

OFFICIAL

## Schedule 9.1 – ESMCP Mobile Services Agreement Staff Transfer

### Version 1.0

OFFICIAL

Page 1 of 17

This document is based on Schedule 9.1 of v1.0 and 28 of v2.0 of the Crown Commercial Services Model Services Agreement and has been adapted for use by the Emergency Services Mobile Communications Programme.

© Crown copyright

87814027.5

OFFICIAL

CHANGE HISTORY

Version No.	Effective Date of agreement / CAN	Version / Details of Changes included in Update	Author(s)
1.0	01/12/2024	Execution version	ESMCP

OFFICIAL

This document is based on Schedule 9.1 of v1.0 and 28 of v2.0 of the Crown Commercial Services Model Services Agreement and has been adapted for use by the Emergency Services Mobile Communications Programme.

Contents

1	Interpretation	4
	Part A: Transferring Authority Employees at commencement of Services	5
	Part B: Transferring Former Supplier Employees at commencement of Services	5
	Part C: No Transfer of employees at commencement of Services	6
1	Procedure In The Event Of Transfer	6
2	Indemnities	6
3	Procurement Obligations	8
4	Authority Indemnities	8
	Part D: Employment Exit Provisions	10
1	Pre-Service Transfer Obligations	10
2	Employment Regulations Exit Provisions	12

## 1 Interpretation

**Where a provision in this Schedule imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Sub-contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Authority, Former Supplier, Replacement Supplier or Replacement Sub-contractor.**

The following terms have the following meanings for the purposes of this Schedule 9.1 (including in the case of paragraph 1.3 below where such definition of "Supplier Personnel" is used within defined terms when those terms are used within this Schedule):

- 1.1 **"Employing Sub-contractor"** shall mean: (i) any third party with whom (a) the Supplier (which in this context means (i) EEL; (ii) BT Plc; or (iii) EEL and BT Plc jointly) or any Supplier Group Company enters into an Employing Sub-contract; or (b) a third party under (i) above enters into an Employing Sub-contract; and/or (c) (as regards (a) and (b)) the servants or agents of that third party.
- 1.2 **"Employing Sub-contract"** shall mean any contract or agreement (or proposed contract or agreement) between: (a) the Supplier (which in this definition means (i) EEL; (ii) BT Plc; or (iii) EEL and BT Plc jointly) or any Supplier Group Company (or an Employing Sub-contractor); and (b) any third party whereby that third party agrees to provide to the Supplier (which in this context means (i) EEL; (ii) BT Plc; or (iii) EEL and BT Plc jointly) or any Supplier Group Company (or the Employing Sub-contractor) all or any part of the Services or facilities or services which are material for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof.
- 1.3 **"Supplier Personnel"** means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or any Supplier Group Company and/or of any Sub-contractor or Employing Sub-contractor engaged in the performance of the Supplier's obligations under this Agreement.

OFFICIAL

**Part A: Transferring Authority Employees at commencement of Services**

Not included for the purpose of this Schedule 9.1.

**Part B: Transferring Former Supplier Employees at commencement of Services**

Not included for the purpose of this Schedule 9.1.

OFFICIAL

Page 5 of 17

This document is based on Schedule 9.1 of v1.0 and 28 of v2.0 of the Crown Commercial Services Model Services Agreement and has been adapted for use by the Emergency Services Mobile Communications Programme.

© Crown copyright

87814027.5

## Part C: No Transfer of employees at commencement of Services

### 1 Procedure In The Event Of Transfer

- 1.1 The Authority and the Supplier agree that the commencement of the provision of the Services (or the UO Services) or of any part of the Services (or the UO Services) will not be a Relevant Transfer in relation to any employees of the Authority and/or any User Organisation and/or any Former Supplier and/or any UO Former Supplier.
- 1.2 If any employee of the Authority or any User Organisation or a Former Supplier or any UO Former Supplier claims, or it is determined in relation to any employee of the Authority or any User Organisation or a Former Supplier or any UO Former Supplier, that his/her contract of employment has been transferred from the Authority or any User Organisation or the Former Supplier or any UO Former Supplier to the Supplier (or the Supplier Group Company, as the case may be) and/or any Employing Sub-contractor pursuant to the Employment Regulations then:
- (a) the Supplier shall, and shall procure that the Supplier Group Company or the relevant Employing Sub-contractor shall, within [REDACTED] of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, give notice to the Former Supplier and/or any User Organisation and/or any UO Former Supplier; and
  - (b) the Authority and/or User Organisation and/or any Former Supplier and/or any UO Former Supplier may offer (or may procure that a third party may offer) employment to such person [REDACTED] of the notification by the Supplier, the Supplier Group Company or the Employing Sub-contractor (as appropriate) or take such other reasonable steps as the Authority (or User Organisation) or Former Supplier (or UO Former Supplier) (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 1.3 If an offer referred to in Paragraph 1.2(b) of this Part C is accepted (or if the situation has otherwise been resolved by the Authority (or User Organisation) and/or the Former Supplier (or UO Former Supplier)), the Supplier shall, or shall procure that the Supplier Group Company or the Employing Sub-contractor shall, immediately release the person from his/her employment or alleged employment.
- 1.4 If by the end of the [REDACTED] period specified in Paragraph 1.2(b) of this Part C (or if collective consultation obligations apply, then such other period as is required by law):
- (a) no such offer of employment has been made;
  - (b) such offer has been made but not accepted; or
  - (c) the situation has not otherwise been resolved,
- the Supplier, the Supplier Group Company and/or the Employing Sub-contractor may within [REDACTED] give notice to terminate the employment or alleged employment of such person.

### 2 Indemnities

- 2.1 Subject to the Supplier, the Supplier Group Company and/or the relevant Employing Sub-contractor acting in accordance with the provisions of Paragraphs 1.2 to 1.4 of this Part C and

## OFFICIAL

in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 2.4 and Paragraph 4 of this Part C, the Authority shall:

- (a) indemnify the Supplier (or the Supplier Group Company, as the case may be) and/or the relevant Employing Sub-contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Authority, or of any User Organisation, referred to in Paragraph 1.2 of this Part C made pursuant to the provisions of Paragraph 1.4 of this Part C provided that the Supplier takes, or shall procure that the Supplier Group Company or the Employing Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities; and
  - (b) procure that the Former Supplier indemnifies or, to the extent that the Authority is not able to procure such an indemnity, shall indemnify the Supplier (or the Supplier Group Company, as the case may be) and/or any Employing Sub-contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier, or any UO Former Supplier, made pursuant to the provisions of Paragraph 1.4 of this Part C provided that the Supplier takes, or shall procure that the Supplier Group Company or the relevant Employing Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.2 If any such person as is described in Paragraph 1.2 of this Part C is neither re-employed by the Authority or any User Organisation or the Former Supplier or any UO Former Supplier as appropriate nor dismissed by the Supplier, the Supplier Group Company and/or any Employing Sub-contractor within the [REDACTED] period referred to in Paragraph 1.4 of this Part C such person shall be treated as having transferred to the Supplier (or the Supplier Group Company) and/or the Employing Sub-contractor (as appropriate) and the Supplier shall, or shall procure that the Supplier Group Company or Employing Sub-contractor shall, comply with such obligations as may be imposed upon it under Law.
- 2.3 Where any person remains employed by the Supplier, the Supplier Group Company and/or any Employing Sub-contractor pursuant to Paragraph 2.2 of this Part C, all Employee Liabilities in relation to such employee shall remain with the Supplier (or the Supplier Group Company) and/or the Employing Sub-contractor and the Supplier shall indemnify the Authority or any User Organisation and any Former Supplier and any UO Former Supplier, and shall procure that the Supplier Group Company or the Employing Sub-contractor shall indemnify the Authority and any User Organisation and any Former Supplier and any UO Former Supplier, against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier (or the Supplier Group Company) and/or employees of the Employing Sub-contractor.
- 2.4 The indemnities in Paragraph 2.1 of this Part C:
- (a) shall not apply to:
    - (i) any claim for:
      - (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
      - (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
- in any case in relation to any alleged act or omission of the Supplier and/or the Supplier Group Company and/or any Employing Sub-contractor; or

OFFICIAL

Page 7 of 17

This document is based on Schedule 9.1 of v1.0 and 28 of v2.0 of the Crown Commercial Services Model Services Agreement and has been adapted for use by the Emergency Services Mobile Communications Programme.

## OFFICIAL

- (ii) any claim that the termination of employment was unfair because the Supplier and/or the Supplier Group Company and/or any Employing Sub-contractor neglected to follow a fair dismissal procedure; and
- (b) shall apply only where the notification referred to in Paragraph 1.2 of this Part C is made by the Supplier, the Supplier Group Company and/or any Employing Sub-contractor to the Authority and, if applicable, the Former Supplier by the date that is [REDACTED] following the National Shutdown Date.

### 3 Procurement Obligations

- 3.1 Where in this Part C the Authority accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Authority's contract with the Former Supplier contains a contractual right in that regard which the Authority may enforce.

### 4 Authority Indemnities

- 4.1 The obligation on the Authority to indemnify the Supplier, the Supplier Group Company, or any Employing Sub-contractor under Paragraph 2.1(b) of this Part C shall apply so that the Authority will only be required to indemnify the Supplier, or any Employing Sub-contractor in respect of [REDACTED] of any Employee Liabilities falling with Paragraph 2.1(b) of this Part C, subject to and conditional upon the Supplier, the Supplier Group Company or any Employing Sub-contractor, meeting the remaining [REDACTED] of any such Employee Liabilities. To the extent that the Supplier, the Supplier Group Company or any Employing Sub-contractor does not meet the required [REDACTED] contribution towards said Employee Liabilities, the Authority's obligation to indemnify the Supplier, the Supplier Group Company or any Employing Sub-contractor, under Paragraph 2.1(b) of this Part C shall not apply.
- 4.2 If the Authority is required to indemnify the Supplier, the Supplier Group Company or any Employing Sub-contractor, under Paragraph 2.1(b) of this Part C in accordance with Paragraph 4.1 of this Part C above, then:
  - (a) the Supplier shall, and shall procure that the Supplier Group Company or any Employing Sub-contractor shall, within [REDACTED] of becoming aware of any Employee Liabilities that have been incurred by it or them notify the ESMCP Programme Team, copied to the Home Office legal advisor and, where required by the Authority, the Former Supplier and/or the UO Former Supplier and/or any User Organisation of any such incurred Employee Liabilities; and
  - (b) the Authority shall, or shall procure that the Former Supplier shall, [REDACTED] of the notification referred to in Paragraph 4.2(a) of this Part C above, transfer such sum or sums due under Paragraph 4.1 of this Part C to the Supplier or any Employing Sub-contractor.

4.3 [REDACTED]

(a) [REDACTED]

(b) [REDACTED]

OFFICIAL

Page 8 of 17

This document is based on Schedule 9.1 of v1.0 and 28 of v2.0 of the Crown Commercial Services Model Services Agreement and has been adapted for use by the Emergency Services Mobile Communications Programme.

OFFICIAL

(c)



OFFICIAL

Page 9 of 17

This document is based on Schedule 9.1 of v1.0 and 28 of v2.0 of the Crown Commercial Services Model Services Agreement and has been adapted for use by the Emergency Services Mobile Communications Programme.

© Crown copyright

87814027.5

## Part D: Employment Exit Provisions

### 1 Pre-Service Transfer Obligations

- 1.1 The Supplier agrees that within [REDACTED] of the earliest of:
- (a) receipt of a notification from the Authority of a Service Transfer or intended Service Transfer;
  - (b) receipt of the giving of notice of early termination or any Partial Termination of this Agreement;
  - (c) the date which [REDACTED] before the end of the Term; and
  - (d) receipt of a written request of the Authority at any time (provided that the Authority shall only be entitled to make one such request in any [REDACTED]),
- it shall provide in a suitably anonymised format so as to comply with the Data Protection Legislation, the Supplier's Provisional Supplier Personnel List, together with the Staffing Information in relation to the Supplier's Provisional Supplier Personnel List and it shall provide an updated Supplier's Provisional Supplier Personnel List at such intervals as are reasonably requested by the Authority.
- 1.2 At least [REDACTED] prior to the Service Transfer Date, the Supplier shall provide to the Authority or at the direction of the Authority to any Replacement Supplier and/or any Replacement Sub-contractor:
- (a) the Supplier's Final Supplier Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and
  - (b) the Staffing Information in relation to the Supplier's Final Supplier Personnel List (insofar as such information has not previously been provided).
- 1.3 The Authority shall be permitted to use and disclose information provided by the Supplier under Paragraphs 1.1 and 1.2 of this Part D for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-contractor.
- 1.4 The Supplier warrants, for the benefit of the Authority, any Replacement Supplier, and any Replacement Sub-contractor that all information provided pursuant to Paragraphs 1.1 and 1.2 of this Part D shall be true and accurate in all material respects at the time of providing the information.
- 1.5 From the date of the earliest event referred to in Paragraph 1.1(a), 1.1(b) of this Part D and/or the date which is [REDACTED] before the end of the Term, the Supplier agrees, that it shall not, and agrees to procure that the Supplier Group Company or each Employing Sub-contractor shall not, assign any person to the provision of the Services who is not listed on the Supplier's Provisional Supplier Personnel List and shall not without the approval of the Authority (not to be unreasonably withheld or delayed):
- (a) replace or redeploy any Supplier Personnel listed on the Supplier Provisional Supplier Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on similar terms and conditions of employment as the person they replace;

## OFFICIAL

- (b) make, promise, propose or permit any material changes to the terms and conditions of employment of the Supplier Personnel (including any payments connected with the termination of employment);
- (c) increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;
- (d) introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Personnel List;
- (e) increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
- (f) terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Personnel List save by due disciplinary process,

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

- 1.6 During the Term, the Supplier shall provide, and shall procure that the Supplier Group Company and each Employing Sub-contractor shall provide, to the Authority any information the Authority may reasonably require relating to the manner in which the Services are organised, which shall include:

- (a) the numbers of employees engaged in providing the Services;
- (b) the percentage of time spent by each employee engaged in providing the Services;
- (c) a description of the nature of the work undertaken by each employee by location; and
- (d) diagrams which describe the organisational structure of the entity providing the Services.

- 1.7 The Supplier shall provide, and shall procure that the Supplier Group Company and each Employing Sub-contractor shall provide, all reasonable cooperation and assistance to the Authority, any Replacement Supplier and/or any Replacement Sub-contractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within [REDACTED] following the Service Transfer Date, the Supplier shall provide, and shall procure that the Supplier Group Company and each Employing Sub-contractor shall provide, the Authority or, at the direction of the Authority, to any Replacement Supplier and/or any Replacement Sub-contractor (as appropriate), in respect of each person on the Supplier's Final Supplier Personnel List who is a Transferring Supplier Employee:

- (a) the most recent month's copy pay slip data;
- (b) details of cumulative pay for tax and pension purposes;

OFFICIAL

Page 11 of 17

This document is based on Schedule 9.1 of v1.0 and 28 of v2.0 of the Crown Commercial Services Model Services Agreement and has been adapted for use by the Emergency Services Mobile Communications Programme.

## OFFICIAL

- (c) details of cumulative tax paid;
- (d) tax code;
- (e) details of any voluntary deductions from pay; and
- (f) bank/building society account details for payroll purposes.

## 2 Employment Regulations Exit Provisions

- 2.1 The Authority and the Supplier acknowledge 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 Agreement or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Sub-contractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations will apply. The Authority and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier, the Supplier Group Company or any Employing Sub-contractor, and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10 of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Supplier Employee.
- 2.2 The Supplier shall, and shall procure that the Supplier Group Company, and each Employing Sub-contractor, shall, comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that the Supplier Group Company, and each Employing Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Supplier Group Company and/or the Employing Sub-contractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Sub-contractor.
- 2.3 Subject to Paragraph 2.4 of this Part D, the Supplier shall indemnify the Authority and/or the Replacement Supplier and/or any Replacement Sub-contractor against any Employee Liabilities in respect of any Transferring Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
- (a) any act or omission of the Supplier (or the Supplier Group Company) or any Employing Sub-contractor whether occurring before, on or after the Service Transfer Date;
  - (b) the breach or non-observance by the Supplier (or the Supplier Group Company) or any Employing Sub-contractor occurring on or before the Service Transfer Date of:
    - (i) any collective agreement applicable to the Transferring Supplier Employees; and/or
    - (ii) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier (or the Supplier

OFFICIAL

Page 12 of 17

This document is based on Schedule 9.1 of v1.0 and 28 of v2.0 of the Crown Commercial Services Model Services Agreement and has been adapted for use by the Emergency Services Mobile Communications Programme.

OFFICIAL

Group Company) or any Employing Sub-contractor is contractually bound to honour;

- (c) any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier (or the Supplier Group Company) or an Employing Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
  - (d) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
    - (i) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
    - (ii) in relation to any employee who is not identified in the Supplier's Final Supplier Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier (or the Supplier Group Company) to the Authority and/or Replacement Supplier and/or any Replacement Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
  - (e) a failure of the Supplier (or the Supplier Group Company) or any Employing Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (and including) the Service Transfer Date;
  - (f) any claim made by or in respect of any person employed or formerly employed by the Supplier (or the Supplier Group Company) or any Employing Sub-contractor other than a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List for whom it is alleged the Authority and/or the Replacement Supplier and/or any Replacement Sub-contractor may be liable by virtue of this Agreement and/or the Employment Regulations; and
  - (g) any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier (or the Supplier Group Company) or any Employing Sub-contractor in relation to its obligations under Regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Authority and/or Replacement Supplier to comply with Regulation 13(4) of the Employment Regulations.
- 2.4 The indemnities in 2.3 of this Part D shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Sub-contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:
- (a) arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working

OFFICIAL

Page 13 of 17

This document is based on Schedule 9.1 of v1.0 and 28 of v2.0 of the Crown Commercial Services Model Services Agreement and has been adapted for use by the Emergency Services Mobile Communications Programme.

## OFFICIAL

conditions proposed by the Replacement Supplier and/or any Replacement Sub-contractor to occur in the period on or after the Service Transfer Date; or

- (b) arising from the Replacement Supplier's failure, and/or Replacement Sub-contractor's failure, to comply with its obligations under the Employment Regulations.
- 2.5 If any person who is not identified in the Supplier's Final Supplier Personnel List claims, or it is determined in relation to any person who is not identified in the Supplier's Final Supplier Personnel List, that his/her contract of employment has been transferred from the Supplier (or the Supplier Group Company) or any Employing Sub-contractor to the Replacement Supplier and/or Replacement Sub-contractor pursuant to the Employment Regulations, then:
- (a) the Authority shall procure that the Replacement Supplier shall, or any Replacement Sub-contractor shall, within [REDACTED] of becoming aware of that fact, give notice in writing to the Supplier; and
  - (b) the Supplier may offer (or may procure that the Supplier Group Company or an Employing Sub-contractor may offer) employment to such person within [REDACTED] of the notification by the Replacement Supplier and/or any and/or Replacement Sub-contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
- 2.6 If such offer is accepted, or if the situation has otherwise been resolved by the Supplier (or the Supplier Group Company) or an Employing Sub-contractor, the Authority shall procure that the Replacement Supplier shall, or procure that the Replacement Sub-contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.
- 2.7 If after the [REDACTED] period specified in Paragraph 2.5(b) of this Part D has elapsed (or if collective consultation obligations apply, then such other period as is required by law):
- (a) no such offer of employment has been made;
  - (b) such offer has been made but not accepted; or
  - (c) the situation has not otherwise been resolved
- the Authority shall advise the Replacement Supplier and/or Replacement Sub-contractor, as appropriate that it may within [REDACTED] give notice to terminate the employment or alleged employment of such person.
- 2.8 Subject to the Replacement Supplier and/or Replacement Sub-contractor acting in accordance with the provisions of Paragraphs 2.5 to 2.7 of this Part D and in accordance with all applicable proper employment procedures set out in applicable Law, the Supplier shall indemnify the Replacement Supplier and/or Replacement Sub-contractor against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.7 of this Part D provided that the Replacement Supplier takes, or shall procure that the Replacement Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.9 The indemnity in Paragraph 2.8 of this Part D:
- (a) shall not apply to:
    - (i) any claim for:

OFFICIAL

Page 14 of 17

This document is based on Schedule 9.1 of v1.0 and 28 of v2.0 of the Crown Commercial Services Model Services Agreement and has been adapted for use by the Emergency Services Mobile Communications Programme.

OFFICIAL

- (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
    - (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees, in any case in relation to any alleged act or omission of the Replacement Supplier and/or Replacement Sub-contractor; or
  - (ii) any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Sub-contractor neglected to follow a fair dismissal procedure; and
  - (b) shall apply only where the notification referred to in Paragraph 2.5(a) of this Part D is made by the Replacement Supplier and/or Replacement Sub-contractor to the Supplier within [REDACTED] of the Service Transfer Date.
- 2.10 If any such person as is described in Paragraph 2.5 of this Part D is neither re-employed by the Supplier (or the Supplier Group Company) or any Employing Sub-contractor nor dismissed by the Replacement Supplier and/or Replacement Sub-contractor within the time scales set out in Paragraphs 2.5 to 2.7 of this Part D, such person shall be treated as a Transferring Supplier Employee and the Replacement Supplier and/or Replacement Sub-contractor shall comply with such obligations as may be imposed upon it under applicable Law.
- 2.11 The Supplier shall comply, and shall procure that the Supplier Group Company and each Employing Sub-contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that the Supplier Group Company and each Employing Sub-contractor shall perform and discharge, all its obligations in respect of any person identified in the Supplier's Final Supplier Personnel List before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:
- (a) the Supplier and/or the Supplier Group Company and/or any Employing Sub-contractor; and
  - (b) the Replacement Supplier and/or the Replacement Sub-contractor.
- 2.12 The Supplier shall, and shall procure that the Supplier Group Company and each Employing Sub-contractor shall, promptly provide to the Authority and any Replacement Supplier and/or Replacement Sub-contractor, in writing such information as is necessary to enable the Authority, the Replacement Supplier and/or Replacement Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Authority shall procure that the Replacement Supplier and/or Replacement Sub-contractor, shall promptly provide to the Supplier and each Employing Sub-contractor in writing such information as is necessary to enable the Supplier and each Employing Sub-contractor to carry out their respective duties under Regulation 13 of the Employment Regulations.
- 2.13 Subject to Paragraph 2.14 of this Part D, the Authority shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-contractor and its Employing Sub-contractors against any Employee Liabilities in respect of each Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List

OFFICIAL

Page 15 of 17

This document is based on Schedule 9.1 of v1.0 and 28 of v2.0 of the Crown Commercial Services Model Services Agreement and has been adapted for use by the Emergency Services Mobile Communications Programme.

© Crown copyright

87814027.5

OFFICIAL

(or, where applicable any employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee) arising from or as a result of:

- (a) any act or omission of the Replacement Supplier and/or Replacement Sub-contractor;
- (b) the breach or non-observance by the Replacement Supplier and/or Replacement Sub-contractor on or after the Service Transfer Date of:
  - (i) any collective agreement applicable to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List; and/or
  - (ii) any custom or practice in respect of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List which the Replacement Supplier and/or Replacement Sub-contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List arising from or connected with any failure by the Replacement Supplier and/or Replacement Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;
- (d) any proposal by the Replacement Supplier and/or Replacement Sub-contractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List on or after their transfer to the Replacement Supplier or Replacement Sub-contractor (as the case may be) on the Service Transfer Date, or to change the terms and conditions of employment or working conditions of any person identified in the Supplier's Final Supplier Personnel List who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under Regulation 4(9) of the Employment Regulations) before the Service Transfer Date as a result of or for a reason connected to such proposed changes;
- (e) any statement communicated to or action undertaken by the Replacement Supplier or Replacement Sub-contractor to, or in respect of, any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;
- (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (i) in relation to any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
  - (ii) in relation to any employee who is not a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier or Employing Sub-contractor, to the Replacement Supplier or Replacement Sub-contractor to the extent that the proceeding, claim or demand by HMRC or other

OFFICIAL

Page 16 of 17

This document is based on Schedule 9.1 of v1.0 and 28 of v2.0 of the Crown Commercial Services Model Services Agreement and has been adapted for use by the Emergency Services Mobile Communications Programme.

© Crown copyright

87814027.5

## OFFICIAL

statutory authority relates to financial obligations arising after the Service Transfer Date;

- (g) a failure of the Replacement Supplier or Replacement Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List in respect of the period from (and including) the Service Transfer Date; and
  - (h) any claim made by or in respect of a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or Replacement Sub-contractor in relation to obligations under Regulation 13 of the Employment Regulations.
- 2.14 The indemnities in Paragraph 2.13 of this Part D shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or the Supplier Group Company and/or any Employing Sub-contractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or the Supplier Group Company and/or any Employing Sub-contractor (as applicable) to comply with its obligations under the Employment Regulations.

OFFICIAL

Page 17 of 17

This document is based on Schedule 9.1 of v1.0 and 28 of v2.0 of the Crown Commercial Services Model Services Agreement and has been adapted for use by the Emergency Services Mobile Communications Programme.