

APPENDIX 4 TO CONSOLIDATED SCHEDULE 21 (*STAFF TRANSFER*)

IUS CONSOLIDATED CONTRACT SCHEDULE

CONSOLIDATED SCHEDULE 21

STAFF TRANSFER (GERMANY)

for Contract Number DCNS/119

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CONSOLIDATED SCHEDULE 21

STAFF TRANSFER

This Consolidated Schedule provides a consolidated version of the requirements of Schedule 7.1 (*Staff Transfer*) to the Call-Off Terms, Appendix 14 to the Call-Off Form and the Customer Authority's special terms relating to Staff Transfer.

Capitalised terms used but not defined in this Consolidated Schedule are defined in Consolidated Schedule 1 (*Definitions*) except that in any definitions in such Consolidated Schedule used in this Schedule, reference to the Employment Regulations shall be substituted by reference to section 613a of the German Civil Code, hereinafter referred to as "**sec. 613a BGB**" and references to Consolidated Schedule 21 (*Staff Transfer*) shall be substituted by references to this Consolidated Schedule.

1 INTRODUCTION

This Consolidated Schedule sets out the Parties' respective rights and obligations in relation to the application of sec. 613a BGB to this Consolidated Contract.

This Consolidated Schedule will not apply to any Transferring Customer Authority Employee employed in Germany at the Transfer Date who is a UK based civil servant or to any Transferring Outgoing Service Provider Employee or Termination Transferring Employee employed in Germany at the Transfer Date or Termination Transfer Date (as applicable) who was previously a UK based civil servant. Consolidated Schedule 21 (*Staff Transfer*) (UK) will apply to them.

2 APPLICATION OF SEC. 613A BGB ON THE COMMENCEMENT OF THE SERVICES BY THE CONTRACTOR

2.1 Parts A and B shall apply to this Consolidated Contract. Part C shall not apply.

Part A

2.2 The Customer Authority and the Contractor shall proceed on the basis that the commencement of the provision of the Services by the Contractor under this Consolidated Contract shall not be a "business transfer" (*Betriebsübergang*) to which sec. 613a BGB shall apply in relation to any employees of the Customer Authority. In the circumstances, the Customer Authority and the Contractor agree that no employees of the Customer Authority shall transfer to the Contractor by virtue of the operation of sec. 613a BGB.

2.3 If any employee of the Customer Authority claims or it is determined that his contract of employment has been transferred from the Customer Authority to the Contractor pursuant to sec. 613a BGB then:

2.3.1 the Contractor shall, within five (5) 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 fifteen (15) Working Days of the notification by the Contractor or take such other steps as it considers appropriate to deal with the matter;

- 2.3.3 if any such offer is accepted (or if the situation has otherwise been resolved by the Customer Authority), the Contractor shall immediately release the person from his/her employment;
- 2.3.4 if after the fifteen (15) Working Day period has elapsed, no such offer of employment has been made or such offer has been made but not accepted the Contractor may within five (5) Working Days give notice to terminate the employment of such person;
- 2.3.5 subject to Paragraph 2.4 below and subject to the Contractor acting in this way or in such other way as may be agreed in writing between the Customer Authority and the Contractor, the Customer Authority shall (as applicable) indemnify, the Contractor against:
- (i) all Employee Liabilities arising out of such termination or otherwise arising out of the employment of such person by the Contractor; and
 - (ii) any direct employment costs (if any) associated with the employment of such person by the Contractor up to the date of termination of such person's employment.

Such indemnity shall be capped in each individual case. The cap shall be calculated according to the following stipulations:

- (iii) the total salary and benefits to be paid by the Contractor until the end of the termination period of the respective employee; and
- (iv) fifty per cent. (50%) of the monthly remuneration for each year of service of the respective employee, but in any event to a maximum of twelve (12) months' service.

2.4 The indemnity in Paragraph 2.3.5 above shall not apply:

- 2.4.1 to any claim for discrimination including but not limited to 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;
- 2.4.2 to any claim in respect of which the notification referred to in Paragraph 2.3.1 above is made by the Contractor to the Customer Authority more than six (6) months after the first Operational Service Commencement Date;
- 2.4.3 if such person is neither re-employed by the Customer Authority nor dismissed by the Contractor within the timescales set out in Paragraph 2.3 above, in which case such person shall be treated as having transferred to the Contractor; and
- 2.4.4 to Employee Liabilities in respect of which the benefit of insurance is available to the Contractor.

Part B

- 2.5** With effect from each Transfer Date, the contracts of employment of the Transferring Outgoing Service Provider Employees identified pursuant to this Consolidated Contract as being assigned by the Outgoing Service Providers to services which are being replaced by

the Services (or in circumstances where separate parts of the Services are commenced by the Contractor at different times, by the relevant Service Tranche) shall as a result of sec. 613a BGB take effect as if they were originally agreed between the Contractor and those Transferring Outgoing Service Provider Employees except where any of the Transferring Outgoing Service Provider Employees have in advance of the Transfer Date:

- 2.5.1 resigned;
- 2.5.2 been dismissed by the Outgoing Service Provider;
- 2.5.3 been re-deployed by the Outgoing Service Provider 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
- 2.5.4 properly objected to transferring to the Contractor in accordance with sec. 613a BGB.

2.6 In circumstances where a Transfer Date occurs more than fifteen (15) Working Days after the Effective Date:

2.6.1 the Customer Authority shall (where reasonably possible and to the extent it is able to do so pursuant to its contracts with the Outgoing Service Providers) procure that the Outgoing Service Providers provide, as may be reasonably requested by the Contractor:

- (i) 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 relevant Service Tranche; and
- (ii) Staffing Information in relation to such employees; and

2.6.2 such employees list and Staffing Information must be provided in an anonymised format to the Contractor and only on a named basis one (1) month after the relevant employees who are engaged in or mainly assigned to the provision of services have received a notice from the Outgoing Service Provider informing them of the business transfer in accordance with sec. 613a para. 5 BGB, and to the extent necessary for the Contractor to comply with its rights and obligations vis-à-vis such employees. The Outgoing Service Provider may provide the Contractor with a list of named employees to be transferred who are of crucial importance in providing the Services.

2.7 The Contractor shall comply with its duties according to sec. 613a BGB to inform the Transferring Outgoing Service Provider Employees and, according to Law, to consult with employee representatives.

2.8 Subject to Paragraph 2.9 below, the Customer Authority shall indemnify the Contractor from and against all Employment Liabilities incurred by the Contractor which arise as a result of any act or omission of the Outgoing Service Provider in respect of any Transferring Outgoing Service Provider Employee in the period up to but not including the Transfer Date.

2.9 The indemnity in Paragraph 2.8 above:

2.9.1 shall apply to the extent only that the Customer Authority is able to recover sums from the Outgoing Service Providers pursuant to any indemnity or other legal

obligation it has with the Outgoing Service Providers in respect of such Employment Liabilities;

- 2.9.2 shall not apply if the Contractor has direct rights to enforce an indemnity or other legal obligation given in its favour by the Outgoing Service Providers in respect of such Employment Liabilities;
- 2.9.3 shall not apply to any Employment Liabilities to the extent that they are a result of any act or omission of the Contractor; and
- 2.9.4 shall not apply to Employment Liabilities in respect of which the benefit of insurance is available to the Contractor.

2.10 The Contractor shall:

- 2.10.1 pay all salaries and provide all other benefits and make all appropriate deductions and payments in respect of all Transferring Outgoing Service Provider Employees for the duration of their employment with the Contractor in the period on and after the Transfer Date;
- 2.10.2 if possible continue any pension schemes applicable to the Transferring Outgoing Service Provider Employees for the duration of their employment with the Contractor in the period on and after the Transfer Date. If the continuation is not possible the Contractor shall establish or nominate new pension schemes which are equivalent in all material respects to the applicable pension schemes of the Outgoing Service Provider; and
- 2.10.3 indemnify the Customer Authority and the Outgoing Service Providers from and against all Employee Liabilities awarded against or incurred by the Customer Authority or the Outgoing Service Providers as a result of or in connection with:
 - (i) the employment or termination of employment by the Contractor of any Transferring Outgoing Service Provider Employee in the period on and after the Transfer Date;
 - (ii) any claim brought by or on behalf of any Transferring Outgoing Service Provider Employee arising out of an assertion that sec. 613a BGB does not apply or that the Transferring Outgoing Service Provider Employee remains employed by the Outgoing Service Provider or that his employment has been terminated by the Outgoing Service Provider, in the period on and after the Transfer Date;
 - (iii) any failure by the Contractor to provide sufficient information to the Customer Authority or the Outgoing Service Providers as reasonably requested by the Customer Authority or the Outgoing Service Providers to enable the Outgoing Service Providers to comply with its obligations under sec. 613a BGB (or otherwise) to inform the Transferring Outgoing Service Provider Employees and, under Law, to consult with employee representatives/employees; and
 - (iv) any other act or omission of the Contractor after the Transfer Date in respect of the Transferring Outgoing Service Provider Employees or their representatives.

- 2.11** In all cases where Other PSN Services Contractors may be subject to a transfer of employees from the same Outgoing Service Provider(s), the Contractor shall work cooperatively with such Other PSN Services Contractors to ensure that the process is, from the point of view of the relevant employees, a consistent and co-ordinated one and that communications with the employees and Outgoing Service Provider are appropriate and coordinated and do not require duplication of effort.
- 2.12** If an employment tribunal or higher court on appeal decides that sec. 613a BGB did not apply to the provision of the Services under this Consolidated Contract, and the Transferring Outgoing Service Provider Employees are held to continue to be employees of the Outgoing Service Provider despite the purported transfer, then the Contractor shall, subject to Paragraphs 2.5.1 to 2.5.4 (inclusive) above and save in circumstances set out in Paragraph 2.13 below:
- 2.12.1** immediately offer in writing to employ the Transferring Outgoing Service Provider Employees; and
- 2.12.2** treat them as having been so employed on an on-going basis with effect from the Transfer Date,
- on the same terms and conditions upon which they would have been employed (and with the same continuity of employment) had sec. 613a BGB (or otherwise) applied.
- 2.13** Where the employment or purported employment of any Transferring Outgoing Service Provider Employee with the Outgoing Service Provider has otherwise subsequently come to an end in the normal course of business, the Outgoing Service Provider shall treat them as having been so employed up to the end of that employment or purported employment.

Part C

- 2.14** With effect from each Transfer Date, the contracts of employment of the Transferring Customer Authority Employees identified pursuant to this Consolidated Contract as being assigned by the Customer Authority to services which are being replaced by the Services (or in circumstances where separate parts of the Services are commenced by the Contractor at different times, by the relevant Service Tranche) shall as a result of sec. 613a BGB take effect 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:
- 2.14.1** resigned;
- 2.14.2** been dismissed by the Customer Authority;
- 2.14.3** 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
- 2.14.4** properly objected to transferring to the Contractor in accordance with sec. 613a BGB.
- 2.15** In circumstances where a Transfer Date occurs more than fifteen (15) Working Days after the Effective Date:
- 2.15.1** the Customer Authority shall provide (where reasonably possible) and as may be reasonably requested by the Contractor:

- (i) 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 relevant Service Tranche; and
 - (ii) Staffing Information in relation to such employees;
- 2.15.2** the Customer Authority and the Contractor shall seek to agree by no later than ten (10) Working Days before the Transfer Date a final list of Transferring Customer Authority Employees who shall transfer pursuant to sec. 613a BGB on that Transfer Date. If agreement is reached those persons shall be the Transferring Customer Authority Employees for the relevant Transfer Date;
- 2.15.3** if agreement is not reached in accordance with Paragraph 2.15.2 above, the Customer Authority shall determine the final list of relevant Transferring Customer Authority Employees and confirm that in writing to the Contractor no later than five (5) Working Days before the Transfer Date. Those persons shall be the Transferring Customer Authority Employees for the relevant Transfer Date; and
- 2.15.4** any employee lists and Staffing Information must be provided in an anonymised format to the Contractor and only on a named basis one (1) month after the relevant employees who are engaged in or mainly assigned to the provision of services have received a notice from the Customer Authority informing them of the business transfer in accordance with sec. 613a para. 5 BGB, and to the extent necessary for the Contractor to comply with its rights and obligations vis-à-vis such employees. The Customer Authority may provide the Contractor with a list of named employees to be transferred who are of crucial importance in providing the Services.
- 2.16** If any person 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 as at the Transfer Date or pursuant to sec. 613a BGB then:
 - 2.16.1** the Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Customer Authority;
 - 2.16.2** the Customer Authority may offer employment to such person within fifteen (15) Working Days of the notification by the Contractor;
 - 2.16.3** if such offer of employment is accepted, the Contractor shall immediately release the person from his/her employment or alleged employment; and
 - 2.16.4** if after the fifteen (15) Working Days period has elapsed, no such offer of employment has been made or such offer has been made but not accepted, the Contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.
- 2.17** Subject to the Contractor acting in the way set out in Paragraph 2.16 above or in such other way as may be agreed between the Contractor and the Customer Authority, and subject to Paragraph 2.18 below, the Customer Authority shall (in respect of its employees or former employees employed immediately prior to the Transfer Date) indemnify the Contractor against:
 - 2.17.1** all Employee Liabilities arising out of such termination or otherwise arising out of the employment of such person by the Contractor; and

2.17.2 any direct employment costs (if any) associated with the employment of such person by the Contractor up to the date of termination of such person's employment.

Such indemnity shall be capped in each individual case. The cap shall be calculated according to the following stipulations:

2.17.3 the total salary and benefits to be paid by the Contractor until the end of the termination period of the respective employee; and

2.17.4 fifty per cent. (50%) of the monthly remuneration for each year of service of the respective employee, but in any event to a maximum of twelve (12) months' service.

2.18 The indemnity in Paragraph 2.17 above shall not apply:

2.18.1 to any claim for discrimination including but not limited to 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;

2.18.2 to any claim by any person in respect of whom the notification given to the Customer Authority under Paragraph 2.16.1 above is received by the Customer Authority more than six (6) months after the Transfer Date;

2.18.3 if such person is neither re-employed by the Customer Authority nor dismissed by the Contractor within the timescales set out in Paragraph 2.16 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; and

2.18.4 to Employee Liabilities in respect of which the benefit of insurance is available to the Contractor.

2.19 The Contractor and the Customer Authority shall jointly inform in writing each of the Transferring Customer Authority Employees who are to transfer no later than one (1) month prior to the envisaged Transfer Date. In this context, the Customer Authority shall draft such initial information and subsequently seek information from the Contractor who shall provide it within one (1) week of such request. Further, the Customer Authority and the Contractor shall both comply with any obligations they may have to inform the Transferring Customer Authority Employees and, under Law, to consult with employee representatives/employees. In this respect the Parties shall promptly provide to each other in writing such information as is necessary to carry out their respective duties according to sec. 613a BGB (or otherwise).

2.20 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, commissions, employment-related taxes, and employers' social security contributions) 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.

2.21 The Customer Authority shall:

- 2.21.1** pay all salaries and provide all other benefits (including contributions to any pension schemes) and make all appropriate deductions and payments in respect of all Transferring Customer Authority Employees up to, but not including, the Transfer Date;
- 2.21.2** indemnify the Contractor from and against all Employee Liabilities awarded against or incurred by the Contractor as a result of or in connection with:
 - (i) 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;
 - (ii) the termination of employment by the Customer Authority of any 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 sec. 613a BGB and this Consolidated Contract; or
 - (iii) any failure by the Customer Authority to comply with its obligations according to sec. 613a BGB (or otherwise) to inform the Transferring Customer Authority Employees and, under Law, to 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 sec. 613a BGB (or otherwise) to inform the Transferring Customer Authority Employees and, under Law, to consult with employee representatives/employees); and
- 2.21.3** provide true, accurate and complete copies of all employment records relating to the Transferring Customer Authority Employees on the Transfer Date.

2.22 The Contractor shall:

- 2.22.1** 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;
- 2.22.2** if possible continue any pension schemes applicable to the Transferring Customer Authority Employees for the duration of their employment with the Contractor in the period on and after the Transfer Date. If the continuation is not possible the Contractor shall establish or nominate new pension schemes which are equivalent in all material respects to the applicable pension schemes of the Customer Authority;
- 2.22.3** no later than three (3) months after the Transfer Date pay to the Customer Authority a sum equal to the outstanding balance on the Transfer Date of any loan, advance or other indebtedness of any Transferring Customer Authority Employee to the Customer Authority which is outstanding immediately prior to the Transfer Date save to the extent that such sums are recovered by the Customer Authority pursuant to Paragraph 2.22.1 above; and

2.22.4 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:

- (i) the employment or termination of employment by the Contractor of any Transferring Customer Authority Employee in the period on and after the Transfer Date;
- (ii) any claim brought by or on behalf of any Transferring Customer Authority Employee arising out of an assertion that sec. 613a BGB does 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; and
- (iii) any failure by the Contractor to provide sufficient information to the Customer Authority as reasonably requested by the Customer Authority to enable the Customer Authority to comply with its obligations according to sec. 613a BGB to inform the Transferring Customer Authority Employees and, under Law, to consult with employee representatives/employees.

2.23 If an employment tribunal or higher court on appeal decides that sec. 613a BGB (or otherwise) did not apply to the provision of the Services under this Consolidated Contract, 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 2.14.1 to 2.14.4 (inclusive) above and save in circumstances set out in Paragraph 2.24 below:

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

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

on the same terms and conditions upon which they would have been employed had sec. 613a BGB (or otherwise) applied.

2.24 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 SEC. 613A BGB ON TERMINATION OF THE PROVISION OF THE SERVICES BY THE CONTRACTOR OR AT THE END OF THE TERM

This Consolidated 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 Consolidated Contract, or part, or otherwise) resulting in Replacement Services being undertaken by the Customer Authority or the Replacement Contractor. Such change in the identity of the supplier of such services shall be a **“Termination Transfer”**. A Termination Transfer may be a Staff Transfer and in such event, the Customer Authority or the Replacement Contractor, may inherit liabilities in respect of the Termination Transferring Employees pursuant to sec. 613a BGB.

4 PRE-SERVICE TRANSFER OBLIGATIONS

4.1 The Contractor agrees, subject to the requirements set out in Paragraph 4.8 below and in compliance with the Data Protection Legislation, that within twenty (20) Working Days of the earliest of:

- 4.1.1** receipt of a notification from the Customer Authority of a Termination Transfer or intended Termination Transfer;
- 4.1.2** receipt of the giving of notice of early termination of this Consolidated Contract or any part thereof;
- 4.1.3** the date which is twelve (12) months before the end of the Term; and
- 4.1.4** otherwise on 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 (6) month period),

that it shall provide the Contractor's Provisional Staff List and the Staffing Information in relation to all those employees listed on the Contractor's Provisional Staff List to the Customer Authority or, at the direction of the Customer Authority, to the Replacement Contractor and it shall provide an updated Contractor's Provisional Staff List at such intervals as are reasonably requested by the Customer Authority and in any event fourteen (14) Working Days before the Termination Transfer Date.

4.2 On receipt of the updated Contractor's Provisional Staff List, the Customer Authority shall either Approve the Contractor's Provisional Staff List in which case it shall constitute the Contractor's Final Staff List or, if the Customer Authority does not Approve the Contractor's Provisional Staff List, it shall so advise the Contractor and the Parties shall use reasonable endeavours to reach an agreement on the Contractor's Final Staff List. If no such agreement can be reached fourteen (14) Working Days before the Termination Transfer Date, the Customer Authority shall determine (acting reasonably) the Contractor's Final Staff List. The Contractor's Final Staff List shall identify which of the Contractor Personnel contained in the Contractor's Final Staff List (whether anonymised or, to the extent permitted, named) are Termination Transferring Employees and be complete and accurate in all material respects.

4.3 The Customer Authority shall, on an anonymous basis, and only on a named basis if permitted under the Data Protection Legislation, use and disclose the Contractor's Provisional Staff List, the Contractor's Final Staff List and the Staffing Information in relation to such employees 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 Paragraph 4.8 below and in compliance with the Data Protection Legislation, the Contractor shall provide the Customer Authority or at the request of the Customer Authority, the Replacement Contractor, with access (on reasonable notice and during Working Hours) to such employment records as the Customer Authority reasonably requests and shall 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 provided in relation to those listed shall 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 shall not assign any person to the provision of the Services (or the relevant part) which is the subject of a Termination Transfer who is not listed in the Contractor's Provisional Staff List and shall not without the Approval of the Customer Authority (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 as may be necessary in order to fulfil assignments and projects previously scheduled and agreed by the Customer Authority;
 - 4.6.2** make, agree to 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 as may be necessary in order to fulfil assignments and projects previously scheduled and agreed by the Customer Authority;
 - 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:
 - (i) the execution of assigned operations as detailed in Paragraph 4.6.1 and 4.6.3 above; or
 - (ii) replacing voluntary resignations, staff absence due to maternity leave, death, retirement or ill-health, 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 shall promptly notify the Customer Authority in writing or, at the direction of the Customer Authority, the Replacement Contractor of any notice to terminate employment given to or received from any persons listed on the Contractor's Provisional Staff List regardless of when such notice takes effect.
- 4.7** Within fourteen (14) Working Days before the Termination Transfer Date in respect of Paragraphs 4.7.1, 4.7.4, 4.7.5 and 4.7.6 below and within seven (7) Working Days following the Termination Transfer Date in respect of Paragraphs 4.7.1 to 4.7.6 below, the Contractor shall provide to the Customer Authority or the Replacement Contractor, in respect of each person on the Contractor's Final Staff List who is a Termination 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.

4.8 To the extent any employee information within the Contractor's Provisional Staff List and the Staffing Information shall be transferred from German territory by the Contractor to the Customer Authority or to the Replacement Contractor as described in Paragraphs 4.1 to 4.7 above, such employee information must be provided in an anonymised format and only on a named basis one (1) month after the relevant employees to be transferred have received a notice from the Contractor informing them of the Termination Transfer in accordance with sec. 613a para. 5 BGB, and to the extent necessary for the Customer Authority or the Replacement Contractor to comply with its rights and obligations vis-à-vis such employees. The Contractor may provide the Customer Authority or the Replacement Contractor with a list of named employees to be transferred who are of crucial importance in providing the Services.

5 TERMINATION TRANSFERS

5.1 The Customer Authority shall or shall procure that the Replacement Contractor shall (as the case may be) comply with its duties, and the Contractor shall comply with its duties, according to sec. 613a BGB if it applies. The Customer Authority shall or shall procure that the Replacement Contractor shall (as the case may be) promptly provide, and the Contractor shall promptly provide, to the other Party in writing such information as is necessary to carry out their respective duties according to sec. 613a BGB.

5.2 In respect of the Termination Transferring Employees there shall be apportioned as at the Termination Transfer Date pro rata all emoluments and outgoings (including all wages, benefits, bonuses, commissions, employment-related taxes, and employers' social security contributions) between the Contractor and the Replacement Contractor or the Customer Authority (as the case may be). The Contractor shall be responsible for the period up to and including the Termination Transfer Date and the Replacement Contractor or the Customer Authority (as the case may be) shall be responsible for the period thereafter, except that there shall be no apportionment payments in respect of the Termination Transferring Employees' holiday entitlements.

5.3 The Contractor shall:

- 5.3.1 pay all salaries and provide all other benefits (including contributions to any pension scheme) and make all appropriate deductions and payments in respect of all Termination Transferring Employees up to and including the Termination Transfer Date;
- 5.3.2 indemnify the Customer Authority and the Replacement Contractor from and against all Employee Liabilities awarded against or incurred by the Customer Authority or the Replacement Contractor (as the case may be) as a result of or in connection with:

- (i) the employment or termination of employment by the Contractor of any Termination Transferring Employee in the period up to and including the Termination Transfer Date;
- (ii) the employment or termination of employment by the Contractor of any existing or former employee of the Contractor (who is not a Termination Transferring Employee) in the period up to and including the Termination Transfer Date in respect of which such employee claims that the Customer Authority or the Replacement Contractor has inherited liability from the Contractor by virtue of the Employment Regulations and this Consolidated Contract; or
- (iii) any failure by the Contractor to comply with its obligations under sec. 613a BGB (other than where any such failure is as a result of a failure by the Replacement Contractor or the Customer Authority (if it is providing the Replacement Services) to provide sufficient information to the Contractor); and

5.3.3 procures that true, accurate and complete copies of all original employment records relating to the Termination Transferring Employees are provided to the Replacement Contractor or the Customer Authority (if it is providing the Replacement Services) on the Termination Transfer Date under the conditions described in Paragraph 4.8 above.

5.4 The Customer Authority shall procure that the Replacement Contractor (or the Customer Authority itself if it provides the relevant Replacement Services) shall:

- 5.4.1** pay all salaries and provide all other benefits and make all appropriate deductions and payments in respect of all Termination Transferring Employees for the duration of their employment with the Replacement Contractor or the Customer Authority (as the case may be) in the period after the Termination Transfer Date;
- 5.4.2** if possible continue any pension schemes applicable to the Termination Transferring Employees for the duration of their employment with the Replacement Contractor or the Customer Authority (as the case may be) in the period after the Termination Transfer Date. If the continuation is not possible the Replacement Contractor or the Customer Authority (as the case may be) shall establish or nominate new pension schemes which are equivalent in all material respects to the applicable pension schemes of the Contractor; and
- 5.4.3** indemnify the Contractor from and against all Employee Liabilities awarded against or incurred by the Contractor as a result of or in connection with:
 - (i) the employment or termination of employment by the Replacement Contractor or the Customer Authority of any Termination Transferring Employee in the period after the Termination Transfer Date;
 - (ii) any claim brought by or on behalf of any Termination Transferring Employee arising out of an assertion that sec. 613a BGB does not apply or that the Termination Transferring Employee remains employed by the Contractor or that his employment has been terminated by the Contractor, in the period after the Termination Transfer Date; or

- (iii) any failure by the Replacement Contractor or the Customer Authority (if it is providing the Replacement Services) to provide sufficient information to the Contractor as reasonably requested by the Contractor to enable the Contractor to comply with its obligations under sec. 613a BGB.

5.5 If any person who is not a Termination Transferring Employee (a “**Non-Disclosed Employee**”) claims or it is determined that his contract of employment has been transferred from the Contractor to the Customer Authority or the Replacement Contractor pursuant to a Staff Transfer, or claims that his employment would have so transferred had he not resigned, then:

- 5.5.1** the Customer Authority or the Replacement Contractor shall (as the case may be), within five (5) Working Days of becoming aware of that fact, give notice in writing to the Contractor;
- 5.5.2** the Contractor may offer employment to such person within fifteen (15) Working Days of the notification by the Customer Authority or the Replacement Contractor;
- 5.5.3** if any such offer of employment is accepted, the Customer Authority or the Replacement Contractor shall immediately release the person from his employment;
- 5.5.4** if after the fifteen (15) Working Day 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 five (5) Working Days give notice to terminate the employment of such person;
- 5.5.5** subject to Paragraph 5.6 below and subject to the Customer Authority or the Replacement Contractor acting in this way or in such other way as may be agreed in writing between the Contractor and the Customer Authority or the Replacement Contractor, the Contractor shall indemnify the Customer Authority and the Replacement Contractor against:
 - (i) all Employment Liabilities arising out of such termination or otherwise arising out of the employment of such person by the Customer Authority or the Replacement Contractor; and
 - (ii) 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 person’s employment.

Such indemnity shall be capped in each individual case. The cap shall be calculated according to the following stipulations:

- (iii) the total salary and benefits to be paid by the Contractor until the end of the termination period of the respective employee; and
 - (iv) fifty per cent. (50%) of the monthly remuneration for each year of service of the respective employee, but in any event to a maximum of twelve (12) months’ service; and
- 5.5.6** if such person is neither re-employed by the Contractor nor dismissed by the Customer Authority or the Replacement Contractor within the timescales set out in this Paragraph 5.5, such person shall be treated as a Termination Transferring Employee.

5.6 The indemnity in Paragraph 5.5.5 above shall not apply:

- 5.6.1** to any claim for discrimination including but not limited to sex, race, disability, sexual orientation, religion or belief or age discrimination in relation to any alleged act or omission of the Replacement Contractor or the Customer Authority or to any claim that the termination of employment was unfair because the Replacement Contractor or the Customer Authority (as the case may be) neglected to follow in whole or in part a fair dismissal procedure;
- 5.6.2** to any claim by any person in respect of whom the notification given to the Contractor under Paragraph 5.5.1 above is received by the Contractor more than six (6) months after the Transfer Date;
- 5.6.3** if such person is neither re-employed by the Contractor nor dismissed by the Replacement Contractor or the Customer Authority within the timescales set out in Paragraph 5.5 above; and
- 5.6.4** to Employment Liabilities in respect of which the benefit of insurance is available to the Replacement Contractor or the Customer Authority.

6 THIRD PARTY RIGHTS

Any Outgoing Service Provider or Replacement Contractor shall have the right, to the extent necessary, to enforce their rights, obligations owed to and indemnities given to them by the Contractor under Paragraphs 2, 4, 5, 7 and 8 of this Consolidated Schedule in their own right pursuant to sec. 328 (1) of the German Civil Code.

7 PROVISIONS WHERE SEC 613A BGB DOES NOT APPLY

7.1 The following provisions shall apply in the event of a Termination Transfer to which the provisions of sec. 613a BGB do not apply:

- 7.1.1** the Customer Authority or the Replacement Contractor may, in its absolute discretion, request the Contractor's Provisional Staff List or a list of any Contractor Personnel assigned to the Services in an anonymised format. On this basis, the Customer Authority or the Replacement Contractor may make an offer, in writing, to employ an employee on these lists under a new contract of employment to take effect on the day after the termination referred to in Paragraph 7.1.2 below or at the earliest reasonable opportunity. The Contractor shall inform the relevant employees of such offer who may then contact the Customer Authority or the Replacement Contractor in respect of the offer;
- 7.1.2** when the offer has been made by the Customer Authority or the Replacement Contractor in accordance with Paragraph 7.1.1 above and accepted by any employee or worker, the Contractor 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;
- 7.1.3** if the employee does not accept an offer of employment made by the Customer Authority or the Replacement Contractor in accordance with Paragraph 7.1.1 above, the employee shall remain employed by the Contractor and all Employee Liabilities in relation to the employee shall remain with the Contractor; and

- 7.1.4 if the Customer Authority or the Replacement Contractor does not make an offer in accordance with Paragraph 7.1.1 above, then that employee and all Employee Liabilities in relation to that employee remains with the Contractor.

8 CONDUCT OF CLAIMS

- 8.1** This Paragraph 8 shall apply to the conduct, by a Party from whom an indemnity is sought under this Consolidated Schedule, of claims made by a third person against a party having (or claiming to have) the benefit of the indemnity. The Party or third party having, or claiming to have, the benefit of the indemnity is referred to as the **"Beneficiary"** and the Party giving the indemnity is referred to as the **"Indemnifier"**.
- 8.2** 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 Consolidated Schedule (**"Claim"**), the Beneficiary shall give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within ten (10) Working Days of receipt of the same.
- 8.3** Subject to Paragraphs 8.4 and 8.5 below, on the giving of a notice by the Beneficiary pursuant to Paragraph 8.2 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 cooperation and assistance for the purposes of such Claim and, subject to Paragraph 8.5 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.
- 8.4** With respect to any Claim conducted by the Indemnifier pursuant to Paragraph 8.3 above:
- 8.4.1** the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the Claim;
 - 8.4.2** the Indemnifier shall not bring the name of the Beneficiary into disrepute;
 - 8.4.3** 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
 - 8.4.4** the Indemnifier shall conduct the Claim with all due diligence.
- 8.5** 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 Consolidated Contract if:
- 8.5.1** the Indemnifier is not entitled to take conduct of the Claim in accordance with Paragraph 8.3 above;
 - 8.5.2** the Indemnifier fails to notify the Beneficiary in writing of its intention to take conduct of the relevant Claim within ten (10) Working Days of the notice from the

Beneficiary under Paragraph 8.2 above or if the Indemnifier notifies the Beneficiary in writing that it does not intend to take conduct of the Claim; or

- 8.5.3 the Indemnifier fails to comply in any material respect with the provisions of Paragraph 8.4 above.

Sensitive claims

- 8.6 With respect to any Claim for which the Customer Authority or the Contractor 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 ("**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 Consolidated 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.
- 8.7 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 8.3 above applies notwithstanding that it does not have the right to do so pursuant to Paragraph 8.3 above if, in the reasonable opinion of the Beneficiary, the Claim is, or has become, a Sensitive Claim. In such cases, the provisions of Paragraph 8.6 above shall apply.

Recovery of Sums

- 8.8 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:
- 8.8.1 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
- 8.8.2 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 Losses sustained by the Beneficiary which may be excluded by Clause 44 (*Limitations on Liability*) of this Consolidated Contract from being recovered from the Indemnifier).

Insurance

- 8.9** Any person taking any of the steps contemplated by Paragraphs 8.2 to 8.6 above shall comply with the requirements of any insurer of the Indemnifier who may have an obligation in respect of any liability arising under this Consolidated Contract.

Mitigation

- 8.10** 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 Consolidated Schedule.

Taxation

- 8.11** If any payment by one Party under an indemnity in this Consolidated 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.

9 SUB-CONTRACTORS

- 9.1** References in this Consolidated Schedule to the Contractor shall include any relevant Contractor party providing any of the Services.
- 9.2** Where a provision in this Consolidated Schedule imposes an obligation on the Contractor or where the Contractor provides an indemnity, undertaking or warranty in this Consolidated Schedule, the Contractor shall procure that each of its Sub-contractors or other agents and contractors shall comply with such obligation or provide such indemnity, undertaking or warranty to the Customer Authority, Outgoing Service Providers or the Replacement Contractor as the case may be.
- 9.3** References in this Consolidated Schedule to the Outgoing Service Providers shall include any of their relevant sub-contractors which provide the Customer Authority with any services which are the same as or similar to the Services which are provided by the Contractor.
- 9.4** References in this Consolidated Schedule to the Replacement Contractor shall include any of its relevant sub-contractors.
- 9.5** Where in Paragraphs 2, 4 and 5 above the Customer Authority accepts an obligation to procure that an Outgoing Service Provider or Replacement Contractor does or does not do something, such obligation shall be limited so that it extends only to the extent that the Customer Authority's contract with the Outgoing Service Provider or Replacement Contractor contains a contractual right in that regard which the Customer Authority may enforce.

APPENDIX 1
TRANSFERRING CUSTOMER AUTHORITY EMPLOYEES (GERMANY)

Not applicable.

APPENDIX 2
TRANSFERRING OUTGOING SERVICE PROVIDER EMPLOYEES (GERMANY)

Details of any Transferring Outgoing Service Provider Employees in respect of Germany to be provided on or around the Effective Date.