

CONNECTIVITY CONSOLIDATED CONTRACT SCHEDULE

CONSOLIDATED SCHEDULE 21

STAFF TRANSFER (UK)

for Contract Number DCNS/080

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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*).

1 INTRODUCTION

1.1 This Consolidated Schedule sets out the Parties' respective rights and obligations in relation to:

- 1.1.1 the application of the Employment Regulations to this Consolidated Contract; and
- 1.1.2 pensions pursuant to Appendix 1 to this Consolidated Schedule.

2 APPLICATION OF THE EMPLOYMENT REGULATIONS 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 "relevant transfer" to which the Employment Regulations 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 the Employment Regulations.

2.3 If any employee of the Customer Authority claims that, or it is determined that, his contract of employment has been transferred from the Customer Authority to the Contractor pursuant to the Employment Regulations 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 accordance with this Paragraph 2.3 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.

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, in which case such person shall be treated as having transferred to the Contractor by virtue of the operation of the Employment Regulations and the Contractor shall comply with such obligations as may be imposed upon it under Employment Regulations or otherwise by Law; 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 the Employment Regulations take effect (except in relation to occupational pension scheme benefits excluded under regulation 10 of the Employment Regulations) 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** objected to transferring to the Contractor in accordance with regulation 4(7) of the Employment Regulations.
- 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.
- 2.7** The Contractor shall comply with its duties under regulation 13 of the Employment Regulations (or otherwise) to inform and consult with employee representatives/employees. The Contractor shall promptly provide the Customer Authority in writing with such information as is necessary for the Outgoing Service Providers to carry out their duties under regulation 13 of the Employment Regulations (or otherwise).
- 2.8** Subject to Paragraph 2.9 below, the Customer Authority shall indemnify the Contractor from and against all Employee 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 Employee 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 Employee Liabilities;
 - 2.9.3** shall not apply to any Employee 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 Employee 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** 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 the Employment Regulations do 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 claim brought by or on behalf of any Transferring Outgoing Service Provider Employee arising out of the resignation of such Transferring Outgoing Service Provider 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;
- (iv) any failure by the Contractor to provide sufficient information to the Customer Authority or the Outgoing Service Providers as is reasonably requested by the Customer Authority or the Outgoing Service Providers to enable the Outgoing Service Providers to comply with their obligations under regulation 13 of the Employment Regulations (or otherwise) to inform and consult with employee representatives/employees; and
- (v) 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 Connectivity 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 Connectivity 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 the Employment Regulations (or otherwise) 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 the Employment Regulations (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.
- 2.14** The Contractor shall, and shall procure that any Sub-contractor shall, comply with any requirement notified to it by the Customer Authority relating to pensions in respect of any Transferring Outgoing Service Provider Employee who is a 'Second Generation Fair Deal Employee' as set down in "Fair Deal for staff pensions: Staff transfer from central government" of October 2013, or any other supplementary or replacement statement of practice, paper or other guidance (a "**Second Generation Fair Deal Employee**").
- 2.15** The Contractor will comply with the provisions of the Pensions Schedule at Appendix 1 to this Consolidated Schedule.

Part C

- 2.16** 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 the Employment Regulations take effect (except in relation to occupational pension scheme benefits 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:
- 2.16.1** resigned;
 - 2.16.2** been dismissed by the Customer Authority;
 - 2.16.3** 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
 - 2.16.4** objected to transferring to the Contractor in accordance with regulation 4(7) of the Employment Regulations.
- 2.17** In circumstances where a Transfer Date occurs more than fifteen (15) Working Days after the Effective Date:
- 2.17.1** the Customer Authority shall provide to the Contractor (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;
 - 2.17.2** 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 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

2.17.3 if agreement is not reached in accordance with Paragraph 2.17.2 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.

2.18 If any person who is not a Transferring Customer Authority Employee claims that, 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 the Employment Regulations then:

2.18.1 the Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Customer Authority;

2.18.2 the Customer Authority may offer employment to such person within fifteen (15) Working Days of the notification by the Contractor;

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

2.18.4 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.

2.19 Subject to the Contractor acting in the way set out in Paragraph 2.18 above or in such other way as may be agreed between the Contractor and the Customer Authority, and subject to Paragraph 2.20 below, the Customer Authority shall (in respect of its employees or former employees employed immediately prior to the Transfer Date) indemnify the Contractor against:

2.19.1 all Employee Liabilities arising out of such termination or otherwise arising out of the employment of such person by the Contractor; and

2.19.2 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.

2.20 The indemnity in Paragraph 2.19 above shall not apply:

2.20.1 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;

2.20.2 to any claim by any person in respect of whom the notification given to the Customer Authority under Paragraph 2.18.1 above is received by the Customer Authority more than six (6) months after the Transfer Date;

2.20.3 if such person is neither re-employed by the Customer Authority nor dismissed by the Contractor within the timescales set out in Paragraph 2.18 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

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

2.21 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.

2.22 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.

2.23 The Customer Authority shall:

2.23.1 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;

2.23.2 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. 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;
- (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 the Employment Regulations and this Consolidated Contract; or
- (iii) 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

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

2.24 The Contractor shall:

- 2.24.1** 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;

- 2.24.2** 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 2.24.1; and

- 2.24.3** 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 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;
- (iii) 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
- (iv) any failure by the Contractor to provide sufficient information to the Customer Authority as is reasonably requested by the Customer Authority 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.

- 2.25** 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 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 2.16.1 to 2.16.4 (inclusive) above and save in circumstances set out in Paragraph 2.26 below:

- 2.25.1** immediately offer in writing to employ the Transferring Customer Authority Employees; and

2.25.2 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 the Employment Regulations (or otherwise) applied.

2.26 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.

2.27 The Parties accept and agree that, in view of the size and nature of the transaction contemplated by this Consolidated Contract, and the disclosure process that has been made available to the Contractor, the provisions of the Employment Regulations concerning employee liability information (as defined in regulation 11 of the Employment Regulations) have been satisfied, and it would not be just and equitable for the Contractor to seek to enforce a claim under regulation 11 of the Employment Regulations.

2.28 The Contractor shall comply with any requirement notified to it by the Customer Authority relating to pensions in respect of any Transferring Customer Authority Employee as set down in "Fair Deal for staff pensions: Staff transfer from central government of October 2013", or any other supplementary or replacement statement of practice, paper or other guidance.

2.29 The Contractor will comply with the provisions of Appendix 1 to this Consolidated Schedule.

3 APPLICATION OF THE EMPLOYMENT REGULATIONS 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 or Partial Termination of this Consolidated Contract, 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, would inherit liabilities in respect of the Termination Transferring Employees pursuant to the Employment Regulations.

4 PRE-SERVICE TRANSFER OBLIGATIONS

4.1 The Contractor agrees, subject to 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 or Partial Termination of this Consolidated Contract;

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 twenty-eight (28) 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 named are Termination Transferring Employees and be complete and accurate in all material respects. To the extent that the provision of Personal Data regarding those individuals detailed on the Contractor's Final Staff List is, under the Data Protection Legislation, subject to the consent of such individuals the Contractor shall use its reasonable endeavours to obtain such consent. Where it is not able to do so, it shall provide the Contractor's Final Staff List on a suitably anonymised basis so as to comply with Data Protection Legislation.
- 4.3** Subject to compliance with the Data Protection Legislation, the Customer Authority shall disclose the Contractor's Provisional Staff List, the Contractor's Final Staff List and the Staffing Information in relation to such employees to 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 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, shall in relation to those staff therein listed, 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; 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 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 twenty-eight (28) 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.

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, under regulation 13 of the Employment Regulations. 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 under regulation 13 of the Employment Regulations.
- 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, PAYE, and employers' NICs) 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 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. This indemnity shall not apply where such claim arises out of the resignation of any such Termination Transferring Employee on or before the Termination 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 Customer Authority or Replacement Contractor (as the case may be) in the period after 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 regulation 13 of the Employment Regulations (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 procure 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.

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; and

5.4.2 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 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 the Employment Regulations do 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;
- (iii) any claim brought by or on behalf of any Termination Transferring Employee arising out of the resignation of such Termination Transferring Employee on or before the Termination 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 Replacement Contractor or the Customer Authority (if it is providing the Replacement Services) in the period after the Termination Transfer Date; or
- (iv) 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 regulation 13 of the Employment Regulations.

5.5 If any person who is not a Termination Transferring Employee (a **“Non-Disclosed Employee”**) claims that, 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 Employee 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.
- 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 Employee Liabilities in respect of which the benefit of insurance is available to the Replacement Contractor or the Customer Authority.

6 THIRD PARTY RIGHTS

The Contracts (Rights of Third Parties) Act 1999 shall apply to Paragraphs 2, 4, 5, 7 and 8 of this Consolidated Schedule to the extent necessary that any Outgoing Service Provider or Replacement Contractor shall have the right to enforce the rights, obligations owed to

and indemnities given to them by the Contractor under those Paragraphs in their own right pursuant to section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

7 PROVISIONS WHERE EMPLOYMENT REGULATIONS DO NOT APPLY

7.1 The following provisions shall apply in the event of a Termination Transfer to which the Employment Regulations do not apply:

- 7.1.1** the Customer Authority or the Replacement Contractor may, in its absolute 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 7.1.2 below or at the earliest reasonable opportunity;
- 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 party 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, access 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 Party 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.

10 OVERSEAS VARIATION

- 10.1** The Parties agree that for any employees based outside the UK who are not UK based civil servants or former UK based civil servants, the terms of this Consolidated Schedule shall apply save where any Law necessitates local variations. Any such local variations will be recorded in a country-specific schedule which, in relation to that country, will be the Staff Transfer schedule unless the only changes required are those set out in Paragraph 10.2 below in which case this Consolidated Schedule shall apply with the variations specified in Paragraph 10.2 below.
- 10.2** In applying this Consolidated Schedule to the employees referred to in Paragraph 10.1 where no country-specific schedule is needed to comply with Laws (save as provided below) the following changes shall apply (including in relation to any definitions used in this Consolidated Schedule):
- 10.2.1** references to regulation 10 of the Employment Regulations shall be interpreted to refer to any exclusion from transfer under the Employment Regulations of any pension scheme rights to the extent that the Employment Regulations in the relevant country include any such exclusion;
- 10.2.2** references to regulation 11 of the Employment Regulations shall be interpreted to refer to any requirement to notify information about employees who will transfer by operation of law to the extent that the Employment Regulations in the relevant country include any such requirement and the parties are by agreement able to contract out of such requirement;

- 10.2.3** references to regulation 13 of the Employment Regulations shall be interpreted to refer to any requirement to inform and consult with employees or their representatives to the extent that the Employment Regulations in the relevant country include any such requirement;
- 10.2.4** Paragraphs 2.14, 2.15, 2.28 and 2.29 shall only apply to UK-based civil servants or former UK based civil servants and Laws will determine the treatment of pensions arrangements for transferring employees in other countries. However, where a transferring employee is not a UK-based civil servant or former UK based civil servant, the Contractor shall in any case provide him or her with pension benefits which are no less favourable than the pension benefits attributable to his or her employment immediately before the Staff Transfer. The parties may agree a Consolidated Schedule for the staff transfer provisions in respect of these employees; and
- 10.2.5** references to UK arrangements and legislation (such as PAYE, employees' NICs and the Contracts (Rights of Third Parties) Act 1999) shall be substituted by any equivalent legislation and arrangements in the relevant country. Where the relevant country's Law would not allow an Outgoing Service Provider or Replacement Contractor to enforce indemnities given in its favour pursuant to this Consolidated Schedule, such indemnities shall be interpreted as being given for their benefit and will be enforced on their behalf by the Customer Authority.
- 10.3** The parties have agreed a Consolidated Schedule for Staff Transfer in Germany, which is set out at Appendix 4 to this Consolidated Schedule.

APPENDIX 1 PENSIONS

PURPOSE AND STRUCTURE OF THIS APPENDIX

This Appendix 1 sets out the pension arrangements for employees whose employment is compulsorily transferred to the Contractor whether from the Customer Authority or an Outgoing Service Provider with effect on and from the Transfer Date.

Definitions for Pensions Matters

For the purposes of this Appendix 1, the following terms have the following meanings:

“Active Member”	means an individual who has been admitted to and remains in active membership of any of the Schemes;
“Admission Agreement”	means in relation to the Contractor or a Sub-contractor an agreement made (or to be made) between (1) The Minister for the Cabinet Office (2) the Contractor or the Sub-contractor, as the case may be, and (3) the Customer Authority relating to the participation of the Contractor or the Sub-contractor, as applicable, in the Schemes for the benefit of those of the Former Authority Employees who are for the time being employed by the Contractor or the Sub-contractor, as applicable, and which is in the form set out at http://www.civilservicepensionscheme.org.uk/media/95250/admission-agreement-v16.pdf ;
“Alpha”	means the public service pension scheme for civil servants established under the Public Service Pensions Act 2013 and planned to be introduced with effect on and from 1 April 2015 (and includes, unless the context otherwise requires, any successor scheme);
“Contractor Default”	means the breach of any term of the Admission Agreement to which the Contractor or, as applicable, the Sub-Contractor is a party and, if the breach is capable of remedy, the Contractor or, as applicable, the Sub-contractor does not remedy the breach within ten (10) Working Days from being notified of the breach by the Schemes, The Minister for the Cabinet Office or the Customer Authority;
“Employment Date”	shall have the meaning given to it in paragraph 1.1.2 of this Appendix 1;
“Former Authority Employee”	means at any time any person whose employment with the Customer Authority is transferred to the Contractor or a Sub-contractor pursuant to the Employment Regulations, or any person who is an ex-employee of the Customer Authority and whose employment with a Previous Contractor is transferred to the Contractor or a Sub-contractor pursuant to the Employment Regulations, and who, in any case, is for the time being

	employed by the Contractor or a Sub-contractor provided that since such person was employed by the Customer Authority (a) he has not ceased to be eligible for membership of the Schemes; and (b) any change in his employer has been effected pursuant to the Employment Regulations;
"New Fair Deal"	means the revised Fair Deal policy set out in HM Treasury's guidance "Fair Deal for staff pensions: staff transfers from central government" issued in October 2013;
"Partnership Pension Account"	means the Civil Service partnership pension arrangement providing benefits on a money purchase basis;
"PCSPS"	means the Principal Civil Service Pension Scheme established under The Superannuation Act 1972;
"Pension Schemes"	means Alpha or the PCSPS whichever is relevant in the context (and includes, unless the context otherwise requires, the respective managers from time to time of such scheme or schemes);
"Previous Contractor"	means British Telecommunications PLC, Atlas, Airbus Defence & Space and NG Bailey Teswaine;
"Relevant Benefits"	means any benefit payable on retirement, on death, on reaching a particular age, on the onset of serious ill-health or incapacity or in similar circumstances (including the provision of medical, dental or similar benefits);
"Relevant Transfer Date"	means the date on which a transfer to the Contractor or a Sub-contractor is effected pursuant to this Contract and the Employment Regulations; and
"Schemes"	means the PCSPS, the Partnership Pension Account and its (i) Ill-health Benefits Scheme and (ii) Death Benefits Scheme, the Civil Service Additional Voluntary Contribution Scheme, Alpha (with effect from the date of its commencement) each as amended or replaced from time to time, or such one of them as is or are relevant in context. Any reference to the Schemes includes, unless the context otherwise requires, a reference to the respective managers from time to time of the Schemes.

1 Pensions

1.1 The Contractor shall:

- 1.1.1 comply with the Admission Agreement to which it is a party and shall not terminate the Admission Agreement while the Contractor is providing any of the Services;
- 1.1.2 ensure that on each occasion (including, but without limitation, on the termination of a contract between the Contractor and a Sub-contractor) any Former Authority Employee becomes an employee of the Contractor pursuant to the Employment Regulations (and the date upon which he becomes such an employee is called the **"Employment Date"**) the Former Authority Employee if not already an Active

Member of the Pension Schemes becomes such an Active Member with effect as on and from the Employment Date provided that this is permitted under the terms of the Pension Schemes and the Admission Agreement as applicable; and

1.1.3 ensure that in relation to each Former Authority Employee who immediately prior to the Employment Date is an Active Member or who becomes an Active Member with effect from that date and for so long as the Former Authority Employee is employed by the Contractor and is assigned to or otherwise engaged at least to the minimum extent specified in the Admission Agreement in the provision of the Services or any of them:

- (i) it is an express term of the contract of employment of the Former Authority Employee with the Contractor that the Contractor shall ensure that (subject to the terms from time to time of the Schemes and the Admission Agreement) the Former Authority Employee may be and may continue to be an Active Member; and
- (ii) each such Former Authority Employee is able to be and remain such an Active Member; and

1.1.4 if it is in arrears in respect of any contributions due to the Schemes in respect of any Former Authority Employee, agree (which agreement the Contractor hereby irrevocably gives) that the Customer Authority may deduct an amount equal to that which is overdue from any monies due to the Contractor and pay that amount to the relevant Scheme.

1.2 The Contractor shall ensure that no Sub-contractor by whom any of the Former Authority Employees become employed pursuant to the Employment Regulations is appointed unless the contract under which the Sub-contractor is to provide any of the Services (the “**Contract**”) contains terms which provide for the following:

1.2.1 an unequivocal right for the Contractor to terminate the Contract if the Sub-Contractor does not enter into the required Admission Agreement on, or as soon as reasonably practicable after, the appointment of the Sub-contractor;

1.2.2 the Sub-contractor must comply with the Admission Agreement and will not terminate the Admission Agreement while the Sub-contractor is providing any of the Services;

1.2.3 a breach of the Admission Agreement which is not capable of remedy or which if it is capable of remedy is not remedied within ten (10) Working Days of the Sub-contractor being given notice of such breach by the Schemes, the Minister for the Cabinet Office (in respect of the Admission Agreement) or the Customer Authority is an event of default by the Sub-contractor enabling the other party to the Contract to terminate the Contract or the Contractor to terminate the Sub-contract (which the Contractor undertakes to the Customer Authority to do if directed to do so by the Customer Authority) immediately on the giving of notice and no notice to waive the event of default or which states that termination is not immediate and reserves a future right to terminate may be given without the consent in writing of the Customer Authority;

1.2.4 on each occasion (including, but without limitation, the termination of any contract pursuant to which the Sub-contractor sub-contracts the provisions of any of the

Services to a third party) any Former Authority Employee becomes an employee of the Sub-contractor pursuant to the Employment Regulations the Former Authority Employee shall if he is not already an Active Member of the Pension Schemes become such an Active Member with effect as on and from the date upon which he becomes such an employee provided that this is permitted under the terms of the Pension Schemes and the Admission Agreement;

- 1.2.5 on each such occasion the Sub-contractor must make it a term of the contract of employment of each Former Authority Employee employed by the Sub-contractor that the Sub-contractor must ensure that the Former Authority Employee may be an Active Member at all times he is assigned to or otherwise engaged at least to the minimum extent specified in the Admission Agreement in the provision of any of the Services (subject to the terms of the Schemes from time to time and the Admission Agreement);
 - 1.2.6 any contract pursuant to which the Sub-contractor sub-contracts to a third party which results in any Former Authority Employee becoming an employee of such third party pursuant to the Employment Regulations must contain the same terms as must be included in the Sub-contractor's contract in accordance with this Paragraph 1.2 and such contract shall not take effect unless and until there is in force an Admission Agreement to which such third party is a party; and
 - 1.2.7 the Sub-contractor must use its best endeavours to enforce the terms of his contract with the third party referred to in Paragraph 1.2.6 above which must be included in that sub-contract in accordance with this Paragraph 1.2.
- 1.3 The Contractor shall indemnify the Customer Authority and at all times keep the Customer Authority indemnified in respect of any Claim in connection with any failure or alleged failure by the Contractor or any Sub-contractor as the case may be, to comply with the Schemes or the Admission Agreement to which the Contractor or any Sub-contractor is a party or to comply with (in the case of the Contractor) the provisions of this Paragraph 1 or (in the case of a Sub-contractor) the provisions to be included in the Contract pursuant to Paragraph 1.2.
- 1.4 If any Sub-contractor fails to pay by the due date any amount payable to any of the Schemes the Customer Authority may deduct an amount equal to that which has not been paid from any money otherwise payable by the Customer Authority to the Contractor and pay that amount to the Schemes.
- 1.5 Save with the approval of the Customer Authority the Contractor shall not and shall procure any Sub-contractor shall not on or after the earliest of:
- 1.5.1 the date which is eighteen (18) months before the expiry of the Term;
 - 1.5.2 the Customer Authority giving the Contractor a Termination Notice terminating the whole of this Agreement or any part of the Services;
 - 1.5.3 the Contractor giving notice under Clause 42 (*Force Majeure*) of this Consolidated Contract and such notice is accepted by the Customer Authority;
 - 1.5.4 on notification to the Contractor by the Customer Authority of a Replacement Contractor; and
 - 1.5.5 on receipt by the Contractor of a written request by the Customer Authority,

allow (other than as required by Law or an amendment to the Schemes) the grant or variation of any new or existing Relevant Benefits for or in respect of any employee of the Contractor to be made, announced or proposed.

- 1.6** The Contractor shall not and shall procure that any Sub-contractor shall not issue any announcements to Former Authority Employees prior to the Relevant Transfer Date concerning the matters in this Paragraph 1 without the consent in writing of the Customer Authority (such consent not to be unreasonably withheld or delayed) and the Customer Authority shall not issue any such announcement without the consent of the Contractor (such consent not to be unreasonably withheld or delayed).

- 1.7** The Contractor shall procure, and shall ensure that any Sub-contractor shall procure, that any information to be provided to the Customer Authority pursuant to the Admission Agreement is sent to:

ISS Networks Commercial
ISS Comrci-Networks
Building 405, Spur C2
West Wells Road
Corsham
Wiltshire SN13 9NR

- 1.8** The Contractor shall not recover any costs or other payments in relation to New Fair Deal where such costs or payments are recoverable or have already been recovered by the Contractor elsewhere in this Contract or otherwise.

- 1.9** The Contractor shall provide and shall procure each Sub-contractor provides all such co-operation and assistance as the Schemes and a Replacement Contractor or sub-contractor of a Replacement Contractor or the Customer Authority may reasonably require to enable the Replacement Contractor or sub-contractor of a Replacement Contractor to participate in the Schemes in respect of any Former Authority Employee and to give effect to any transfer of accrued rights required as part of the participation under New Fair Deal.

- 1.10** The Contractor undertakes to the Customer Authority to indemnify and keep indemnified the Customer Authority on demand against any liability out of or attributable to or in any way connected with the transmission of information supplied to it by the Contractor or any Sub-contractor as in connection with a re-tendering or proposed re-tendering of all or any of the Services.

- 1.11** The Contractor and the Customer Authority acknowledge that the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) is not covered by the protection of New Fair Deal. Nevertheless it is agreed that the Contractor shall provide and shall ensure that the Sub-contractor shall provide for each Former Authority Employee, as far as practicable, on termination of employment on or after the Relevant Transfer Date, equivalent rights to which each Former Authority Employee would have been entitled under the Civil Service Injury Benefit Scheme had the Former Authority Employee been employed by the Customer Authority at the relevant time and the Former Authority Employee shall be provided by the Contractor or Sub-contractor, with compensation that is broadly comparable or of equal value to the lost entitlement.

**Annex A to Appendix 1
Admission Agreement**

See <http://www.civilservicepensionscheme.org.uk/media/95250/admission-agreement-v16.pdf>

APPENDIX 2
TRANSFERRING CUSTOMER AUTHORITY EMPLOYEES

Not applicable.

APPENDIX 3
NOT USED

APPENDIX 4
CONSOLIDATED SCHEDULE 21 (*STAFF TRANSFER*) FOR GERMANY