser*, to any Replacement Supplier and/or any Replacement Sub-Supplier (as appropriate), in respect of each person on the Supplier's Final Personnel List who is a Transferring Supplier Employee:
		1. the most recent month's copy pay slip data;
		2. details of cumulative pay for tax and pension purposes;
		3. details of cumulative tax paid;
		4. tax code;
		5. details of any voluntary deductions from pay; and
		6. bank/building society account details for payroll purposes.
1. Employment Regulations Exit Provisions
	1. The *Purchaser* and the *Supplier* 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 Supplier and/or a Replacement Sub-Supplier. Such change in the identity of the *Supplier* of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The *Purchaser* and the *Supplier* further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the *Supplier* and the Transferring Supplier 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 Supplier and/or a Replacement Sub-Supplier (as the case may be) and each such Transferring Supplier Employee.
	2. The *Supplier* shall, and shall procure that each Sub-Supplier shall, comply with all its obligations in respect of the Transferring Supplier 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-Supplier shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the *Supplier* and/or the Sub-Supplier (as appropriate); and (ii) the Replacement Supplier and/or Replacement Sub-Supplier.
	3. Subject to paragraph 2.4 of Part D of this Annex G, the *Supplier* shall indemnify the *Purchaser* and/or the Replacement Supplier and/or any Replacement Sub-Supplier against any Employee Liabilities in respect of any Transferring Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
		1. any act or omission of the *Supplier* or any Sub-Supplier whether occurring before, on or after the Service Transfer Date;
		2. the breach or non-observance by the *Supplier* or any Sub-Supplier occurring on or before the Service Transfer Date of:
			1. any collective agreement applicable to the Transferring Supplier Employees; and/or
			2. any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the *Supplier* or any Sub-Supplier is contractually bound to honour;
		3. any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the *Supplier* or a Sub-Supplier to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
		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:
			1. in relation to any Transferring Supplier 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
			2. in relation to any employee who is not a Transferring Supplier 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 *Supplier* to the *Purchaser* and/or Replacement Supplier and/or any Replacement Sub-Supplier, 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;
		5. a failure of the *Supplier* or any Sub-Supplier 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 Supplier Employees in respect of the period up to (and including) the Service Transfer Date);
		6. any claim made by or in respect of any person employed or formerly employed by the *Supplier* or any Sub-Supplier other than a Transferring Supplier Employee for whom it is alleged the *Purchaser* and/or the Replacement Supplier and/or any Replacement Sub-Supplier may be liable by virtue of this contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
		7. any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the *Supplier* or any Sub-Supplier 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 *Purchaser* and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.
	4. The indemnities in paragraph 2.3 of Part D of this Annex G shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Sub-Supplier whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:
		1. arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or any Replacement Sub-Supplier to occur in the period on or after the Service Transfer Date); or
		2. arising from the Replacement Supplier’s failure, and/or Replacement Sub-Supplier’s failure, to comply with its obligations under the Employment Regulations.
	5. If any person who is not a Transferring Supplier Employee claims, or it is determined in relation to any person who is not a Transferring Supplier Employee, that his/her contract of employment has been transferred from the *Supplier* or any Sub-Supplier to the Replacement Supplier and/or Replacement Sub-Supplier pursuant to the Employment Regulations or the Acquired Rights Directive, then:
		1. the *Purchaser* shall procure that the Replacement Supplier shall, or any Replacement Sub-Supplier shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the *Supplier*; and
		2. the *Supplier* may offer (or may procure that a Sub-Supplier may offer) employment to such person within fifteen (15) Working Days of the notification by the Replacement Supplier and/or any and/or Replacement Sub-Supplier 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*.
	6. If such offer is accepted, or if the situation has otherwise been resolved by the *Supplier* or a Sub-Supplier, the *Purchaser* shall procure that the Replacement Supplier shall, or procure that the Replacement Sub-Supplier shall, immediately release or procure the release of the person from his/her employment or alleged employment.
	7. If after the fifteen (15) Working Day period specified in paragraph 2.5.2 of Part D of this Annex G has elapsed:
		1. no such offer of employment has been made;
		2. such offer has been made but not accepted; or
		3. the situation has not otherwise been resolved;

the *Purchaser* shall advise the Replacement Supplier and/or Replacement Sub-Supplier, as appropriate that it may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

* 1. Subject to the Replacement Supplier and/or Replacement Sub-Supplier acting in accordance with the provisions of paragraphs 2.5 to 2.7 of Part D of this Annex G and in accordance with all applicable proper employment procedures set out in the *law of the contract*, the *Supplier* shall indemnify the Replacement Supplier and/or Replacement Sub-Supplier against all Employee Liabilities arising out of the termination pursuant to the provisions of paragraph 1.7 of Part D of this Annex G provided that the Replacement Supplier takes, or shall procure that the Replacement Sub-Supplier takes, all reasonable steps to minimise any such Employee Liabilities.
	2. The indemnity in paragraph 2.8 of Part D of this Annex G
		1. shall not apply to:
			1. 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 Replacement Supplier and/or Replacement Sub-Supplier; or

* + - 1. any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Sub-Supplier neglected to follow a fair dismissal procedure; and
		1. shall apply only where the notification referred to in paragraph 2.5.1 of Part D of this Annex G is made by the Replacement Supplier and/or Replacement Sub-Supplier to the *Supplier* within six (6) months of the Service Transfer Date.
	1. If any such person as is described in paragraph 2.5 of Part D of this Annex G is neither re-employed by the *Supplier* or any Sub-Supplier nor dismissed by the Replacement Supplier and/or Replacement Sub-Supplier within the time scales set out in paragraphs 2.5 to 2.7 of Part D of this Annex G, such person shall be treated as a Transferring Supplier Employee and the Replacement Supplier and/or Replacement Sub-Supplier shall comply with such obligations as may be imposed upon it under the *law of the contract*.
	2. The *Supplier* shall comply, and shall procure that each Sub-Supplier shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-Supplier shall perform and discharge, all its obligations in respect of the Transferring Supplier Employees up to (but not including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:
		1. the *Supplier* and/or any Sub-Supplier; and
		2. the Replacement Supplier and/or the Replacement Sub-Supplier.
	3. The *Supplier* shall, and shall procure that each Sub-Supplier shall, promptly provide to the *Purchaser* and any Replacement Supplier and/or Replacement Sub-Supplier, in writing such information as is necessary to enable the *Purchaser*, the Replacement Supplier and/or Replacement Sub-Supplier to carry out their respective duties under regulation 13 of the Employment Regulations. The *Purchaser* shall procure that the Replacement Supplier and/or Replacement Sub-Supplier shall promptly provide to the *Supplier* and each Sub-Supplier in writing such information as is necessary to enable the *Supplier* and each Sub-Supplier to carry out their respective duties under regulation 13 of the Employment Regulations.
	4. Subject to paragraph 2.14 of Part D of this Annex G, the *Purchaser* shall procure that the Replacement Supplier indemnifies the *Supplier* on its own behalf and on behalf of any Replacement Sub-Supplier and its sub-Suppliers against any Employee Liabilities in respect of each Transferring Supplier Employee (or, where applicable any employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee) arising from or as a result of:
		1. any act or omission of the Replacement Supplier and/or Replacement Sub-Supplier;
		2. the breach or non-observance by the Replacement Supplier and/or Replacement Sub-Supplier on or after the Service Transfer Date of:
			1. any collective agreement applicable to the Transferring Supplier Employees; and/or
			2. any custom or practice in respect of any Transferring Supplier Employees which the Replacement Supplier and/or Replacement Sub-Supplier is contractually bound to honour;
		3. any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Replacement Supplier and/or Replacement Sub-Supplier to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
		4. any proposal by the Replacement Supplier and/or Replacement Sub-Supplier to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees on or after their transfer to the Replacement Supplier or Replacement Sub-Supplier (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 Supplier 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;
		5. any statement communicated to or action undertaken by the Replacement Supplier or Replacement Sub-Supplier to, or in respect of, any Transferring Supplier Employee on or before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the *Supplier* in writing;
		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:
			1. in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
			2. in relation to any employee who is not a Transferring Supplier 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 *Supplier* or Sub-Supplier, to the Replacement Supplier or Replacement Sub-Supplier 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;
		7. a failure of the Replacement Supplier or Replacement Sub-Supplier 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 Supplier Employees in respect of the period from (and including) the Service Transfer Date; and
		8. any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or Replacement Sub-Supplier in relation to obligations under regulation 13 of the Employment Regulations.
	5. The indemnities in paragraph 2.3 of Part D of this Annex G shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the *Supplier* and/or any Sub-Supplier (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 *Supplier* and/or any Sub-Supplier (as applicable) to comply with its obligations under the Employment Regulations.

12/08/2013

**ANNEX 1: LIST OF NOTIFIED SUBSUPPLIERS**

***[Guidance Note: list of Notified Sub-Suppliers to be inserted here as required.*]**

1. SUPPLY CONTRACT ANNEX H – [ ]

[Insert reference to any other documents which should form part of the call off contract]