

COMPUTER BASED TESTING SERVICES

CALL-OFF CONTRACT

SCHEDULE 9

STAFF TRANSFER

In this schedule 9 (Staff Transfer), unless the context otherwise requires, in addition to the definitions in the Contract, the following expressions shall have the meanings given to them below.

"Acquired Rights Directive"	the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended;
"Contractor's Final Staff List"	the relevant list of all Contractor Personnel engaged in or wholly or mainly assigned to, the provision of the Services or any party of the services at the date of the Service Transfer;
"Contractor Party"	the Contractor's agents and contractors, including each Sub-contractor;
"Contractor Personnel"	all employees, agents, consultants and contractors of the Contractor and/or any Sub-contractor;
"Contractor's Provisional Staff List"	a list prepared and updated by the Contractor of all Contractor Personnel who are engaged in or wholly or mainly assigned to, the provision of the Services or any part of the Services as at the date of such list;
"Losses"	(without limitation) any damages, liabilities, claims, demands, proceedings, actions, costs, charges, losses and/or expenses;
"Relevant Transfer"	as defined in paragraph 3;
"Staffing Information"	<p>in relation to all person's named on the Contractor's Provisional Staff List, such information as the Customer Authority may reasonably request and, in relation to the Transferring Customer Authority Employees, such information as the Contractor may reasonably request (in both cases subject to Data Protection Legislation), but including in an anonymised format:</p> <p>(a) their ages, dates of commencement of employment or engagement and gender;</p> <p>(b) details of whether they be employed, self employed contractors or consultants, agency workers or otherwise;</p>

- (c) the identity of the employer or relevant contracting party;
- (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (e) the wages, salaries, profit sharing;
- (f) 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;
- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence; and
- (i) 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
- (j) any other "employee liability information" as such term is defined in Regulation 11 of the Employment Regulations;

"Service Transfer" has the meaning given in paragraph 3 of schedule 9 (Staff Transfer);

"Service Transfer Date" the date of a Service Transfer;

"Transfer Date" the Commencement Date or such other date upon which performance of the relevant Services commences;

"Transferring Customer Authority" the employees of the Customer Authority named as such in the Call-Off Form;

Employees”

**“Transferring
Employees”**

any of the Contractor Personnel whose contract of employment becomes, by virtue of the application of Employment Regulations where subsequent to the commencement of the provision of the Services the identity of the provider of the Services (or any part of the Services) changes (whether as a result of termination of this Contract, or part, or otherwise) resulting in the Services or related services being undertaken by the Authority or a Replacement Contractor, a contract of employment with the Authority or the Replacement Contractor, but excluding any such Contractor Personnel who are not named on the Contractor’s Final Staff List as Transferring Employees (subject to paragraph 5.3.6).

1. PURPOSE OF THIS SCHEDULE

This schedule sets out the parties respective right and obligations in relation to the application of the Employment Regulations to this Contract.

2. APPLICATION OF THE EMPLOYMENT REGULATIONS ON THE COMMENCEMENT OF THE CONTRACT

PART A

2.1 Unless the Call-Off Form identifies that Part B of paragraph 2 of this Schedule applies, the Customer Authority and the Contractor agree that, at the Effective Date, neither the Acquired Rights Directive nor the Employment Regulations shall apply in such a way so as to transfer the employment of any employees of the Customer Authority to the Contractor or any Contractor Party at the Effective Date.

2.2 The Contractor agrees and accepts that, as at the Effective Date, the Employment Regulations may apply so as to transfer the employment of any Relevant Employees to the Contractor (and/or any relevant sub-contractor). The Contractor shall comply and shall procure that each relevant sub-contractor shall comply with its obligations under the Employment Regulations pursuant to this Contract and shall indemnify the Customer Authority against any losses (including but not limited to Employee Liabilities) sustained as a result of any breach of paragraph 2 of this Schedule.

2.3 If any person who is an employee of the Customer Authority claims or it is determined that his/her contract of employment has been transferred from the Customer Authority to the Contractor or a Contractor Party pursuant to the Employment Regulations and/or the Acquired Rights Directive, or claims that his employment would have so transferred had he not resigned, then:

2.3.1 the Contractor will, within seven Working Days of becoming aware of that fact, give notice in writing to the Customer Authority;

2.3.2 the Customer Authority may offer employment to such person within 21 Working Days of the notification by the Contractor;

2.3.3 if such offer of employment is accepted, the Contractor or the relevant Contractor Party shall immediately release the person from his/her employment;

- 2.3.4 if after that period has elapsed, no such offer of employment has been made or such offer has been made but not accepted, the Contractor or the relevant Contractor Party may within seven Working Days give notice to terminate the employment of such person.
- 2.4 Subject to the Contractor and each relevant Contractor Party acting in the way set out in paragraph 2.3 or in such other way as may be agreed between the Contractor and the Customer Authority, the Customer Authority will indemnify the Contractor and each Contractor Party against:
 - 2.4.1 all Employee Liabilities arising out of such termination or otherwise arising out of the employment of such person by the Contractor or the relevant Contractor Party; and/or
 - 2.4.2 any direct employment costs (if any) associated with the employment of such person by the Contractor or the relevant Contractor Party up to the date of termination of such person's employment.
- 2.5 The indemnity in paragraph 2.3 will not apply:
 - 2.5.1 to any claim by any person in respect of whom the notification given to the Customer Authority under paragraph 2.3.1 is received by the Customer Authority more than six calendar months after the Effective Date; and
 - 2.5.2 if such person is neither re-employed by the Customer Authority nor dismissed by the Contractor or the relevant Contractor Party within the time scales set out in paragraph 2.3, in which case such person will be treated as having transferred to the Contractor or the relevant Contractor Party who shall be responsible for all liabilities arising in respect of any such person.

PART B

- 2.6 Where the Call-Off Form identifies that Part B of this Schedule applies (but, for the avoidance of doubt, not in any other circumstances), the provisions paragraphs 2.7 to 2.18 below shall apply.

- 2.7 With effect from each Transfer Date, the contracts of employment of the Transferring Customer Authority Employees identified pursuant to this Agreement as being assigned by the Customer Authority to services which are being replaced by the Services shall as a result of the Employment Regulations take effect (except in so far as such contracts of employment relate to benefits for old age, survivors and invalidity under any occupational pension scheme excluded under regulation 10 of the Employment Regulations) as if they were originally agreed between the Contractor and those Transferring Customer Authority Employees except where any of the Transferring Customer Authority Employees have in advance of the Transfer Date:
- 2.7.1 resigned;
 - 2.7.2 been dismissed by the Customer Authority;
 - 2.7.3 been re-deployed by the Customer Authority so that they are no longer assigned to those services which are being replaced by the Services commenced by the Contractor on the Transfer Date; or
 - 2.7.4 objected to transferring to the Contractor in accordance with regulation 4(7) of the Employment Regulations.
- 2.8 In circumstances where a Transfer Date occurs more than fifteen (15) Working Days after the Effective Date:
- 2.8.1 the Customer Authority shall provide (where reasonably possible) and as may be reasonably requested by the Contractor:
 - 2.8.1.1 an up to date list of all employees who are engaged in or mainly assigned to the provision of services which are to be replaced by the Services; and
 - 2.8.1.2 Staffing Information in relation to such employees;
 - 2.8.2 the Customer Authority and the Contractor shall seek to agree by no later than twenty (20) Working Days before the Transfer Date a final list of Transferring Customer Authority Employees who shall transfer pursuant to the Employment Regulations on that Transfer Date. If agreement is

reached those persons shall be the Transferring Customer Authority Employees for the relevant Transfer Date; and

2.8.3 if agreement is not reached in accordance with paragraph 2.8.2 above, the Customer Authority (acting reasonably) shall determine the final list of relevant Transferring Customer Authority Employees and confirm that in writing to the Contractor no later than ten (10) Working Days before the Transfer Date. Those persons shall be the Transferring Customer Authority Employees for the relevant Transfer Date.

2.9 If any person who is an employee of the Customer Authority and who is not a Transferring Customer Authority Employee claims or it is determined that his/her contract of employment has been transferred from the Customer Authority to the Contractor or a Contractor Party as at the Transfer Date pursuant to the Employment Regulations and/or the Acquired Rights Directive as a consequence of this Agreement then:

2.9.1 the Contractor shall, within seven (7) Working Days of becoming aware of that fact, give notice in writing to the Customer Authority;

2.9.2 the Customer Authority may offer employment to such person within twenty one (21) Working Days of the notification by the Contractor;

2.9.3 if such offer of employment is accepted, the Contractor shall immediately release the person from his/her employment;

2.9.4 if after that period has elapsed, no such offer of employment has been made or such offer has been made but not accepted, the Contractor or the relevant Contractor Party may within seven (7) Working Days give notice to terminate the employment of such person.

2.10 Subject to the Contractor and each relevant Contractor Party acting in the way set out in paragraph 2.9 above or in such other way as may be agreed between the Contractor and the Customer Authority, the Customer Authority shall (in respect of its employees or former employees employed immediately prior to the Transfer Date) indemnify the Contractor and each Contractor Party against:

- 2.10.1 all Employee Liabilities arising out of such termination or otherwise arising out of the employment of such person by the Contractor or the relevant Contractor Party; and/or
- 2.10.2 any direct employment costs (if any) associated with the employment of such person by the Contractor or the relevant Contractor Party up to the date of termination of such person's employment.
- 2.11 The indemnity in paragraph 2.10 above shall not apply:
 - 2.11.1 to any claim for discrimination including sex, race, disability, sexual orientation, religion or belief or age discrimination in relation to any alleged act or omission of the Contractor or to any claim that the termination of employment was unfair because the Contractor neglected to follow in whole or in part a fair dismissal procedure;
 - 2.11.2 to any claim by any person in respect of whom the notification given to the Customer Authority under paragraph 2.9.1 above is received by the Customer Authority more than six (6) months after the Transfer Date; and
 - 2.11.3 if such person is neither re-employed by the Customer Authority nor dismissed by the Contractor within the timescales set out in paragraph 2.9 above, in which case such person shall be treated as having transferred to the Contractor who shall be responsible for all liabilities arising in respect of any such person.
- 2.12 The Contractor and the Customer Authority shall comply with their duties under regulation 13 of the Employment Regulations (or otherwise) to inform and consult with employee representatives/employees. The Parties shall promptly provide to each other in writing such information as is necessary to carry out their respective duties under regulation 13 of the Employment Regulations (or otherwise) to inform and consult with employee representatives/employees.
- 2.13 In respect of the Transferring Customer Authority Employees there shall be apportioned as at the Transfer Date pro rata all emoluments and outgoings (including all wages, benefits, bonuses, PAYE, and employers' NICs) between the Contractor and the Customer Authority. The Customer Authority shall be responsible for the

period up to the Transfer Date and the Contractor shall be responsible for the Transfer Date and the period thereafter, except that there shall be no apportionment payments in respect of the Transferring Customer Authority Employees' holiday entitlements.

2.14 The Customer Authority shall:

2.14.1 pay all salaries and provide all other benefits and make all appropriate deductions and payments in respect of all Transferring Customer Authority Employees up to, but not including, the Transfer Date;

2.14.2 indemnify the Contractor from and against all Employee Liabilities awarded against or incurred by the Contractor as a result of or in connection with:

2.14.2.1 the employment or termination of employment by the Customer Authority of any Transferring Customer Authority Employee in the period up to but not including the Transfer Date. This indemnity shall not apply where such claim arises out of the resignation of any such Transferring Customer Authority Employee before the Transfer Date on account of substantial detrimental changes to his contract of employment that are proposed or shall occur as a consequence of the actions of the Contractor in the period on or after the Transfer Date;

2.14.2.2 the employment or termination of employment by the Customer Authority of any existing or former employee of the Customer Authority (who is not a Transferring Customer Authority Employee) in the period up to but not including the Transfer Date in respect of which such employee claims that the Contractor has inherited liability from the Customer Authority by virtue of the Employment Regulations and this Agreement; or

2.14.2.3 any failure by the Customer Authority to comply with its obligations under regulation 13 of the Employment Regulations (or otherwise) to inform and consult with employee representatives/employees (other than to the extent

any such failure is as a result of a failure by the Contractor to comply with regulation 13 of the Employment Regulations (or otherwise) to inform and consult with employee representatives/employees); and

2.14.3 provide true, accurate and complete copies of all employment records relating to the Transferring Customer Authority Employees on the Transfer Date.

2.15 The Contractor shall:

2.15.1 pay all salaries and provide all other benefits and make all appropriate deductions and payments in respect of all Transferring Customer Authority Employees for the duration of their employment with the Contractor in the period on and after the Transfer Date;

2.15.2 indemnify the Customer Authority from and against all Employee Liabilities awarded against or incurred by the Customer Authority as a result of or in connection with:

2.15.2.1 the employment or termination of employment by the Contractor of any Transferring Customer Authority Employee in the period on and after the Transfer Date;

2.15.2.2 any claim brought by or on behalf of any Transferring Customer Authority Employee arising out of an assertion that the Employment Regulations do not apply or that the Transferring Customer Authority Employee remains employed by the Customer Authority or that his employment has been terminated by the Customer Authority, in the period on and after the Transfer Date;

2.15.2.3 any claim brought by or on behalf of any Transferring Customer Authority Employee arising out of the resignation of such Transferring Customer Authority Employee before the Transfer Date on account of substantial detrimental changes to his contract of employment that are proposed or

shall occur as a consequence of the actions of the Contractor in the period on or after the Transfer Date; or

2.15.2.4 any failure by the Contractor to provide sufficient information to the Customer Authority in respect of any measures that the Contractor envisages taking after the relevant Transfer Date to enable the Customer Authority to comply with its obligations under regulation 13 of the Employment Regulations to inform and consult with employee representatives/employees;

2.16 If an employment tribunal or higher court on appeal decides that the Employment Regulations (or otherwise) did not apply to the provision of the Services under this Agreement, and the Transferring Customer Authority Employees are held to continue to be employees of the Customer Authority despite the purported transfer, then the Contractor shall, subject to paragraphs 2.7.1 to 2.7.4 (inclusive) above and save in circumstances set out in paragraph 2.17 below:

2.16.1 immediately offer in writing to employ the Transferring Customer Authority Employees; and

2.16.2 treat them as having been so employed on an on-going basis with effect from the Transfer Date,

2.16.3 on the same terms and conditions upon which they would have been employed had the Employment Regulations (or otherwise) applied.

2.17 Where the employment or purported employment of any Transferring Customer Authority Employees with the Customer Authority has otherwise subsequently come to an end in the normal course of business, the Customer Authority shall treat them as having been so employed up to the end of that employment or purported employment.

3. APPLICATION OF THE EMPLOYMENT REGULATIONS ON TERMINATION OR AT THE END OF THE TERM

The Contract envisages that, subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination of this Contract, or part, or otherwise) resulting in the Services or related services being undertaken by the Customer Authority or a Replacement

Contractor. Such change in the identity of the supplier of such services shall be a "**Service Transfer**". The parties acknowledge that a Service Transfer will be a relevant transfer for the purposes of the Employment Regulations ("**Relevant Transfer**") and in such event, the Customer Authority, or a Replacement Contractor, would inherit liabilities in respect of the Relevant Employees. Accordingly, the Employment Regulations and/or the Acquired Rights Directive will apply.

4. PRE-SERVICE TRANSFER OBLIGATIONS

4.1 The Contractor agrees, subject to compliance with the Data Protection Legislation that within 20 Working Days of the earliest of:

- 4.1.1 receipt of a notification from the Customer Authority of a Service Transfer or intended Service Transfer; or
- 4.1.2 receipt of the giving of notice of early termination of this Contract or any part thereof; or
- 4.1.3 the date which is 12 months before the end of the Term; or
- 4.1.4 receipt of a written request of the Customer Authority at any time (provided that the Customer Authority shall only be entitled to make one such request in any six month period),

it will provide the Contractor's Provisional Staff List and the Staffing Information together with any additional information required by the Customer Authority, including information as to the application of the Employment Regulations to the Customer Authority or, at the direction of the Customer Authority, to a Replacement Contractor and it will provide an updated Contractor's Provisional Staff List at such intervals as are reasonably requested by the Customer Authority. The Contractor shall notify the Customer Authority of any material changes to this information as and when they occur.

4.2 At least 14 Working Days prior to the Service Transfer Date, the Contractor shall prepare (subject to compliance with Data Protection Legislation) and provide, or as appropriate procure that the Contractor Party shall prepare and provide, to the Customer Authority or, at the direction of the Customer Authority or the Replacement Contractor, the Contractor's Final Staff List, which shall be complete and accurate in all material respects. The Contractor's Final Staff List shall identify which of the

Contractor Personnel named are Relevant Employees. The provision of personal data regarding those individuals detailed on the Contractor's Final Staff List is subject to the consent of such individuals (which the Contractor shall use its reasonable endeavours to obtain) and being mindful that the final "Personalised List" can change up to the date of transfer or in the absence of such individual's approval, the Contractor's Final Staff List being suitably anonymised so as to comply with Data Protection Legislation.

- 4.3 Subject to compliance with the Data Protection Legislation, the Customer Authority shall be permitted to use and disclose the Contractor's Provisional Staff List, the Contractor's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Contractor for any services which are substantially the same type of services (or any part thereof) as the Services, provided that the Customer Authority imposes on such third party obligations of confidence that are no less onerous than the Customer Authority has to the Contractor in relation to that information.
- 4.4 Upon reasonable request by the Customer Authority and subject to compliance with the Data Protection Legislation, the Contractor shall provide, and shall procure that each Contractor Party shall provide, the Customer Authority or at the request of the Customer Authority, the Replacement Contractor, with access (on reasonable notice and during normal working hours) to such employment records as the Customer Authority reasonably requests and will allow the Customer Authority or the Replacement Contractor to have copies of any such documents.
- 4.5 The Contractor warrants that the Contractor's Provisional Staff List, the Contractor's Final Staff List and the Staffing Information will be true and accurate in all material respects.
- 4.6 From the date of the earliest event referred to in paragraphs 4.1.1 to 4.1.3 above, the Contractor agrees that it will not, and agrees to procure that each Contractor Party will not, other than in the ordinary course of business, assign any person to the provision of the Services (or the relevant part) which is the subject of a Service Transfer who is not listed in the Contractor's Provisional Staff List and will not, other than in the ordinary course of business, without the prior written consent of the Customer Authority (such consent not to be unreasonably withheld or delayed):

- 4.6.1 increase the total number of employees listed on the Contractor's Provisional Staff List save for fulfilling assignments and projects previously scheduled and agreed;
- 4.6.2 make, propose or permit any material changes to the terms and conditions of employment of any employees listed on the Contractor's Provisional Staff List;
- 4.6.3 increase the proportion of working time spent on the Services (or the relevant part) by any of the Contractor Personnel save for fulfilling assignments and projects previously scheduled and agreed;
- 4.6.4 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Contractor's Provisional Staff List;
- 4.6.5 replace any Contractor Personnel listed on the Contractor's Provisional Staff List or deploy any other person to perform the Services (or the relevant part) or terminate or give notice to terminate the employment or contracts of any persons on the Contractor's Provisional Staff List save for:
 - 4.6.5.1 the execution of assigned operations as detailed in 4.6.1 and 4.6.3; and/or
 - 4.6.5.2 replacing voluntary resignations or staff terminated by due disciplinary process to satisfy the fulfilment of previously agreed work streams provided that any replacement is employed on the same terms and conditions of employment as the person he/she replaces; and
- 4.6.6 the Contractor will promptly notify or as appropriate will procure that the Contractor Party will promptly notify the Customer Authority or, at the direction of the Customer Authority, the Replacement Contractor of any notice to terminate employment given by the Contractor or any Contractor Party or received from any persons listed on the Contractor's Provisional Staff List regardless of when such notice takes effect.

4.7 Within seven Working Days following the Service Transfer Date, the Contractor will provide to the Customer Authority or any Replacement Contractor, in respect of each person on the Contractor's Final Staff List who is a Transferring Employee:

- 4.7.1 the most recent month's copy pay slip data;
- 4.7.2 details of cumulative pay for tax and pension purposes;
- 4.7.3 details of cumulative tax paid;
- 4.7.4 tax code;
- 4.7.5 details of any voluntary deductions from pay; and
- 4.7.6 bank/building society account details for payroll purposes.

5. THE CONTRACTOR'S INDEMNITY

5.1 In connection with a Relevant Transfer under paragraph 3 of this schedule, the parties agree that:

5.1.1 the Contractor will, and shall procure that any Contractor Party will, perform and discharge all its obligations in respect of all the Relevant Employees and their representatives for its own account up to and including the Service Transfer Date. The Contractor will indemnify the Customer Authority and any Replacement Contractor against all Employee Liabilities arising from the Contractor's, or any Contractor Party's, failure to perform and discharge any such obligation and against any Employee Liabilities in respect of the Relevant Employees arising from or as a result of:

5.1.1.1 any act or omission by the Contractor or any Contractor Party occurring on or before the Service Transfer Date or any other matter, event or circumstance occurring or having its origin before the Service Transfer Date save simply for accrual of service before that date;

5.1.1.2 all and any Employee Liabilities in respect of all emoluments and outgoings in relation to the Relevant Employees (including without limitation all wages, bonuses, PAYE,

national insurance contributions, pension contributions and otherwise) payable in respect of any period on or before the Service Transfer Date;

5.1.1.3 any claim arising out of the provision of, or proposal by the Contractor or any Contractor Party to offer any change to any benefit, term or condition or working condition of any Transferring Employee arising on or before the Service Transfer Date;

5.1.1.4 any claim made by or in respect of any person employed or formerly employed by the Contractor or any Contractor Party other than a Transferring Employee for which it is alleged the Customer Authority or any Replacement Contractor may be liable by virtue of this Contract and/or the Employment Regulations;

5.1.2 the Contractor will indemnify the Customer Authority and any Replacement Contractor against all Employee Liabilities arising from:

5.1.2.1 any act or omission of the Contractor or any Contractor Party in relation to its obligations under Regulation 13 of the Employment Regulations, or in respect of an award of compensation under Regulation 15 of the Employment Regulations except to the extent that the liability arises from the Customer Authority or a Replacement Contractor's failure to comply with Regulation 13(4) of the Employment Regulations; and

5.1.2.2 any statement communicated to or action done by the Contractor or any Contractor Party to, or in respect of, any Transferring Employee on or before the Service Transfer Date regarding the Service Transfer which has not been agreed in advance with the Customer Authority in writing subject to the timely availability of the Customer Authority, the Contractor or Contractor Party to verify, amend or negotiate the content of such statements.

- 5.2 The Contractor will indemnify the Customer Authority and any Replacement Contractor in respect of any Employee Liabilities arising from any act or omission of the Contractor or any Contractor Party in relation to any other Contractor Personnel who is not a Transferring Employee during any period whether before, on or after the Service Transfer Date.
- 5.3 If any person who is not named on the Contractor's Final Staff List as a Transferring Employee claims or it is determined that his contract of employment has been transferred from the Contractor or any Contractor Party to the Customer Authority, or a Replacement Contractor pursuant to a Relevant Transfer, or claims that his employment would have so transferred had he not resigned, then:
- 5.3.1 the Customer Authority or the Replacement Contractor will, within seven Working Days of becoming aware of that fact, give notice in writing to the Contractor;
 - 5.3.2 the Contractor may offer (or may procure that a Contractor Party may offer) employment to such person within 21 Working Days of the notification by the Customer Authority or the Replacement Contractor;
 - 5.3.3 if such offer of employment is accepted, the Customer Authority or the Replacement Contractor shall immediately release the person from his employment;
 - 5.3.4 if after that period has elapsed, no such offer of employment has been made or such offer has been made but not accepted, the Customer Authority or the Replacement Contractor may within seven Working Days give notice to terminate the employment of such person;
 - 5.3.5 subject to the Customer Authority or the Replacement Contractor acting in this way or in such other way as may be agreed between the Contractor and the Customer Authority or the Replacement Contractor, the Contractor will indemnify the Customer Authority and the Replacement Contractor against:
 - 5.3.5.1 all Employee Liabilities arising out of such termination or otherwise arising out of the employment of such person by the Customer Authority or a Replacement Contractor; and/or

5.3.5.2 any direct employment costs (if any) associated with the employment of such person by the Customer Authority or the Replacement Contractor up to the date of termination of such persons employment.

5.3.6 If such person is neither re-employed by the Contractor or any Contractor Party nor dismissed by the Customer Authority or the Replacement Contractor within the time scales set out in this paragraph 5.3, such person will be treated as a Transferring Employee.

6. THE AUTHORITY'S INDEMNITIES

6.1 The Customer Authority shall indemnify the Contractor and any Contractor Party against all Employee Liabilities arising from the Customer Authority' or the Replacement Contractor's failure to perform and discharge any obligation and against any Employee Liabilities in respect of the Transferring Employee arising from or as a result of:

6.1.1 any act or omission by the Customer Authority or the Replacement Contractor relating to a Transferring Employee occurring on or after the Service Transfer Date;

6.1.2 all and any Employee Liabilities in respect of all emoluments and outgoings in relation to the Relevant Employees (including without limitation all wages, bonuses, PAYE, national insurance contributions, pension contribution and otherwise) payable after the Service Transfer Date;

6.1.3 any claim arising out of the provision of, or proposal by the Customer Authority or any Replacement Contractor to offer any change to any benefit, term or condition or working condition of any Transferring Employee arising after the Service Transfer Date;

6.1.4 any failure by the Customer Authority or any Replacement Contractor to comply with the obligations imposed on a transferee by Regulation 10(3) of the Employment Regulations in respect of the transfer of any Relevant Employees on the Service Transfer Date except to the extent such failure

is caused by or related to an act or omission of the Contractor or any Contractor Party.

7. MUTUAL OBLIGATIONS

7.1 The parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to a Relevant Transfer will be fulfilled.

7.2 The Customer Authority will assume (or will procure that the Replacement Contractor, as the case may be, will assume) the outstanding obligations of the Contractor and any Contractor Party in relation to the Relevant Employees in respect of accrued holiday entitlements and accrued holiday remuneration to the Service Transfer Date. In consideration, the Contractor will or will procure that any Contractor Party will pay to the Customer Authority (or the Replacement Contractor as the case may be) within 14 days of the Service Transfer Date the full amount necessary to enable the Customer Authority or the Replacement Contractor to meet the cost of providing any such untaken holiday entitlements and remuneration as at the Service Transfer Date. The Customer Authority or the Replacement Contractor, as the case may be, will reimburse the Contractor and any Contractor Party any amount paid by the Contractor or the Contractor Party before the Service Transfer Date in respect of holidays taken in excess of any Transferring Employee's entitlement to paid holiday in respect of the period ending on the Service Transfer Date.

8. THIRD PARTY RIGHTS

The parties agree that the Contracts (Right of Third Parties) Act 1999 ("**CRiTPA**") shall apply to paragraphs 5, 6, 7 and 10 of this schedule to the extent necessary that any Replacement Contractor and Contractor Party shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Contractor by the Contractor or the Customer Authority to the Contractor Party under those paragraphs 5, 6, 7 and 10 in its own right pursuant to clause 1(1) of CRiTPA.

9. PROVISIONS WHERE TRANSFER REGULATIONS DO NOT APPLY

9.1 The following provisions shall apply in the event of a Service Transfer to which the Employment Regulations or the Acquired Rights Directive do not apply:

9.1.1 the Customer Authority or the Replacement Contractor can, in its discretion, make to any of the employees listed on the Contractor's Provisional Staff List or any Contractor Personnel assigned to the Services an offer, in writing, to employ that employee under a new contract of employment to take effect on the day after the termination referred to in paragraph 9.1.2 below of this schedule or at the earliest reasonable opportunity;

9.1.2 when the offer has been made by the Customer Authority or Replacement Contractor and accepted by any employee or worker, the Contractor shall, and shall procure that any Contractor Party shall, permit the employee or worker to leave its employment, as soon as practicable depending on the business needs of the Contractor, which could be without the employee or worker having worked his full notice period, if the employee so requests and where operational obligations allow;

9.1.3 if the employee does not accept an offer of employment made by the Customer Authority or Replacement Contractor, the employee shall remain employed by the Contractor (or the Contractor Party, as the case may be) and all Employee Liabilities in relation to the employee shall remain with the Contractor or the relevant Contractor Party;

9.1.4 if the Customer Authority or the Replacement Contractor do not make an offer to any employee on the Contractor's Provisional Staff List or any Contractor Personnel, then that employee and all Employee Liabilities in relation to that employee remains with the Contractor or relevant Contractor Party.

10. CONDUCT OF CLAIMS

10.1 This paragraph 10 shall apply to the conduct, by a party from whom an indemnity is sought under this schedule, of claims made by a third person against a party having (or claiming to have) the benefit of the indemnity. The party (or parties) having, or

claiming to have, the benefit of the indemnity is/are referred to as the "**Beneficiary**" and the party (or parties) giving the indemnity is/are referred to as the "**Indemnifier**".

- 10.2 If the Beneficiary receives any notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may become entitled to, indemnification under this schedule ("**Claim**"), the Beneficiary shall give notice to the Indemnifier as soon as reasonably practicable and in any event within 10 Working Days of receipt of the same.
- 10.3 Subject to paragraphs 10.4 and 10.5, on the giving of a notice by the Beneficiary pursuant to paragraph 10.2 above, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all (but not part only) of the liability arising out of the Claim, the Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to its reasonable satisfaction against all costs and expenses that it may incur by reason of such action) be entitled to dispute the Claim in the name of the Beneficiary at the Indemnifier's own expense and take conduct of any defence, dispute, compromise or appeal of the Claim and of any incidental negotiations relating to the Claim. If the Indemnifier does elect to conduct the Claim, the Beneficiary shall give the Indemnifier all reasonable co-operation, access and assistance for the purposes of such Claim and, subject to paragraph 10.5 below, the Beneficiary shall not make any admission which could be prejudicial to the defence or settlement of the Claim without the prior written consent of the Indemnifier.
- 10.4 With respect to any Claim conducted by the Indemnifier pursuant to paragraph 10.3 above:
- 10.4.1 the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the Claim;
- 10.4.2 the Indemnifier shall not bring the name of the Beneficiary into disrepute;
- 10.4.3 the Indemnifier shall not pay or settle such Claim without the prior written consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
- 10.4.4 the Indemnifier shall conduct the Claim with all due diligence.

- 10.5 The Beneficiary shall be entitled to have conduct of the Claim and shall be free to pay or settle any Claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Contract if:
- 10.5.1 the Indemnifier is not entitled to take conduct of the Claim in accordance with paragraph 10.3 above;
 - 10.5.2 the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant Claim within 10 Working Days of the notice from the Beneficiary under paragraph 10.2 above or if the Indemnifier notifies the Beneficiary that it does not intend to take conduct of the Claim; or
 - 10.5.3 the Indemnifier fails to comply in any material respect with the provisions of paragraph 10.4 above.

Sensitive claims

- 10.6 With respect to any Claim for which the Customer Authority or the Contractor or the Contractor Party are the Beneficiary and the conduct of which the Customer Authority or Contractor acting reasonably, considers is likely to have an adverse impact on the general public's perception of the Customer Authority or the Contractor or the Contractor Party ("**Sensitive Claim**"), the Indemnifier shall only be entitled to take conduct of any defence, dispute, compromise or appeal of the Sensitive Claim with the Beneficiary's prior written consent. If the Beneficiary withholds such consent and elects to conduct the defence, dispute, compromise or appeal of the Sensitive Claim itself, it shall conduct the Sensitive Claim with all due diligence and if any failure to do so results in an increase in the amount recoverable by the Beneficiary in respect of an indemnity under this Contract, the Indemnifier shall only be liable to indemnify the Beneficiary in respect of that amount which would have been recoverable by the Beneficiary had it conducted the Sensitive Claim with all due diligence.
- 10.7 The Beneficiary shall be free at any time to give written notice to the Indemnifier that it is retaining or taking over (as the case may be) the conduct of any Claim, to which paragraph 10.3 above applies notwithstanding that it does not have the right to do so pursuant to paragraph 10.3 if, in the reasonable opinion of the Beneficiary the Claim is, or has become, a Sensitive Claim. In such cases, the provisions of paragraph 10.6 above shall apply.

Recovery of sums

10.8 If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the Claim, the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:

10.8.1 an amount equal to the sum recovered (or the value of the discount, credit, saving, relief, other benefit or amount otherwise obtained) less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering or obtaining the same; and

10.8.2 the amount paid to the Beneficiary by the Indemnifier in respect of the Claim under the relevant indemnity,

provided that there shall be no obligation on the Beneficiary to pursue such recovery and that the Indemnifier is repaid only to the extent that the amount of such recovery aggregated with any sum recovered from the Indemnifier exceeds any loss sustained by the Beneficiary (including for this purpose any indirect Losses sustained by the Beneficiary which may be excluded by this Contract from being recovered from the Indemnifier).

Insurance

10.9 Any person taking any of the steps contemplated by paragraphs 10.2 to 10.6 shall comply with the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Contract.

Mitigation

10.10 Each of the Customer Authority and the Contractor shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant party is entitled to bring a claim against the other party pursuant to the indemnities in this schedule.

Taxation

- 10.11 If any payment by one party under an indemnity in this Contract is subject to income tax or corporation tax (or any tax replacing either or both of them) in the hands of the recipient (or a withholding made by the paying party in respect of tax), the recipient may demand in writing to the party making the payment that the payment shall be increased by such amount as would ensure that, after taking into account any such tax payable in respect of such additional amount, the recipient receives and retains a net sum equal to the amount it would have otherwise received had the payment not been subject to such tax or withholding.