

**PHOENIX II AGREEMENT FOR SERVICES SCHEDULES**

**SCHEDULE 8.2**

**CHANGE CONTROL PROCEDURE**

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## **Change Control Procedure**

### **1 Definitions**

In this Schedule, the following definitions shall apply:

<b>“Authority Change Manager”</b>	the person appointed to that position by the Authority from time to time and notified in writing to the Supplier or, if no person is notified, the Authority Representative;
<b>“Change Request”</b>	a written request for a Contract Change which shall be substantially in the form of Annex 1;
<b>“Change Communication”</b>	any Change Request, Impact Assessment, Change Authorisation Note or other communication sent or required to be sent pursuant to this Schedule;
<b>“Fast-track Change”</b>	any Contract Change which the Parties agree to expedite in accordance with Paragraph 8;
<b>“Impact Assessment”</b>	an assessment of a Change Request in accordance with Paragraph 5;
<b>“Impact Assessment Estimate”</b>	has the meaning given in Paragraph 4.3;
<b>“Receiving Party”</b>	the Party which receives a proposed Contract Change; and
<b>“Supplier Change Manager”</b>	the person appointed to that position by the Supplier from time to time and notified in writing to the Authority or, if no person is notified, the Supplier Representative.

### **2. General principles of change control procedure**

- 2.1 This Schedule sets out the procedure for dealing with Contract Changes.
- 2.2 Operational Changes shall be processed in accordance with Paragraph 9. If either Party is in doubt about whether a change falls within the definition of an Operational Change, then it must be processed as a Contract Change.
- 2.3 The Parties shall deal with Contract Change as follows :
  - (a) either Party may request a Contract Change which they shall initiate by issuing a Change Request in accordance with Paragraph 4;
  - (b) unless this Agreement otherwise requires, the Supplier shall assess and document the potential impact of a proposed Contract Change in accordance

with Paragraph 5 before the Contract Change can be either approved or implemented;

- (c) the Authority shall have the right to request amendments to a Change Request, approve it or reject it in the manner set out in Paragraph 6;
- (d) the Supplier shall have the right to reject a Change Request solely in the manner set out in Paragraph 7;
- (e) save as otherwise provided in this Agreement, no proposed Contract Change shall be implemented by the Supplier until a Change Authorisation Note has been signed and issued by the Authority in accordance with Paragraph 6.2; and
- (f) a proposed Contract Change is a Fast-track Change, it shall be processed in accordance with Paragraph 8.

2.4 To the extent that any Contract Change requires testing and/or a programme for implementation, then the Parties shall follow the procedures set out in Schedule 6.2 (*Testing Procedures*), and, where appropriate, the Change Authorisation Note relating to such a Contract Change shall specify Milestones and/or a Authority to Proceed Milestone and Milestone Date(s) in respect of such Contract Change for the purposes of such procedures.

2.5 Until a Change Authorisation Note has been signed and issued by the Authority in accordance with Paragraph 6.2, then:

- (a) unless the Authority expressly agrees (or requires) otherwise in writing, the Supplier shall continue to supply the Services in accordance with the existing terms of this Agreement as if the proposed Contract Change did not apply; and
- (b) any discussions, negotiations or other communications which may take place between the Authority and the Supplier in connection with any proposed Contract Change, including the submission of any Change Communications, shall be without prejudice to each Party's other rights under this Agreement.

2.6 The Supplier shall:

- (a) within 10 Working Days of the Authority's signature and issue of a Change Authorisation Note, deliver to the Authority a copy of this Agreement updated to reflect all Contract Changes agreed in the relevant Change Authorisation Note and annotated with a reference to the Change Authorisation Note pursuant to which the relevant Contract Changes were agreed; and
- (b) thereafter provide to the Authority such further copies of the updated Agreement as the Authority may from time to time request.

### **3. Costs**

3.1 Subject to Paragraph 3.3:

- (a) the costs of preparing each Change Request shall be borne by the Party making the Change Request; and

- (b) the costs incurred by the Supplier in undertaking an Impact Assessment shall be borne by the Party making the Change Request provided that the Authority shall not be required to pay any such costs if:
  - (i) such costs are below £10,000;
  - (ii) the Supplier is able to undertake the Impact Assessment by using resources already deployed in the provision of the Services; or
  - (iii) such costs exceed those in the accepted Impact Assessment Estimate.
- 3.2 The Supplier shall be entitled to increase the Charges only if it can demonstrate in the Impact Assessment that the proposed Contract Change requires additional resources and, in any event, any change to the Charges resulting from a Contract Change (whether the change will cause an increase or a decrease in the Charges) will be strictly proportionate to the increase or decrease in the level of resources required for the provision of the Services as amended by the Contract Change.
- 3.3 Both Parties' costs incurred in respect of any use of this Change Control Procedure as a result of any error or Default by the Supplier shall be paid for by the Supplier.

#### 4. Change request

- 4.1 Either Party may issue a Change Request to the other Party at any time during the Term. A Change Request shall be substantially in the form of Annex 1 and state whether the Party issuing the Change Request considers the proposed Contract Change to be a Fast-track Change.
- 4.2 If the Supplier issues the Change Request, then it shall also provide an Impact Assessment to the Authority as soon as is reasonably practicable but in any event within 10 Working Days of the date of issuing the Change Request.
- 4.3 If the Authority issues the Change Request, then the Supplier shall provide as soon as reasonably practical and in any event within 10 working days of the date of receiving the Change Request an estimate ("**Impact Assessment Estimate**") of the cost of preparing an Impact Assessment and the timetable for preparing it. The timetable shall provide for the completed Impact Assessment to be received by the Authority within 10 working days of acceptance of the Impact Assessment Estimate or within any longer time period agreed by the Authority.
- 4.4 If the Authority accepts an Impact Assessment Estimate then following receipt of notice of such acceptance the Supplier shall provide the completed Impact Assessment to the Authority as soon as is reasonably practicable and in any event within the period agreed in the Impact Assessment Estimate. If the Supplier requires any clarification in relation to the Change Request before it can deliver the Impact Assessment, then it shall promptly make a request for clarification to the Authority and provided that sufficient information is received by the Authority to fully understand:
  - (a) The nature of the request for clarification; and
  - (b) The reasonable justification for the request;

- (c) the time period to complete the Impact Assessment shall be extended by the time taken by the Authority to provide that clarification. The Authority shall respond to the request for clarification as soon as is reasonably practicable.

## 5. Impact assessment

5.1 Each Impact Assessment shall be completed in good faith and shall include:

- (a) details of the proposed Contract Change including the reason for the Contract Change; and
- (b) details of the impact of the proposed Contract Change on the Services, the Optional Services (if any) and the Supplier's ability to meet its other obligations under this Agreement;
- (c) any variation to the terms of this Agreement that will be required as a result of that impact, including changes to:
  - (i) the Services Description, the Performance Indicators and/or the Target Performance Levels;
  - (ii) the format of Authority Data, as set out in the Services Description;
  - (iii) the Milestones, Implementation Plan and any other timetable previously agreed by the Parties;
  - (iv) other services provided by third party contractors to the Authority, including any changes required by the proposed Contract Change to the Authority's IT infrastructure;
- (d) details of the cost of implementing the proposed Contract Change;
- (e) details of the on-going costs required by the proposed Contract Change when implemented, including any increase or decrease in the Charges, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;
- (f) a timetable for the implementation, together with any proposals for the testing of the Contract Change;
- (g) details of how the proposed Contract Change will ensure compliance with any applicable Change in Law; and
- (h) such other information as the Authority may reasonably request in (or in response to) the Change Request.

5.2 If the Contract Change involves the processing or transfer of any Personal Data outside the European Economic Area, the preparation of the Impact Assessment shall also be subject to Clause 23 (*Protection of Personal Data*).

5.3 Subject to the provisions of Paragraph 5.4, the Authority shall review the Impact Assessment and respond to the Supplier in accordance with Paragraph 6 within 15 Working Days of receiving the Impact Assessment, it.

- 5.4 If the Authority is the Receiving Party and the Authority reasonably considers that it requires further information regarding the proposed Contract Change so that it may properly evaluate the Change Request and the Impact Assessment, then within 5 Working Days of receiving the Impact Assessment, it shall notify the Supplier of this fact and detail the further information that it requires. The Supplier shall then re-issue the relevant Impact Assessment to the Authority within 10 Working Days of receiving such notification. At the Authority's discretion, the Parties may repeat the process described in this Paragraph 5.4 until the Authority is satisfied that it has sufficient information to properly evaluate the Change Request and Impact Assessment.
- 5.5 The calculation of costs for the purposes of Paragraphs 5.1(d) and (e) shall:
- (a) be based on the Financial Annex;
  - (b) facilitate the Financial Transparency Objectives;
  - (c) include estimated volumes of each type of resource to be employed and the applicable rate card;
  - (d) include full disclosure of any assumptions underlying such Impact Assessment;
  - (e) include evidence of the cost of any assets required for the Change; and
  - (f) include details of any new Sub-contracts necessary to accomplish the Change.

## **6. Authority's right of approval**

- 6.1 Within 15 Working Days of receiving the Impact Assessment from the Supplier or within 10 Working Days of receiving the further information that it may request pursuant to Paragraph 5.4, the Authority shall evaluate the Change Request and the Impact Assessment and shall do one of the following:
- (a) approve the proposed Contract Change, in which case the Parties shall follow the procedure set out in Paragraph 6.2;
  - (b) in its absolute discretion reject the Contract Change, in which case it shall notify the Supplier of the rejection. The Authority shall not reject any proposed Contract Change to the extent that the Contract Change is necessary for the Supplier or the Services to comply with any Changes in Law. If the Authority does reject a Contract Change, then it shall explain its reasons in writing to the Supplier as soon as is reasonably practicable following such rejection; or
  - (c) in the event that it reasonably believes that a Change Request or Impact Assessment contains errors or omissions, require the Supplier to modify the relevant document accordingly, in which event the Supplier shall make such modifications within 5 Working Days of such request. Subject to Paragraph 5.4, on receiving the modified Change Request and/or Impact Assessment, the Authority shall approve or reject the proposed Contract Change within 10 Working Days.

- 6.2 If the Authority approves the proposed Contract Change pursuant to Paragraph 6.1 and it has not been rejected by the Supplier in accordance with Paragraph 7, then it shall inform the Supplier and the Supplier shall prepare two copies of a Change Authorisation Note which it shall sign and deliver to the Authority for its signature. Following receipt by the Authority of the Change Authorisation Note, it shall sign both copies and return one copy to the Supplier. On the Authority's signature the Change Authorisation Note shall constitute (or, where the Authority has agreed to or required the implementation of a Change prior to signature of a Change Authorisation Note, shall constitute confirmation of) a binding variation to this Agreement.
- 6.3 If the Authority does not sign the Change Authorisation Note within 10 Working Days, then the Supplier shall have the right to notify the Authority and if the Authority does not sign the Change Authorisation Note within 5 Working Days of such notification, then the Supplier may refer the matter to the Expedited Dispute Timetable pursuant to the Dispute Resolution Procedure.

## **7. Supplier's right of approval**

- 7.1 Following an Impact Assessment, if:
- (a) the Supplier reasonably believes that any proposed Contract Change which is requested by the Authority would:
    - (i) materially and adversely affect the risks to the health and safety of any person; and/or
    - (ii) require the Services to be performed in a way that infringes any Law; and/or
  - (b) the Supplier demonstrates to the Authority's reasonable satisfaction that the proposed Contract Change is technically impossible to implement and neither the Supplier Solution nor the Services Description state that the Supplier does have the technical capacity and flexibility required to implement the proposed Contract Change,

then the Supplier shall be entitled to reject the proposed Contract Change and shall notify the Authority of its reasons for doing so within 5 Working Days after the date on which it is obliged to deliver the Impact Assessment pursuant to Paragraph 4.3.

## **8. Fast-track changes**

- 8.1 The Parties acknowledge that to ensure operational efficiency there may be circumstances where it is desirable to expedite the processes set out above.
- 8.2 If:
- (a) the total number of Contract Changes in relation to which this Fast-track Change procedure has been applied does not exceed 4 in any 12 month period; and
  - (b) both Parties agree the value of the proposed Contract Change over the remaining Term and any period for which Termination Services may be required does not exceed £100,000 and the proposed Contract Change is not significant (as determined by the Authority acting reasonably),



then the Parties shall confirm to each other in writing that they shall use the process set out in Paragraphs 4, 5, 6 and 7 but with reduced timescales, such that any period of 15 Working Days is reduced to 5 Working Days, any period of 10 Working Days is reduced to 2 Working Days and any period of 5 Working Days is reduced to 1 Working Day.

- 8.3 The Parties may agree in writing to revise the parameters set out in Paragraph 8.2 from time to time or that the Fast-track Change procedure shall be used in relation to a particular Contract Change notwithstanding that the total number of Contract Changes to which such procedure is applied will then exceed 4 in a 12 month period.

## **9. Operational change procedure**

- 9.1 Any Operational Changes identified by the Supplier to improve operational efficiency of the Services may be implemented by the Supplier without following the Change Control Procedure for proposed Contract Changes provided they do not:
- (a) have an impact on the business of the Authority;
  - (b) require a change to this Agreement;
  - (c) have a direct impact on use of the Services; or
  - (d) involve the Authority in paying any additional Charges or other costs.
- 9.2 The Authority may request an Operational Change by submitting a written request for Operational Change (“**RFOC**”) to the Supplier Representative.
- 9.3 The RFOC shall include the following details:
- (a) the proposed Operational Change; and
  - (b) the time-scale for completion of the Operational Change.
- 9.4 The Supplier shall inform the Authority of any impact on the Services that may arise from the proposed Operational Change.
- 9.5 The Supplier shall complete the Operational Change by the timescale specified for completion of the Operational Change in the RFOC, and shall promptly notify the Authority when the Operational Change is completed.

## **10. Communications**

- 10.1 For any Change Communication to be valid under this Schedule, it must be sent to either the Authority Change Manager or the Supplier Change Manager, as applicable. The provisions of Clause 44 (Notices) shall apply to a Change Communication as if it were a notice.

## ANNEX 1

### Change Request Form

CR NO.:	TITLE:	TYPE OF CHANGE:
CONTRACT:		REQUIRED BY DATE:
ACTION:	NAME:	DATE:
RAISED BY:		
AREA(S) IMPACTED ( <i>OPTIONAL FIELD</i> ):		
ASSIGNED FOR IMPACT ASSESSMENT BY:		
ASSIGNED FOR IMPACT ASSESSMENT TO:		
SUPPLIER REFERENCE NO.:		
FULL DESCRIPTION OF REQUESTED CONTRACT CHANGE (INCLUDING PROPOSED CHANGES TO THE WORDING OF THE CONTRACT):		
DETAILS OF ANY PROPOSED ALTERNATIVE SCENARIOS:		
REASONS FOR AND BENEFITS AND DISADVANTAGES OF REQUESTED CONTRACT CHANGE:		
SIGNATURE OF REQUESTING CHANGE OWNER:		
DATE OF REQUEST:		

## ANNEX 2

### Change Authorisation Note

CR NO.:	TITLE:	DATE RAISED:
CONTRACT:	TYPE OF CHANGE:	REQUIRED BY DATE:
[AUTHORITY TO PROCEED MILESTONE DATE: <i>[if any]</i> ]		
DETAILED DESCRIPTION OF CONTRACT CHANGE FOR WHICH IMPACT ASSESSMENT IS BEING PREPARED AND WORDING OF RELATED CHANGES TO THE CONTRACT:		
PROPOSED ADJUSTMENT TO THE CHARGES RESULTING FROM THE CONTRACT CHANGE:		
DETAILS OF PROPOSED ONE-OFF ADDITIONAL CHARGES AND MEANS FOR DETERMINING THESE (E.G. FIXED PRICE BASIS):		
SIGNED ON BEHALF OF THE AUTHORITY:		SIGNED ON BEHALF OF THE SUPPLIER:
Signature:_____		Signature:_____
Name:_____		Name:_____
Position:_____		Position:_____
Date:_____		Date:_____

**PHOENIX II AGREEMENT FOR SERVICES SCHEDULES**

**SCHEDULE 8.3**

**DISPUTE RESOLUTION PROCEDURE**

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## Dispute Resolution Procedure

### 1 Definitions

In this Schedule, the following definitions shall apply:

<b>“CEDR”</b>	the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;
<b>“Counter Notice”</b>	has the meaning given in Paragraph 7.2;
<b>“Expert”</b>	in relation to a Dispute, a person appointed in accordance with Paragraph 6.2 to act as an expert in relation to that Dispute;
<b>“Expert Determination”</b>	determination by an Expert in accordance with Paragraph 6;
<b>“Mediation Notice”</b>	has the meaning given in Paragraph 4.2;
<b>“Mediator”</b>	the independent third party appointed in accordance with Paragraph 5.2 to mediate a Dispute;
<b>“Multi-Party Dispute”</b>	a Dispute which involves the Parties and one or more Related Third Parties;
<b>“Multi-Party Dispute Representatives”</b>	has the meaning given in Paragraph 9.6;
<b>“Multi-Party Dispute Resolution Board”</b>	has the meaning given in Paragraph 9.6;
<b>“Related Third Party”</b>	a party to: <ul style="list-style-type: none"> <li>(a) another contract with the Authority or the Supplier which is relevant to this Agreement; or</li> <li>(b) a Sub-contract; and</li> </ul>
<b>“Supplier Request”</b>	a notice served by the Supplier requesting that the Dispute be treated as a Multi-Party Dispute, setting out its grounds for that request and specifying each Related Third Party that it believes should be involved in the Multi-Dispute Resolution Procedure in respect of that Dispute.

### 2 Dispute notices

#### 2.1 If a Dispute arises then:

- (a) the Authority Representative and the Supplier Representative shall attempt in good faith to resolve the Dispute; and

- (b) if such attempts are not successful within a reasonable period, not being longer than 20 Working Days, either Party may issue to the other a Dispute Notice.

2.2 A Dispute Notice:

- (a) shall set out:
  - (i) the material particulars of the Dispute;
  - (ii) the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and
  - (iii) if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable, the reason why; and
- (b) may specify in accordance with the requirements of Paragraphs 9.2 and 9.3 that the Party issuing the Dispute Notice has determined (in the case of the Authority) or considers (in the case of the Supplier) that the Dispute is a Multi-Party Dispute, in which case Paragraph 2.3 shall apply.

2.3 If a Dispute Notice specifies that the Dispute has been determined or is considered to be a Multi-Party Dispute pursuant to Paragraph 2.2(b), then:

- (a) if it is served by the Authority it shall be treated as a Multi-Party Procedure Initiation Notice; and
- (b) if it is served by the Supplier it shall be treated as a Supplier Request,

and in each case the provisions of Paragraph 9 shall apply.

2.4 Subject to Paragraphs 2.5 and 3.2 and so long as the Authority has not served a Multi-Party Procedure Initiation Notice in respect of the relevant Dispute, following the issue of a Dispute Notice the Parties shall seek to resolve the Dispute:

- (a) first by commercial negotiation (as prescribed in Paragraph 4);
- (b) then, if either Party serves a Mediation Notice, by mediation (as prescribed in Paragraph 5); and
- (c) lastly by recourse to arbitration (as prescribed in Paragraph 7) or litigation (in accordance with Clause 46 (*Governing Law and Jurisdiction*)).

2.5 Specific issues shall be referred to Expert Determination (as prescribed in Paragraph 6) where specified under the provisions of this Agreement and may also be referred to Expert Determination where otherwise appropriate as specified in Paragraph 6.1.

2.6 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Agreement regardless of the nature of the Dispute and notwithstanding any issue of a Dispute Notice or a Multi-Party Procedure Initiation Notice.

### 3 Expedited dispute timetable

3.1 In exceptional circumstances where the use of the times in this Schedule would be unreasonable, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use the Expedited Dispute Timetable within 5 Working Days of the issue of a Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Authority.

3.2 If the Expedited Dispute Timetable is to be used pursuant to the provisions of Paragraph 3.1 or is otherwise specified under the provisions of this Agreement, then the following periods of time shall apply in lieu of the time periods specified in the applicable Paragraphs:

- (a) in Paragraph 4.2(c), 10 Working Days;
- (b) in Paragraph 5.2, 10 Working Days;
- (c) in Paragraph 6.2, 5 Working Days; and
- (d) in Paragraph 7.2, 10 Working Days.

3.3 If at any point it becomes clear that an applicable deadline cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the deadline. Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension.

### 4 Commercial negotiation

4.1 Following the service of a Dispute Notice, then, so long as the Authority has not served a Multi-Party Procedure Initiation Notice in respect of the relevant Dispute, the Authority and the Supplier shall make reasonable endeavours to resolve the Dispute as soon as possible by commercial negotiation between the Authority's Head of Land Equipment Commercial and the Supplier's Commercial Director.

4.2 If:

- (a) either Party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiation, will not result in an appropriate solution;
- (b) the Parties have already held discussions of a nature and intent (or otherwise were conducted in the spirit) that would equate to the conduct of commercial negotiation in accordance with this Paragraph 4; or
- (c) the Parties have not settled the Dispute in accordance with Paragraph 4.1 within 30 Working Days of service of the Dispute Notice,

either Party may serve a written notice to proceed to mediation in accordance with Paragraph 5 (a "**Mediation Notice**").



## **5 Mediation**

5.1 If a Mediation Notice is served, the Parties shall attempt to resolve the dispute in accordance with CEDR's Model Mediation Agreement which shall be deemed to be incorporated by reference into this Agreement.

5.2 If the Parties are unable to agree on the joint appointment of an independent person to mediate the Dispute within 20 Working Days from (and including) the service of a Mediation Notice then either Party may apply to CEDR to nominate such a person.

5.3 If the Parties are unable to reach a settlement in the negotiations at the mediation, and only if both Parties so request and the Mediator agrees, the Mediator shall produce for the Parties a non-binding recommendation on terms of settlement. This shall not attempt to anticipate what a court might order but shall set out what the Mediator suggests are appropriate settlement terms in all of the circumstances.

5.4 Any settlement reached in the mediation shall not be legally binding until it has been reduced to writing and signed by, or on behalf of, the Parties (in accordance with the Change Control Procedure where appropriate). The Mediator shall assist the Parties in recording the outcome of the mediation.

## **6 Expert determination**

6.1 If a Dispute relates to any aspect of the technology underlying the provision of the Services or otherwise relates to a matter of an IT technical, financial technical or other technical nature (as the Parties may agree) and the Dispute has not been resolved by commercial negotiation in accordance with Paragraph 4 or, if applicable, mediation in accordance with Paragraph 5, then either Party may by written notice to the other request (agreement to which request shall not be unreasonably withheld or delayed) that the Dispute be referred to an expert for determination.

6.2 The expert shall be appointed by agreement in writing between the Parties, but in the event of a failure to agree within 10 Working Days of the relevant request made pursuant to Paragraph 6.1, or if the person appointed is unable or unwilling to act, the expert shall be appointed:

- (a) if the Dispute relates to any aspect of the technology underlying the provision of the Services or a matter of an IT technical nature, on the instructions of the President of the British Computer Society (or any other association that has replaced the British Computer Society);
- (b) if the Dispute relates to a matter of a financial technical nature, on the instructions of the President of the Institute of Chartered Accountants of England and Wales; or
- (c) if the Dispute relates to a matter of a technical nature not falling within Paragraphs 6.2(a) or (b), on the instructions of the president (or equivalent) of:
  - (i) an appropriate body agreed between the Parties; or
  - (ii) if the Parties do not reach agreement on the relevant body within 15 Working Days of the relevant request made pursuant to

Paragraph 6.1, such body as may be specified by the President of the Law Society on application by either Party.

6.3 The Expert shall act on the following basis:

- (a) he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;
- (b) the Expert's determination shall (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties;
- (c) the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within 30 Working Days of his appointment or as soon as reasonably practicable thereafter and the Parties shall assist and provide the documentation that the Expert requires for the purpose of the determination;
- (d) any amount payable by one Party to another as a result of the Expert's determination shall be due and payable within 20 Working Days of the Expert's determination being notified to the Parties;
- (e) the process shall be conducted in private and shall be confidential; and
- (f) the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

## 7 Arbitration

7.1 Subject to compliance with its obligations under Paragraph 4.1 and to the provisions of Paragraph 6, the Authority may at any time before court proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of Paragraph 7.5.

7.2 Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Authority of its intentions and the Authority shall have 15 Working Days following receipt of such notice to serve a reply (a "**Counter Notice**") on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with Paragraph 7.5 or be subject to the exclusive jurisdiction of the courts of England and Wales. The Supplier shall not commence any court proceedings or arbitration until the expiry of such 15 Working Day period.

7.3 If the Authority serves a Counter Notice, then:

- (a) if the Counter Notice requires the Dispute to be referred to arbitration, the provisions of Paragraph 7.5 shall apply; or
- (b) if the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts of England and Wales, the Dispute shall be so referred to those courts and the Supplier shall not commence arbitration proceedings.

7.4 If the Authority does not serve a Counter Notice within the 15 Working Day period referred to in Paragraph 7.2, the Supplier may either commence arbitration proceedings in accordance with Paragraph 7.5 or commence court proceedings in the Courts of England and Wales which shall (in those circumstances) have exclusive jurisdiction.

7.5 The Parties hereby confirm that if any arbitration proceedings are commenced pursuant to Paragraphs 7.1 to 7.4:

- (a) the Dispute shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration ("**LCIA**") (subject to Paragraphs 7.5(e), (f) and (g));
- (b) the arbitration shall be administered by the LCIA;
- (c) the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this Agreement and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
- (d) if the Parties fail to agree the appointment of the arbitrator within 10 Working Days from the date on which arbitration proceedings are commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- (e) the chair of the arbitral tribunal shall be British;
- (f) the arbitration proceedings shall take place in London and in the English language; and
- (g) the seat of the arbitration shall be London.

## 8 Urgent relief

8.1 Either Party may at any time take proceedings or seek remedies before any court or tribunal of competent jurisdiction:

- (a) for interim or interlocutory remedies in relation to this Agreement or infringement by the other Party of that Party's Intellectual Property Rights; and/or
- (b) where compliance with Paragraph 2.1 and/or referring the Dispute to mediation may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period.

## 9 Multi-party disputes

9.1 All Multi-Party Disputes shall be resolved in accordance with the procedure set out in this Paragraph 9 (the "**Multi-Party Dispute Resolution Procedure**").

9.2 If at any time following the issue of a Dispute Notice, the Authority reasonably considers that the matters giving rise to the Dispute involve one or more Related Third Parties, then the Authority shall be entitled to determine that the Dispute is a Multi-Party Dispute and to serve a notice on the Supplier which sets out the Authority's determination that the Dispute is a Multi-Party Dispute and specifies the Related Third Parties which are to be involved in the Multi-Party Dispute Resolution Procedure, such notice a "**Multi-Party Procedure Initiation Notice**".

9.3 If following the issue of a Dispute Notice but before the Dispute has been referred to Expert Determination or to arbitration in accordance with Paragraph 7, the Supplier has

reasonable grounds to believe that the matters giving rise to the Dispute have been contributed to by one or more Related Third Parties, the Supplier may serve a Supplier Request on the Authority.

9.4 The Authority shall (acting reasonably) consider each Supplier Request and shall determine within 5 Working Days whether the Dispute is:

- (a) a Multi-Party Dispute, in which case the Authority shall serve a Multi-Party Procedure Initiation Notice on the Supplier; or
- (b) not a Multi-Party Dispute, in which case the Authority shall serve written notice of such determination upon the Supplier and the Dispute shall be treated in accordance with Paragraphs 3 to 8.

9.5 If the Authority has determined, following a Supplier Request, that a Dispute is not a Multi-Party Dispute, the Supplier may not serve another Supplier Request with reference to the same Dispute.

9.6 Following service of a Multi-Party Procedure Initiation Notice a Multi-Party Dispute shall be dealt with by a board (in relation to such Multi-Party Dispute, the “**Multi-Party Dispute Resolution Board**”) comprising representatives from the following parties to the Multi-Party Dispute, each of whom shall be of a suitable level of seniority to finalise any agreement with the other parties to settle the Multi-Party Dispute:

- (a) the Authority;
- (b) the Supplier;
- (c) each Related Third Party involved in the Multi-Party Dispute; and
- (d) any other representatives of any of the Parties and/or any Related Third Parties whom the Authority considers necessary,

(together “**Multi-Party Dispute Representatives**”).

9.7 The Parties agree that the Multi-Party Dispute Resolution Board shall seek to resolve the relevant Multi-Party Dispute in accordance with the following principles and procedures:

- (a) the Parties shall procure that their Multi-Party Dispute Representatives attend, and shall endeavour to procure that the Multi-Party Dispute Representatives of each Related Third Party attend, all meetings of the Multi-Party Dispute Resolution Board in respect of the Multi-Party Dispute;
- (b) the Multi-Party Dispute Resolution Board shall first meet within 10 Working Days of service of the relevant Multi-Party Procedure Initiation Notice at such time and place as the Parties may agree or, if the Parties do not reach agreement on the time and place within 5 Working Days of service of the relevant Multi-Party Procedure Initiation Notice, at the time and place specified by the Authority, provided such place is at a neutral location within England and that the meeting is to take place between 9.00am and 5.00pm on a Working Day; and
- (c) in seeking to resolve or settle any Multi-Party Dispute, the members of the Multi-Party Dispute Resolution Board shall have regard to the principle that a

Multi-Party Dispute should be determined based on the contractual rights and obligations between the Parties and the Related Third Parties and that any apportionment of costs should reflect the separate components of the Multi-Party Dispute.

9.8 If a Multi-Party Dispute is not resolved between the Parties and all Related Third Parties within 25 Working Days of the issue of the Multi-Party Procedure Initiation Notice (or such longer period as the Parties may agree in writing), then:

- (a) either Party may serve a Mediation Notice in respect of the Multi-Party Dispute in which case Paragraph 5 shall apply;
- (b) either Party may request that the Multi-Party Dispute is referred to an expert in which case Paragraph 6 shall apply; and/or
- (c) subject to Paragraph 9.9, Paragraph 7 shall apply to the Multi-Party Dispute,

and in each case references to the "Supplier" or the "Parties" in such provisions shall include a reference to all Related Third Parties.

9.9 If a Multi-Party Dispute is referred to arbitration in accordance with Paragraph 7 or a Dispute becomes a Multi-Party Dispute during the course of arbitration proceedings and either Party is unable to compel a Related Third Party to submit to such arbitration proceedings, the Authority or the Supplier may discontinue such arbitration proceedings and instead initiate court proceedings. The costs of any such discontinued arbitration proceedings shall be borne by the Party which is in a direct contractual relationship with the Related Third Party or, where the Related Third Party is a Sub-Contractor, by the Supplier.

# **PHOENIX II AGREEMENT FOR SERVICES SCHEDULES**

## **SCHEDULE 8.4**

### **RECORDS PROVISIONS**

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## Records Provisions

### 1 Reports

1.1 The Authority may require any or all of the following reports:

- (a) delay reports;
- (b) reports relating to Testing and tests carried out under Schedule 2.4 (*Security Management*) and Schedule 8.6 (*Business Continuity and Disaster Recovery*);
- (c) reports which the Supplier is required to supply as part of the Management Information;
- (d) annual reports on the Insurances;
- (e) security reports; and
- (f) Force Majeure Event reports.

### 2 Records

2.1 The Supplier shall retain and maintain all the records (including superseded records) referred to in Paragraph 1 and Annex 1 (together "**Records**"):

- (a) in accordance with the requirements of the Public Records Office (PRO) and Good Industry Practice;
- (b) in chronological order;
- (c) in a form that is capable of audit; and
- (d) at its own expense.

2.2 The Supplier shall make the Records available for inspection to the Authority on request, subject to the Authority giving reasonable notice.

2.3 Where Records are retained in electronic form, the original metadata shall be preserved together with all subsequent metadata in a format reasonably accessible to the Authority.

2.4 The Supplier shall, during the Term and a period of at least 7 years following the expiry or termination of this Agreement, maintain or cause to be maintained complete and accurate documents and records in relation to the provision of the Services including but not limited to all Records.

2.5 Records that contain financial information shall be retained and maintained in safe storage by the Supplier for a period of at least 7 years after the expiry or termination of this Agreement.

2.6 Without prejudice to the foregoing, the Supplier shall provide the Authority:



- (a) as soon as they are available, and in any event within 60 Working Days after the end of the first 6 months of each financial year of the Supplier during the Term, a copy, certified as a true copy by an authorised representative of the Supplier, of its un-audited interim accounts and, if applicable, of consolidated un-audited interim accounts of the Supplier and its Affiliates which would (if the Supplier were listed on the London Stock Exchange (whether or not it is)) be required to be sent to shareholders as at the end of and for each such 6 month period; and
- (b) as soon as they shall have been sent to its shareholders in order to be laid before an annual general meeting of the Supplier, but not later than 130 Working Days after the end of each accounting reference period of the Supplier part or all of which falls during the Term, the Supplier's audited accounts and if applicable, of the consolidated audited accounts of the Supplier and its Affiliates in respect of that period together with copies of all related directors' and auditors' reports and all other notices/circulars to shareholders.

## **ANNEX 1**

### **Records to be kept by the Supplier**

The records to be kept by the Supplier are:

1. This Agreement, its Schedules and all amendments to such documents.
2. All other documents which this Agreement expressly requires to be prepared.
3. Records relating to the appointment and succession of the Supplier Representative and each member of the Key Personnel.
4. Notices, reports and other documentation submitted by any Expert.
5. All operation and maintenance manuals prepared by the Supplier for the purpose of maintaining the provision of the Services and the underlying IT Environment and Supplier Equipment.
6. Documents prepared by the Supplier or received by the Supplier from a third party relating to a Force Majeure Event.
7. All formal notices, reports or submissions made by the Supplier to the Authority Representative in connection with the provision of the Services.
8. All certificates, licences, registrations or warranties in each case obtained by the Supplier in relation to the provision of the Services.
9. Documents prepared by the Supplier in support of claims for the Charges.
10. Documents submitted by the Supplier pursuant to the Change Control Procedure.
11. Documents submitted by the Supplier pursuant to invocation by it or the Authority of the Dispute Resolution Procedure.
12. Documents evidencing any change in ownership or any interest in any or all of the shares in the Supplier and/or the Guarantor, where such change may cause a change of Control; and including documents detailing the identity of the persons changing such ownership or interest.
13. Invoices and records related to VAT sought to be recovered by the Supplier.
14. Financial records, including audited and un-audited accounts of the Guarantor and the Supplier.
15. Records required to be retained by the Supplier by Law, including in relation to health and safety matters and health and safety files and all consents.
16. All documents relating to the insurances to be maintained under this Agreement and any claims made in respect of them.

17. All journals and audit trail data referred to in Schedule 2.4 (*Security Management*).
18. All other records, notices or certificates required to be produced and/or maintained by the Supplier pursuant to this Agreement.

**PHOENIX II AGREEMENT FOR SERVICES SCHEDULES**

**SCHEDULE 8.5**

**EXIT MANAGEMENT**

**Contents**

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## Exit Management

### 1 Definitions

In this Schedule, the following definitions shall apply:

<b>“Emergency Exit”</b>	any termination of this Agreement which is a: <ul style="list-style-type: none"><li>(a) termination of the whole or part of this Agreement in accordance with Clause 33 (<i>Termination Rights</i>), except where the period of notice given under that Clause is greater than or equal to 6 months;</li><li>(b) termination of the provision of the Services for any reason prior to the expiry of any period of notice of termination served pursuant to Clause 33 (<i>Termination Rights</i>); or</li><li>(c) wrongful termination or repudiation of this Agreement by either Party;</li></ul>
<b>“Exclusive Assets”</b>	those Assets used by the Supplier or a Key Sub-contractor which are used exclusively in the provision of the Services;
<b>“Exit Information”</b>	has the meaning given in Paragraph 3.1;
<b>“Exit Manager”</b>	the person appointed by each Party pursuant to Paragraph 2.3 for managing the Parties' respective obligations under this Schedule;
<b>“Net Book Value”</b>	the net book value of the relevant Asset(s) calculated in accordance with the depreciation policy of the Supplier set out in the letter in the agreed form from the Supplier to the Authority, as applicable;
<b>“Non-Exclusive Assets”</b>	those Assets (if any) which are used by the Supplier or a Key Sub-contractor in connection with the Services but which are also used by the Supplier or Key Sub-contractor for other purposes of material value;
<b>“Ordinary Exit”</b>	any termination of this Agreement which occurs: <ul style="list-style-type: none"><li>(a) pursuant to Clause 33 (<i>Termination Rights</i>) where the period of notice</li></ul>

given by the Party serving notice to terminate pursuant to such Clause is greater than or equal to 6 months; or

(b) as a result of the expiry of the Initial Term or any Extension Period;

**“Registers”**

the register and configuration database referred to in Paragraphs 2.1(a) and 2.1(b);

**“Transferable Assets”**

those of the Exclusive Assets which are capable of legal transfer to the Authority;

**“Transferable Contracts”**

the Sub-contracts, licences for Supplier's Software, licences for Third Party Software or other agreements which are necessary to enable the Authority or any Replacement Supplier to perform the Services or the Replacement Services, including in relation to licences all relevant Documentation; and

**“Transferring Contracts”**

has the meaning given in Paragraph 6.2(c).

## **2 Obligations during the term to facilitate exit**

### **2.1 During the Term, the Supplier shall:**

- (a) create and maintain a register of all:
  - (i) Assets, detailing their:
    - (A) make, model and asset number;
    - (B) ownership and status as either Exclusive Assets or Non-Exclusive Assets;
    - (C) Net Book Value;
    - (D) condition and physical location; and
    - (E) use (including technical specifications); and
  - (ii) Sub-contracts and other relevant agreements (including relevant software licences, maintenance and support agreements and equipment rental and lease agreements) required for the performance of the Services;
- (b) create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Supplier provides the Services, which shall contain sufficient detail to permit the Authority and/or Replacement Supplier to understand how the Supplier provides the Services

and to enable the smooth transition of the Services with the minimum of disruption;

- (c) agree the format of the Registers with the Authority as part of the process of agreeing the Exit Plan; and
- (d) at all times keep the Registers up to date, in particular in the event that Assets, Sub-contracts or other relevant agreements are added to or removed from the Services.
- (e) Maintain the telematic data in a format agreed with the Authority in the Implementation Phase that can be supplied to the Authority .

The data under Paragraph 2.1 is the Authority Data and may be requested at any time during the term of the Contract. The Authority shall not be limited to the use of the data. The data shall be provided to the Authority within 10 working days of request.

2.2 The Supplier shall procure that all Exclusive Assets listed in the Registers are clearly marked to identify that they are exclusively used for the provision of the Services under this Agreement.

2.3 Each Party shall appoint a person for the purposes of managing the Parties' respective obligations under this Schedule and provide written notification of such appointment to the other Party within 3 months of the Effective Date. The Supplier's Exit Manager shall be responsible for ensuring that the Supplier and its employees, agents and Sub-contractors comply with this Schedule. The Supplier shall ensure that its Exit Manager has the requisite authority to arrange and procure any resources of the Supplier as are reasonably necessary to enable the Supplier to comply with the requirements set out in this Schedule. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination of this Agreement and all matters connected with this Schedule and each Party's compliance with it.

### **3 Obligations to assist on re-tendering of services**

3.1 On reasonable notice at any point during the Term, the Supplier shall provide to the Authority and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by the Authority of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence:

- (a) details of the Service(s);
- (b) a copy of the Registers, updated by the Supplier up to the date of delivery of such Registers;
- (c) the Authority's Data in the Supplier's possession or control to include but not limited to fleet details, telematic data, charges;
- (d) details of any key terms of any Exclusive Sub-Contracts and licences, particularly as regards charges, termination, assignment and novation;
- (e) a list of on-going and/or threatened disputes in relation to the provision of the Services;



- (f) to the extent permitted by applicable Law, all information relating to Transferring Supplier Employees required to be provided by the Supplier under this Agreement; and
- (g) such other material and information as the Authority shall reasonably require, (together, the “**Exit Information**”). The Exit Information is to be delivered to the Authority within 10 working days of notice from the Authority.

3.2 The Supplier acknowledges that the Authority may disclose the Supplier's Confidential Information to an actual or prospective Replacement Supplier or any third party whom the Authority is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that the Authority may not under this Paragraph 3.2 disclose any Supplier's Confidential Information which is information relating to the Supplier's or its Sub-contractors' prices or costs).

3.3 The Supplier shall:

- (a) notify the Authority within 5 Working Days of any material change to the Exit Information which may adversely impact upon the potential transfer and/or continuance of any Services and shall consult with the Authority regarding such proposed material changes; and
- (b) provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within 10 Working Days of a request in writing from the Authority.

3.4 The Supplier may charge the Authority for its reasonable additional costs to the extent the Authority requests more than 4 updates in any 6 month period.

3.5 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Supplier shall be such as would be reasonably necessary to enable a third party to:

- (a) prepare an informed offer for those Services; and
- (b) not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).

#### **4 Exit plan**

4.1 The Supplier shall, within 3 months after the Effective Date, deliver to the Authority an Exit Plan which:

- (a) sets out the Supplier's proposed methodology for achieving an orderly transition of the Services from the Supplier to the Authority and/or its Replacement Supplier on the expiry or termination of this Agreement;
- (b) complies with the requirements set out in Paragraph 4.2; and
- (c) is otherwise reasonably satisfactory to the Authority.

4.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within 20 Working Days of its

submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

4.3 The Exit Plan shall set out, as a minimum:

- (a) how the Exit Information is obtained;
- (b) separate mechanisms for dealing with Ordinary Exit and Emergency Exit, the provisions relating to Emergency Exit being prepared on the assumption that the Supplier may be unable to provide the full level of assistance which is required by the provisions relating to Ordinary Exit, and in the case of Emergency Exit, provision for the supply by the Supplier of all such reasonable assistance as the Authority shall require to enable the Authority or its sub-contractors to provide the Services;
- (c) the management structure to be employed during both transfer and cessation of the Services in an Ordinary Exit and an Emergency Exit;
- (d) the management structure to be employed during the Termination Assistance Period;
- (e) a detailed description of both the transfer and cessation processes, including a timetable, applicable in the case of an Ordinary Exit and an Emergency Exit;
- (f) how the Services will transfer to the Replacement Supplier and/or the Authority, including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Authority's technology components from any technology components operated by the Supplier or its Sub-contractors (where applicable);
- (g) the scope of the Termination Services that may be required for the benefit of the Authority (including such of the services set out in Annex 1 as are applicable);
- (h) a timetable and critical issues for providing the Termination Services;
- (i) how the Termination Services would be provided (if required) during the Termination Assistance Period;
- (j) procedures to deal with requests made by the Authority and/or a Replacement Supplier for Staffing Information pursuant to Schedule 9.1 (*Staff Transfer*);
- (k) how each of the issues set out in this Schedule will be addressed to facilitate the transition of the Services from the Supplier to the Replacement Supplier and/or the Authority with the aim of ensuring that there is no disruption to or degradation of the Services during the Termination Assistance Period; and
- (l) any charges that would be payable for the provision of the Termination Services (calculated in accordance with the methodology that would apply if such services were being treated as a Contract Change).

4.4 The Parties acknowledge that the migration of the Services from the Supplier to the Authority and/or its Replacement Supplier may be phased, such that certain of the Services are handed over before others.

4.5 The Supplier shall review and (if appropriate) update the Exit Plan on a basis consistent with the principles set out in this Schedule in the first month of each Contract Year (commencing with the second Contract Year) to reflect any changes in the Services that have occurred since the Exit Plan was last agreed. Following such update the Supplier shall submit the revised Exit Plan to the Authority for review. Within 20 Working Days following submission of the revised Exit Plan, the Parties shall meet and use reasonable endeavours to agree the contents of the revised Exit Plan. If the Parties are unable to agree the contents of the revised Exit Plan within that 20 Working Day period, such dispute shall be resolved in accordance with the Dispute Resolution Procedure.

### **Finalisation of the Exit Plan**

4.6 Within 20 Working Days after service of a Termination Notice by either Party or 6 months prior to the expiry of this Agreement, the Supplier will submit for the Authority's approval the Exit Plan in a final form that could be implemented immediately. The final form of the Exit Plan shall be prepared on a basis consistent with the principles set out in this Schedule and shall reflect any changes in the Services that have occurred since the Exit Plan was last agreed.

4.7 The Parties will meet and use their respective reasonable endeavours to agree the contents of the final form of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within 20 Working Days following its delivery to the Authority then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure. Until the agreement of the final form of the Exit Plan, the Supplier shall provide the Termination Services in accordance with the principles set out in this Schedule and the last approved version of the Exit Plan (insofar as relevant).

## **5 Termination services**

### **Notification of Requirements for Termination Services**

5.1 The Authority shall be entitled to require the provision of Termination Services at any time during the Term by giving written notice to the Supplier (a **"Termination Assistance Notice"**) at least 4 months prior to the date of termination or expiry of this Agreement or as soon as reasonably practicable (but in any event, not later than 1 month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:

- (a) the date from which Termination Services are required;
- (b) the nature of the Termination Services required; and
- (c) the period during which it is anticipated that Termination Services will be required, which shall continue no longer than 24 months after the date that the Supplier ceases to provide the Services.

5.2 The Authority shall have an option to extend the period of assistance beyond the period specified in the Termination Assistance Notice provided that such extension shall not extend for more than 6 months after the date the Supplier ceases to provide the Services or, if applicable, beyond the end of the Termination Assistance Period and provided that it shall notify the Supplier to such effect no later than 20 Working Days prior to the date on which the provision of Termination Services is otherwise due to expire. The Authority shall have the right to terminate its requirement for Termination Services by serving not less than 20 Working Days' written notice upon the Supplier to such effect.

**Termination Assistance Period**

5.3 Throughout the Termination Assistance Period, or such shorter period as the Authority may require, the Supplier shall:

- (a) continue to provide the Services (as applicable) and, if required by the Authority pursuant to Paragraph 5.1, provide the Termination Services;
- (b) in addition to providing the Services and the Termination Services, provide to the Authority any reasonable assistance requested by the Authority to allow the Services to continue without interruption following the termination or expiry of this Agreement and to facilitate the orderly transfer of responsibility for and conduct of the Services to the Authority and/or its Replacement Supplier;
- (c) use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in Paragraph 5.3(b) without additional costs to the Authority;
- (d) provide the Services and the Termination Services at no detriment to the Target Performance Levels, save to the extent that the Parties agree otherwise in accordance with Paragraph 5.5; and
- (e) at the Authority's request and on reasonable notice, deliver up-to-date Registers to the Authority.

5.4 Without prejudice to the Supplier's obligations under Paragraph 5.3(c), if it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in Paragraph 5.3(b) without additional costs to the Authority, any additional costs incurred by the Supplier in providing such reasonable assistance which is not already in the scope of the Termination Services or the Exit Plan shall be subject to the Change Control Procedure.

5.5 If the Supplier demonstrates to the Authority's reasonable satisfaction that transition of the Services and provision of the Termination Services during the Termination Assistance Period will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular Target Performance Level(s), the Parties shall vary the relevant Target Performance Level(s) and/or the applicable Service Credits to take account of such adverse effect.

**Termination Obligations**

5.6 The Supplier shall comply with all of its obligations contained in the Exit Plan.

5.7 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule), the Supplier shall:

- (a) cease to use the Authority Data;
- (b) provide the Authority and/or the Replacement Supplier with a complete and uncorrupted version of the Authority Data in electronic form (or such other format as reasonably required by the Authority);

- (c) erase from any computers, storage devices and storage media that are to be retained by the Supplier after the end of the Termination Assistance Period all Authority Data and promptly certify to the Authority that it has completed such deletion;
- (d) return to the Authority such of the following as is in the Supplier's possession or control:
  - (i) all copies of the Authority Software and any other software licensed by the Authority to the Supplier under this Agreement;
  - (ii) all materials created by the Supplier under this Agreement in which the IPRs are owned by the Authority;
  - (iii) any parts of the IT Environment and any other equipment which belongs to the Authority; and
  - (iv) any items that have been on-charged to the Authority, such as consumables;
- (e) vacate any Authority Premises;
- (f) provide access during normal working hours to the Authority and/or the Replacement Supplier for up to 12 months after expiry or termination to:
  - (i) such information relating to the Services as remains in the possession or control of the Supplier; and
  - (ii) such members of the Supplier Personnel as have been involved in the design, development and provision of the Services and who are still employed by the Supplier, provided that the Authority and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to requests for access under this Paragraph 5.7(f)(ii).

5.8 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule), each Party shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party and shall certify that it does not retain the other Party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any Services or Termination Services or for statutory compliance purposes.

5.9 Except where this Agreement provides otherwise, all licences, leases and authorisations granted by the Authority to the Supplier in relation to the Services shall be terminated with effect from the end of the Termination Assistance Period.

## **6 Assets, sub-contracts and software**

6.1 Following notice of termination of this Agreement and during the Termination Assistance Period, the Supplier shall not, without the Authority's prior written consent:

- (a) terminate, enter into or vary any Sub-contract except to the extent that such change does not or will not affect the provision of Services or the Charges;
- (b) (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Assets or acquire any new Assets; or
- (c) terminate, enter into or vary any licence for software in connection with the Services.

6.2 Within 20 Working Days of receipt of the up-to-date Registers provided by the Supplier pursuant to Paragraph 5.3(e), the Authority shall provide written notice to the Supplier setting out:

- (a) which, if any, of the Transferable Assets the Authority requires to be transferred to the Authority and/or the Replacement Supplier ("**Transferring Assets**");
- (b) which, if any, of:
  - (i) the Exclusive Assets that are not Transferable Assets; and
  - (ii) the Non-Exclusive Assets,the Authority and/or the Replacement Supplier requires the continued use of; and
- (c) which, if any, of Transferable Contracts the Authority requires to be assigned or novated to the Authority and/or the Replacement Supplier (the "**Transferring Contracts**"),

in order for the Authority and/or its Replacement Supplier to provide the Services from the expiry of the Termination Assistance Period. Where requested by the Authority and/or its Replacement Supplier, the Supplier shall provide all reasonable assistance to the Authority and/or its Replacement Supplier to enable it to determine which Transferable Assets and Transferable Contracts the Authority and/or its Replacement Supplier requires to provide the Services or Replacement Services.

6.3 With effect from the expiry of the Termination Assistance Period, the Supplier shall sell the Transferring Assets to the Authority and/or its nominated Replacement Supplier for a consideration equal to their Net Book Value, except where:

- (a) a Termination Payment is payable by the Authority to the Supplier, in which case, payment for such Assets shall be included within the Termination Payment; or
- (b) the cost of the Transferring Asset has been partially or fully paid for through the Charges at the time of expiry or termination of this Agreement, in which case the Authority shall pay the Supplier the Net Book Value of the Transferring Asset less the amount already paid through the Charges.

6.4 Risk in the Transferring Assets shall pass to the Authority or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title to the Transferring Assets shall pass to the Authority or the Replacement Supplier (as appropriate) on payment for the same.

6.5 Where the Supplier is notified in accordance with Paragraph 6.2(b) that the Authority and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Supplier shall as soon as reasonably practicable:

- (a) procure a non-exclusive, perpetual, royalty-free licence (or licence on such other terms that have been agreed by the Authority) for the Authority and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which
- (b) procure a suitable alternative to such assets and the Authority or the Replacement Supplier shall bear the reasonable proven costs of procuring the same.

6.6 The Supplier shall as soon as reasonably practicable assign or procure the novation to the Authority and/or the Replacement Supplier of the Transferring Contracts. The Supplier shall execute such documents and provide such other assistance as the Authority reasonably requires to effect this novation or assignment.

6.7 The Authority shall:

- (a) accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and
- (b) once a Transferring Contract is novated or assigned to the Authority and/or the Replacement Supplier, carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.

6.8 The Supplier shall hold any Transferring Contracts on trust for the Authority until such time as the transfer of the relevant Transferring Contract to the Authority and/or the Replacement Supplier has been effected.

6.9 The Supplier shall indemnify the Authority (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Authority (and/or Replacement Supplier) pursuant to Paragraph 6.6 in relation to any matters arising prior to the date of assignment or novation of such Sub-contract.

## **7 Supplier personnel**

7.1 The Authority and Supplier agree and acknowledge that in the event of the Supplier ceasing to provide the Services or part of them for any reason, Schedule 9.1 (*Staff Transfer*) shall apply.

7.2 The Supplier shall not take any step (expressly or implicitly or directly or indirectly by itself or through any other person) to dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Authority and/or the Replacement Supplier.

7.3 During the Termination Assistance Period, the Supplier shall give the Authority and/or the Replacement Supplier reasonable access to the Supplier's personnel to present the case for transferring their employment to the Authority and/or the Replacement Supplier.

7.4 The Supplier shall immediately notify the Authority or, at the direction of the Authority, the Replacement Supplier of any period of notice given by the Supplier or received from any person referred to in the Staffing Information, regardless of when such notice takes effect.

7.5 The Supplier shall not for a period of 12 months from the date of transfer re-employ or re-engage or entice any employees, suppliers or Sub-contractors whose employment or engagement is transferred to the Authority and/or the Replacement Supplier.

## **8 Charges**

8.1 During the Termination Assistance Period (or for such shorter period as the Authority may require the Supplier to provide the Termination Services.

8.2 The costs of providing any Operational Services (in support of the migration of the Service) for any period beyond the Initial Term, or the Extension Period if applicable, shall be determined in accordance with the Change Control Procedure.

8.3 Except as otherwise expressly specified in this Agreement, the Supplier shall not make any charges for the services provided by the Supplier pursuant to, and the Authority shall not be obliged to pay for costs incurred by the Supplier in relation to its compliance with, this Schedule including the preparation and implementation of the Exit Plan and any activities mutually agreed between the Parties to carry on after the expiry of the Termination Assistance Period.

## **9 Apportionments**

9.1 All outgoing and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Authority and the Supplier and/or the Replacement Supplier and the Supplier (as applicable) as follows:

- (a) the amounts shall be annualised and divided by 365 to reach a daily rate;
- (b) the Authority shall be responsible for (or shall procure that the Replacement Supplier shall be responsible for) or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and
- (c) the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.

9.2 Each Party shall pay (and/or the Authority shall procure that the Replacement Supplier shall pay) any monies due under Paragraph 9.1 as soon as reasonably practicable.



## **ANNEX 1**

### **Scope of the Termination Services**

1.1 The Termination Services to be provided by the Supplier shall include such of the following services as the Authority may specify:

- (a) ceasing all non-critical Software changes (except where agreed in writing with the Authority);
- (b) notifying the Sub-contractors of procedures to be followed during the Termination Assistance Period and providing management to ensure these procedures are followed;
- (c) providing assistance and expertise as necessary to examine all operational and business processes (including all supporting documentation) in place and re-writing and implementing processes and procedures such that they are appropriate for use by the Authority and/or the Replacement Supplier after the end of the Termination Assistance Period;
- (d) delivering to the Authority the existing systems support profiles, monitoring or system logs, problem tracking/resolution documentation and status reports all relating to the 12 month period immediately prior to the commencement of the Termination Services);
- (e) providing details of work volumes and staffing requirements over the 12 month period immediately prior to the commencement of the Termination Services;
- (f) with respect to work in progress as at the end of the Termination Assistance Period, documenting the current status and stabilising for continuity during transition;
- (g) providing the Authority with any problem logs which have not previously been provided to the Authority;
- (h) providing assistance and expertise as necessary to examine all governance and reports in place for the provision of the Services and re-writing and implementing these during and for a period of 12 months after the Termination Assistance Period;
- (i) providing assistance and expertise as necessary to examine all relevant roles and responsibilities in place for the provision of the Services and re-writing and implementing these such that they are appropriate for the continuation of the Services after the Termination Assistance Period;
- (j) reviewing all Software libraries used in connection with the Services and providing details of these to the Authority and/or the Replacement Supplier;
- (k) making available to the Authority and/or the Replacement Supplier expertise to analyse training requirements and provide all necessary training for the use of tools by such staff as are nominated by the Authority (acting reasonably) at the time of termination or expiry;

- (l) assisting in establishing naming conventions for any new production site;
- (m) analysing and providing information about capacity and performance requirements, processor requirements and bandwidth requirements, and known planned requirements for capacity growth across these areas;
- (n) generating a computer listing of the Source Code of [insert details of relevant Software] in a form and on media reasonably requested by the Authority;
- (o) agreeing with the Authority a handover plan for all of the Supplier's responsibilities as set out in the Security Management Plan;
- (p) delivering copies of the production databases (with content listings) to the Authority's and/or the Replacement Supplier's operations staff (on appropriate media) as reasonably requested by the Authority;
- (q) assisting with the loading, testing and implementation of the production databases;
- (r) assisting in the execution of a parallel operation until the effective date of expiry or termination of this Agreement;
- (s) in respect of the maintenance and support of the Supplier System, providing historical performance data for the previous [insert time period];
- (t) assisting in the execution of a parallel operation of the maintenance and support of the Supplier System until the end of the Termination Assistance Period or as otherwise specified by the Authority (provided that these Services shall end on a date no later than the end of the Termination Assistance Period);
- (u) providing an information pack listing and describing the Services for use by the Authority in the procurement of the Replacement Services;
- (v) answering all reasonable questions from the Authority and/or the Replacement Supplier regarding the Services;
- (w) agreeing with the Authority and/or the Replacement Supplier a plan for the migration of the Authority Data to the Authority and/or the Replacement Supplier;
- (x) providing access to the Authority and/or the Replacement Supplier during the Termination Assistance Period and for a period not exceeding 6 months afterwards for the purpose of the smooth transfer of the Services to the Authority and/or the Replacement Supplier:
  - (i) to information and documentation relating to the Transferring Services that is in the possession or control of the Supplier or its Sub-contractors (and the Supplier agrees and shall procure that its Sub-contractors do not destroy or dispose of that information within this period) including the right to take reasonable copies of that material; and

- (ii) following reasonable notice and during the Supplier's normal business hours, to members of the Supplier Personnel who have been involved in the provision or management of the Services and who are still employed or engaged by the Supplier or its Sub-contractors; and
- (y) knowledge transfer services, including:
  - (i) transferring all training material and providing appropriate training to those Authority and/or Replacement Supplier staff responsible for internal training in connection with the provision of the Services;
  - (ii) providing for transfer to the Authority and/or the Replacement Supplier of all knowledge reasonably required for the provision of the Services which may, as appropriate, include information, records and documents; and
  - (iii) providing the Supplier and/or the Replacement Supplier with access to such members of the Supplier's or its Sub-contractors' personnel as have been involved in the design, development, provision or management of the Services and who are still employed or engaged by the Supplier or its Sub-contractors.

1.2 The Supplier shall:

- (a) provide a documented plan relating to the training matters referred to in Paragraph 1.1(k) for agreement by the Authority at the time of termination or expiry of this Agreement;
- (b) co-operate fully in the execution of the handover plan agreed pursuant to Paragraph 1.1(o), providing skills and expertise of a suitable standard; and
- (c) fully co-operate in the execution of the Authority Database migration plan agreed pursuant to Paragraph 1.1(w), providing skills and expertise of a reasonably acceptable standard.

1.3 To facilitate the transfer of knowledge from the Supplier to the Authority and/or its Replacement Supplier, the Supplier shall provide a detailed explanation of the procedures and operations used to provide the Services, the change management process and other standards and procedures to the operations personnel of the Authority and/or the Replacement Supplier.

1.4 The information which the Supplier shall provide to the Authority and/or the Replacement Supplier pursuant to Paragraph 1.1(y) shall include:

- (a) copies of up-to-date procedures and operations manuals;
- (b) product information;
- (c) agreements with third party suppliers of goods and services which are to be transferred to the Authority and/or the Replacement Supplier;
- (d) key support contact details for third party supplier personnel under contracts which are to be assigned or novated to the Authority pursuant to this Schedule;

- (e) information regarding any unresolved faults in progress at the commencement of the Termination Assistance Period as well as those expected to be in progress at the end of the Termination Assistance Period;
- (f) details of physical and logical security processes and tools which will be available to the Authority; and
- (g) any relevant interface information.

1.5 During the Termination Assistance Period the Supplier shall grant any agent or personnel (including employees, consultants and Suppliers) of the Replacement Supplier and/or the Authority access, during business hours and upon reasonable prior written notice, to any Sites for the purpose of effecting a prompt knowledge transfer provided that:

- (a) any such agent or personnel (including employees, consultants and suppliers) having access to any Sites pursuant to this Paragraph 1.5 shall:
  - (a) sign a confidentiality undertaking in favour of the Supplier (in such form as the Supplier shall reasonably require); and
  - (b) during each period of access comply with the security, systems and facilities operating procedures of the Supplier relevant to such Site and that the Authority deems reasonable; and
- (b) the Authority and/or the Replacement Supplier shall pay the reasonable, proven and proper costs of the Supplier incurred in facilitating such access.

**PHOENIX II AGREEMENT FOR SERVICES SCHEDULES**

**SCHEDULE 8.6**

**BUSINESS CONTINUITY AND DISASTER RECOVERY**

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## Definitions

1.1 In this Schedule, the following definitions shall apply:

<b>“Business Continuity Plan”</b>	has the meaning given in Paragraph 2.2(a)(ii);
<b>“Business Continuity Services”</b>	has the meaning given in Paragraph 4.2(b);
<b>“Disaster”</b>	the occurrence of one or more events which, either separately or cumulatively, mean that the Services, or a material part of the Services will be unavailable for period of 10 working days or which is reasonably anticipated will mean that the Services or a material part of the Services will be unavailable for that period;
<b>“Disaster Recovery Plan”</b>	has the meaning given in Paragraph 2.2(a)(iii);
<b>“Disaster Recovery Services”</b>	the services embodied in the processes and procedures for restoring the Services following the occurrence of a Disaster;
<b>“Disaster Recovery System”</b>	the system identified by the Supplier in the Supplier Solution which shall be used for the purpose of delivering the Disaster Recovery Services;
<b>“Related Service Provider”</b>	any person who provides services to the Authority in relation to this Agreement from time to time which persons include as at the Effective Date.

## 2 BCDR plan

2.1 Within 40 Working Days from the Effective Date the Supplier shall prepare and deliver to the Authority for the Authority's written approval a plan, which shall detail the processes and arrangements that the Supplier shall follow to:

- (a) ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services; and
- (b) the recovery of the Services in the event of a Disaster.

2.2 The BCDR Plan shall:

- (a) be divided into three parts:
  - (i) Part A which shall set out general principles applicable to the BCDR Plan;
  - (ii) Part B which shall relate to business continuity (the **“Business Continuity Plan”**); and

- (iii) Part C which shall relate to disaster recovery (the “**Disaster Recovery Plan**”); and
  - (b) unless otherwise required by the Authority in writing, be based upon and be consistent with the provisions of Paragraphs 3, 4 and 5.
- 2.3 Following receipt of the draft BCDR Plan from the Supplier, the Authority shall:
- (a) review and comment on the draft BCDR Plan as soon as reasonably practicable; and
  - (b) notify the Supplier in writing that it approves or rejects the draft BCDR Plan no later than 20 Working Days after the date on which the draft BCDR Plan is first delivered to the Authority.
- 2.4 If the Authority rejects the draft BCDR Plan:
- (a) the Authority shall inform the Supplier in writing of its reasons for its rejection; and
  - (b) the Supplier shall then revise the draft BCDR Plan (taking reasonable account of the Authority's comments) and shall re-submit a revised draft BCDR Plan to the Authority for the Authority's approval within 20 Working Days of the date of the Authority's notice of rejection. The provisions of Paragraph 2.3 and this Paragraph 2.4 shall apply again to any resubmitted draft BCDR Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

### **3 Part A of the BCDR plan and general principles and requirements**

- 3.1 Part A of the BCDR Plan shall:
- (a) set out how the business continuity and disaster recovery elements of the Plan link to each other;
  - (b) provide details of how the invocation of any element of the BCDR Plan may impact upon the operation of the Services and any services provided to the Authority by a Related Service Provider;
  - (c) contain an obligation upon the Supplier to liaise with the Authority and (at the Authority's request) any Related Service Provider with respect to issues concerning business continuity and disaster recovery where applicable;
  - (d) detail how the BCDR Plan links and interoperates with any overarching and/or connected disaster recovery or business continuity plan of the Authority and any of its other Related Service Providers in each case as notified to the Supplier by the Authority from time to time;
  - (e) contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multi-channels (including but without limitation a web-site (with FAQs), e-mail, phone and fax) for both portable and desk top configurations, where required by the Authority;



- (f) contain a risk analysis, including:
  - (i) failure or disruption scenarios and assessments and estimates of frequency of occurrence;
  - (ii) identification of any single points of failure within the Services and processes for managing the risks arising therefrom;
  - (iii) identification of risks arising from the interaction of the Services with the services provided by a Related Service Provider; and
  - (iv) a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
- (g) provide for documentation of processes, including business processes, and procedures;
- (h) set out key contact details (including roles and responsibilities) for the Supplier (and any Sub-contractors) and for the Authority;
- (i) identify the procedures for reverting to “normal service”;
- (j) set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to ensure that there is no more than the accepted amount of data loss and to preserve data integrity;
- (k) identify the responsibilities (if any) that the Authority has agreed it will assume in the event of the invocation of the BCDR Plan; and
- (l) provide for the provision of technical advice and assistance to key contacts at the Authority as notified by the Authority from time to time to inform decisions in support of the Authority’s business continuity plans.

3.2 The BCDR Plan shall be designed so as to ensure that:

- (a) the Services are provided in accordance with this Agreement at all times during and after the invocation of the BCDR Plan;
- (b) the adverse impact of any Disaster, service failure, or disruption on the operations of the Authority is minimal as far as reasonably possible;
- (c) it complies with the relevant provisions of ISO/IEC 27002 and all other industry standards from time to time in force; and
- (d) there is a process for the management of disaster recovery testing detailed in the BCDR Plan.

3.3 The BCDR Plan shall be upgradeable and sufficiently flexible to support any changes to the Services or to the business processes facilitated by and the business operations supported by the Services.

3.4 The Supplier shall not be entitled to any relief from its obligations under the Performance Indicators or to any increase in the Charges to the extent that a Disaster occurs as a consequence of any breach by the Supplier of this Agreement.

#### **4 Business continuity plan - principles and contents**

4.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes and operations facilitated by the Services remain supported and to ensure continuity of the business operations supported by the Services including, unless the Authority expressly states otherwise in writing:

- (a) the alternative processes (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the Services; and
- (b) the steps to be taken by the Supplier upon resumption of the Services in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.

4.2 The Business Continuity Plan shall:

- (a) address the various possible levels of failures of or disruptions to the Services;
- (b) set out the services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Services (such services and steps, the **"Business Continuity Services"**);
- (c) specify any applicable Performance Indicators with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the Performance Indicators in respect of other Services during any period of invocation of the Business Continuity Plan; and
- (d) clearly set out the conditions and/or circumstances under which the Business Continuity Plan is invoked.

#### **5 Disaster recovery plan - principles and contents**

5.1 The Disaster Recovery Plan shall be designed so as to ensure that upon the occurrence of a Disaster the Supplier ensures continuity of the business operations of the Authority supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.

5.2 The Disaster Recovery Plan shall be invoked only upon the occurrence of a Disaster.

5.3 The Disaster Recovery Plan shall include the following:

- (a) the technical design and build specification of the Disaster Recovery System;
- (b) details of the procedures and processes to be put in place by the Supplier in relation to the Disaster Recovery System and the provision of the Disaster

Recovery Services and any testing of the same including but not limited to the following:

- (i) data centre and disaster recovery site audits;
  - (ii) backup methodology and details of the Supplier's approach to data back-up and data verification;
  - (iii) identification of all potential disaster scenarios;
  - (iv) risk analysis;
  - (v) documentation of processes and procedures;
  - (vi) hardware configuration details;
  - (vii) network planning including details of all relevant data networks and communication links;
  - (viii) invocation rules;
  - (ix) Service recovery procedures; and
  - (x) steps to be taken upon resumption of the Services to address any prevailing effect of the failure or disruption of the Services;
- (c) any applicable Performance Indicators with respect to the provision of the Disaster Recovery Services and details of any agreed relaxation to the Performance Indicators in respect of other Services during any period of invocation of the Disaster Recovery Plan;
- (d) details of how the Supplier shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
- (e) access controls to any disaster recovery sites used by the Supplier in relation to its obligations pursuant to this Schedule; and
- (f) testing and management arrangements.

## **6 Review and amendment of the BCDR plan**

6.1 The Supplier shall review the BCDR Plan (and the risk analysis on which it is based):

- (a) on a regular basis and as a minimum once every 6 months;
- (b) within three calendar months of the BCDR Plan (or any part) having been invoked pursuant to Paragraph 8; and
- (c) where the Authority requests any additional reviews (over and above those provided for in Paragraphs 6.1(a) and 6.1(b)) by notifying the Supplier to such effect in writing, whereupon the Supplier shall conduct such reviews in accordance with the Authority's written requirements. Prior to starting its

review, the Supplier shall provide an accurate written estimate of the total costs payable by the Authority for the Authority's approval. The costs of both Parties of any such additional reviews shall be met by the Authority except that the Supplier shall not be entitled to charge the Authority for any costs that it may incur above any estimate without the Authority's prior written approval.

6.2 Each review of the BCDR Plan pursuant to Paragraph 6.1 shall be a review of the procedures and methodologies set out in the BCDR Plan and shall assess their suitability having regard to any change to the Services or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the BCDR Plan or the last review of the BCDR Plan and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the BCDR Plan. The review shall be completed by the Supplier within the period required by the BCDR Plan or, if no such period is required, within such period as the Authority shall reasonably require. The Supplier shall, within 20 Working Days of the conclusion of each such review of the BCDR Plan, provide to the Authority a report (a **"Review Report"**) setting out:

- (a) the findings of the review;
- (b) any changes in the risk profile associated with the Services; and
- (c) the Supplier's proposals (the **"Supplier's Proposals"**) for addressing any changes in the risk profile and its proposals for amendments to the BCDR Plan following the review detailing the impact (if any and to the extent that the Supplier can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any services or systems provided by a third party.

6.3 Following receipt of the Review Report and the Supplier's Proposals, the Authority shall:

- (a) review and comment on the Review Report and the Supplier's Proposals as soon as reasonably practicable; and
- (b) notify the Supplier in writing that it approves or rejects the Review Report and the Supplier's Proposals no later than 20 Working Days after the date on which they are first delivered to the Authority.

6.4 If the Authority rejects the Review Report and/or the Supplier's Proposals:

- (a) the Authority shall inform the Supplier in writing of its reasons for its rejection; and
- (b) the Supplier shall then revise the Review Report and/or the Supplier's Proposals as the case may be (taking reasonable account of the Authority's comments and carrying out any necessary actions in connection with the revision) and shall re-submit a revised Review Report and/or revised Supplier's Proposals to the Authority for the Authority's approval within 20 Working Days of the date of the Authority's notice of rejection. The provisions of Paragraph 6.3 and this Paragraph 6.4 shall apply again to any resubmitted Review Report and Supplier's Proposals, provided that either

Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

6.5 The Supplier shall as soon as is reasonably practicable after receiving the Authority's approval of the Supplier's Proposals (having regard to the significance of any risks highlighted in the Review Report) effect any change in its practices or procedures necessary so as to give effect to the Supplier's Proposals. Any such change shall be at the Supplier's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Services.

## **7 Testing of the BCDR plan**

7.1 The Supplier shall test the BCDR Plan on a regular basis (and in any event not less than once in every Contract Year). Subject to Paragraph 7.2, the Authority may require the Supplier to conduct additional tests of some or all aspects of the BCDR Plan at any time where the Authority considers it necessary, including where there has been any change to the Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the BCDR Plan.

7.2 If the Authority requires an additional test of the BCDR Plan, it shall give the Supplier written notice and the Supplier shall conduct the test in accordance with the Authority's requirements and the relevant provisions of the BCDR Plan. The Supplier's costs of the additional test shall be borne by the Authority unless the BCDR Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.

7.3 The Supplier shall undertake and manage testing of the BCDR Plan in full consultation with the Authority and shall liaise with the Authority in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Authority in this regard. Each test shall be carried out under the supervision of the Authority or its nominee.

7.4 The Supplier shall ensure that any use by it or any Sub-contractor of "live" data in such testing is first approved with the Authority. Copies of live test data used in any such testing shall be (if so required by the Authority) destroyed or returned to the Authority on completion of the test.

7.5 The Supplier shall, within 20 Working Days of the conclusion of each test, provide to the Authority a report setting out:

- (a) the outcome of the test;
- (b) any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and
- (c) the Supplier's proposals for remedying any such failures.

7.6 Following each test, the Supplier shall take all measures requested by the Authority, (including requests for the re-testing of the BCDR Plan) to remedy any failures in the BCDR Plan and such remedial activity and re-testing shall be completed by the Supplier, at no additional cost to the Authority, by the date reasonably required by the Authority and set out in such notice.

7.7 For the avoidance of doubt, the carrying out of a test of the BCDR Plan (including a test of the BCDR Plan's procedures) shall not relieve the Supplier of any of its obligations under this Agreement.

7.8 The Supplier shall also perform a test of the BCDR Plan in the event of any major reconfiguration of the Services or as otherwise reasonably requested by the Authority.

## **8 Invocation of the BCDR plan**

8.1 In the event of a complete loss of service or in the event of a Disaster, the Supplier shall immediately invoke the BCDR Plan (and shall inform the Authority promptly of such invocation). In all other instances the Supplier shall invoke or test the BCDR Plan only with the prior consent of the Authority.

**PHOENIX II AGREEMENT FOR SERVICES SCHEDULES**

**SCHEDULE 8.7**

**CONDUCT OF CLAIMS**

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## Conduct of Claims

### 1 Indemnities

1.1 This Schedule shall apply to the conduct, by a Party from whom an indemnity is sought under this Agreement (the “**Indemnifier**”), of claims made by a third person against a party having (or claiming to have) the benefit of the indemnity (the “**Beneficiary**”).

1.2 If the Beneficiary receives any notice of any claim for which it appears that the Beneficiary is, or may become, entitled to indemnification under this Agreement (a “**Claim**”), the Beneficiary shall give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within 10 Working Days of receipt of the same.

1.3 Subject to Paragraph 2, on the giving of a notice by the Beneficiary, 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 2.2, 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.

1.4 With respect to any Claim conducted by the Indemnifier pursuant to Paragraph 1.3:

- (a) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the Claim;
- (b) the Indemnifier shall not bring the name of the Beneficiary into disrepute;
- (c) 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
- (d) the Indemnifier shall conduct the Claim with all due diligence.

1.5 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 Agreement if:

- (a) the Indemnifier is not entitled to take conduct of the Claim in accordance with Paragraph 1.3;
- (b) the Indemnifier fails to notify the Beneficiary in writing of its intention to take conduct of the relevant Claim within 10 Working Days of the notice from the Beneficiary or if the Indemnifier notifies the Beneficiary in writing that it does not intend to take conduct of the Claim; or
- (c) the Indemnifier fails to comply in any material respect with the provisions of Paragraph 1.4.

## 2 Sensitive claims

2.1 With respect to any Claim which the Beneficiary, acting reasonably, considers is likely to have an adverse impact on the general public's perception of the Beneficiary (a "**Sensitive Claim**"), the Indemnifier shall be entitled to take conduct of any defence, dispute, compromise or appeal of the Sensitive Claim only 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 it fails to do so, 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.

2.2 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 1.3 applies if, in the reasonable opinion of the Beneficiary, the Claim is, or has become, a Sensitive Claim.

## 3 Recovery of sums

3.1 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:

- (a) 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
- (b) the amount paid to the Beneficiary by the Indemnifier in respect of the Claim under the relevant indemnity.

## 4 Mitigation

4.1 Each of the Authority and the Supplier shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Schedule.

**PHOENIX II AGREEMENT FOR SERVICES SCHEDULES**

**SCHEDULE 8.8**

**COMPLIANCE REGIME**

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**1 Supplier's Compliance Regime**

- (a) The Supplier shall perform the Services in accordance with the requirements of the Agreement. This includes procuring and hiring vehicles using supplier's that are qualified under the Crown Commercial Services (CCS) frameworks to deliver such services.
- (b) In addition to its capacity as Supplier under this Agreement, the Supplier is also a supplier of vehicles to the Authority for Phoenix II through existing contracts that were placed in relation to the CCS Vehicle Lease Framework (RM858) Lots 3, 5 and 7 ("Babcock Contract Hire Contracts").
- (c) S. MacNeillie and Son Limited is a supplier into the Vehicle Conversion and Reconditioning Services Framework (RM956)
- (d) In February 2015, S. MacNeillie and Son Limited ("MacNeillie") was acquired by the Support Services Division of Babcock.
- (e) Notwithstanding the inherent separation of operating in distinct divisions, the Supplier acknowledges that there is a need to demonstrate to the Authority that there are appropriate processes implemented within the Supplier's organisation and MacNeillie to ensure that there is separation between the Supplier's personnel involved in, and information related to, delivering the services in accordance with this Agreement ("Phoenix II Team"), and MacNeillie's personnel (and related information) bidding into the Phoenix II Team for provision of conversion and reconditioning services under the RM956 Framework ("MacNeillie Team").
- (f) The Supplier further acknowledges that there is a need to demonstrate to the Authority that there are appropriate processes implemented within the Supplier's organisation to ensure that there is separation between the Supplier's personnel involved in managing the Babcock Contract Hire Contracts as part of the Phoenix II service delivery and the Supplier's personnel involved in delivering the services in accordance with the Babcock Contract Hire Contracts ("Babcock Contract Hire Team").
- (g) The Phoenix II Team, the Babcock Contract Hire Team and the MacNeillie Team shall ensure that their respective Phoenix II Information Barrier Policies attached at Annex 1 and Annex 2 to this Schedule 8.8 shall be implemented and incorporated into their respective Quality Management Systems.

**Annex 1 - Information Barrier Policy between Babcock Phoenix II and MacNeillie**

- **Purpose:**

Babcock Land Limited (“Babcock Phoenix II”) has been awarded a contract (Phoenix II) that includes procuring, hiring and managing vehicles.

Babcock Phoenix II acting as Agent to the Authority, shall wherever possible, procure conversion and reconditioning services from the Crown Commercial Services Vehicle Condition and Reconditioning Services Framework (RM956) (“Framework”).

S. MacNeillie and Son Limited is a supplier into the Framework. In February 2015, S. MacNeillie and Son (“MacNeillie”) was acquired by the Support Service Division (SSD) of Babcock International; whereas Babcock Phoenix II is part of the Defence and Security Division (D&S) of Babcock.

Notwithstanding the inherent separation of operating in distinct divisions, SSD and D&S are part of the same ultimate parent organisation, Babcock International Group.

- This Information Barrier Policy between Phoenix II and MacNeillie (“Policy”) sets out the process by which Babcock Phoenix II and MacNeillie shall ensure that there is separation between Babcock Phoenix II personnel involved in (and information related to) delivering of the services in Phoenix II (“Phoenix II Team” and MacNeillie’s personnel (and related information) bidding into the Phoenix II Team for provision of conversion and reconditioning services (“MacNeillie Team”).

- Accordingly, the Policy has been created to separately maintain and preserve the integrity of information and persons involved in each of the Phoenix II Team and the MacNeillie Team within Babcock.

• Document Change Information	
Issue 1.0	<i>New policy</i>

- **In Scope:** This document details the policy agreed between Babcock Phoenix II, MacNeillie, and the Authority.
- **Responsibility:**

Role	Procedure Responsibilities
Commercial	Adhere to Policy.
Finance	Adhere to Policy.
Technical	Adhere to Policy.
D&S Board	Adhere to Policy.
SSD Board	Adhere to Policy.
Supply Chain	Adhere to Policy.

- **Procedure:** The procedure which forms part of the Policy is as follows:
  - 1) **Applicability:** With the exception of individuals involved in the governance process and general administration duties, this Policy shall apply to all Babcock Phoenix II and MacNeillie employees involved in any tender competition for the procurement of conversion and reconditioning services from the suppliers on the Framework and shall apply to all Babcock D&S and SSD sites occupied by the Phoenix II Team and/or the MacNeillie Team.
  - 2) **Confidentiality:** Work on the matter shall be restricted to defined teams who will be briefed as to the particular confidentiality of the matter and the consequent importance of the policy. These defined teams will not engage with one another in relation to their respective workflows other than in strict accordance with this Policy. If additional persons are required to be added to the team they will join the team only after having been similarly briefed. The defined team members shall be required to sign the relevant employee confidentiality agreement appended to this Policy.
  - 3) **Communication:** A list of persons working on both teams is set out at Appendix 1 and shall be circulated within Babcock. Any changes to team members shall be circulated within Babcock and will also be notified to the Authority. Any communication between these teams in relation to any tender competition for the procurement of conversion and reconditioning services from the Framework shall be in accordance with the bid process notified to all suppliers taking part in the tender competition.
  - 4) **Physical separation:** Babcock shall ensure that the MacNeillie and the Phoenix II Team are physically separated.
  - 5) **Document management:** Information Technology (IT) shall ensure that electronic files relating to each workflow are maintained and that access is restricted to the team authorised to work on the workflow to which such files relate.
  - 6) **Supervisory arrangements:** Direct and separate supervisory arrangements will be in place for the MacNeillie Team and the Phoenix II Team respectively.

- 7) **Restrictions:** Members of the MacNeillie Team will not be involved in Phoenix II during the procurement phase.
- 8) **Audit:** The Authority may require Babcock to demonstrate compliance with this Policy, and may request an inspection. Babcock may also appoint an auditor to conduct periodic reviews.

Reference Documents
<i>Appendix 1 – Information Barrier Policy between Babcock Phoenix II and MacNeillie - Team List</i>
<i>Appendix 2 - Information Barrier Policy between Babcock Phoenix II and MacNeillie – MacNeillie - Employee confidentiality agreement</i>
<i>Appendix 3 – Phoenix II Team - Information Barrier Policy between Babcock Phoenix II and MacNeillie - Phoenix II - Employee confidentiality agreement</i>



**Appendix 1 - Information Barrier Policy between Babcock Phoenix II and MacNeillie****Team List**

Phoenix II Team	MacNeillie Team

**Appendix 2 - Information Barrier Policy between Babcock Phoenix II and MacNeillie****MacNeillie Employee Confidentiality Agreement**

To: [employee]

You are a member of MacNeillie's defined bid team that may take part in a tender process or processes in relation to conversion and reconditioning services of vehicles to the Phoenix II Team ("the Transaction"). As you are aware, to guard against any perception of a conflict of interest arising, certain information barrier arrangements have been put in place.

These include the fact that, during the competitive period:

- a) you are not to discuss the Transaction, or any details in relation to it, with any employee who is a member of the Phoenix II Team;
- b) (except for governance or general administration purposes), you should not forward or give access to incoming or outgoing documentation, or correspondence in relation to the Transaction to any employee of the company other than an existing member of the MacNeillie Team, or, who by virtue of such forwarding or access becomes a member of the MacNeillie Team; and
- c) You should ensure that the electronic documentation or correspondence that you create in relation to the Transaction is restricted such that only members of the MacNeillie Team have access to it.

Please indicate your acceptance of this letter by signing and returning the enclosed copy of this agreement.

CONFIRMED

.....  
[MacNeillie Team member] signature

.....  
Print name

.....  
Date

**Appendix 3 - Information Barrier Policy between Babcock Phoenix II and MacNeillie****Babcock Phoenix II Employee Confidentiality Agreement**

To: [employee]

You are a member of the defined Babcock Phoenix II Team that may undergo the evaluation of a tender process or processes in relation to conversion and reconditioning services from framework suppliers via the Crown Commercial Services Vehicle Conversion and Reconditioning Services Framework ("Transaction"). To guard against any perception of a conflict of interest arising, certain information barrier arrangements have been put in place.

These include the fact that during the competitive period:

- a) you are not to discuss the Transaction, or any details in relation to it, with any employee who is a member of the defined MacNeillie Team;
- b) (except for governance or general administration purposes), you should not forward or give access to incoming or outgoing documentation or correspondence in relation to the Transaction to any employee of the company other than an existing member of the defined Babcock Phoenix II Team or who by virtue of such forwarding or access becomes a member of the defined Babcock Phoenix II Team; and
- c) you should ensure that the profile of any electronic documentation or correspondence that you create in relation to the Transaction is restricted such that only members of the defined Babcock Phoenix II Team have access to it.

Please indicate your acceptance of this letter by signing and returning the enclosed copy of this agreement.

.....  
[Babcock Phoenix II Team member] signature

.....  
Print name

.....  
Date

## **Annex 2 – Information Barrier Policy between Babcock Phoenix II and Babcock Contract Hire**

- **Purpose:**

*Babcock Land Limited has been awarded a contract (Phoenix II) that includes procuring, hiring and managing vehicles.*

*Babcock Land Limited is also a supplier of vehicles to the Authority for Phoenix II through contracts that were placed in relation to the Crown Commercial Services Vehicle Lease Framework (RM858) Lots 3, 5 and 7 ("Framework Contracts").*

*The team responsible for managing the Phoenix II contract ("Phoenix II team") and the team responsible for operating the Framework Contracts ("Babcock Contract Hire Team") operate separately within Babcock's Defence and Security Division (D&S).*

- *This Information Barrier Policy ("Policy") sets out the process by which Babcock Land Limited shall ensure that there is separation between the Phoenix II team and the 'Babcock Contract Hire Team'.*
- *Accordingly, this Policy has been created to separately maintain and preserve the integrity of information and persons involved in each of the Phoenix II Team and the Babcock Contract Hire Team within Babcock.*

Document Change Information	
Issue 1.0	<i>New policy</i>

- **In Scope:** *This document details the policy agreed between Babcock Phoenix II, Babcock Contract Hire and the Authority.*

- **Responsibility:**

Role	Procedure Responsibilities
Commercial	Adhere to below Policy.
Finance	Adhere to below Policy.
Technical	Adhere to below Policy.
D&S Board	Adhere to below Policy.
Supply Chain	Adhere to below Policy.

- **Procedure:** The procedure which forms part of the Policy is as follows:
  - 1) **Applicability:** With the exception of individuals involved in the governance process and general administration duties, this Policy shall apply to all Babcock employees involved in managing or delivering the Framework Contracts and shall apply to all Babcock D&S sites occupied by the Babcock Contract Hire Team and/or the Phoenix II Team.
  - 2) **Confidentiality:** Work on the matter shall be restricted to defined teams who will be briefed as to the particular confidentiality of the matter and the consequent importance of the policy. These defined teams will not engage with one another in relation to their respective workflows other than in strict accordance with this Policy. If additional persons are required to be added to the team they will join the team only after having been similarly briefed. The defined team members shall be required to sign the relevant employee confidentiality agreement appended to this Policy.
  - 3) **Communication:** A full list of persons working on both teams is as set out in Appendix 1 and shall be circulated within Babcock. Any changes to team members shall be circulated within Babcock and will also be notified to the Authority. Any communication between the teams in relation to the Framework Contracts shall be in accordance with the bid process notified to all suppliers taking part in the tender competition.
  - 4) **Physical separation:** Babcock shall ensure that the Babcock Contract Hire Team and the Phoenix II Team are physically separated.
  - 5) **Document management:** Information Technology (IT) shall ensure that electronic files relating to each workflow are maintained and that access is restricted to the team authorised to work on the workflow to which such files relate.
  - 6) **Supervisory arrangements:** Direct and separate supervisory arrangements will be in place for the Babcock Contract Hire Team and the Phoenix II Team respectively.
  - 7) **Audit:** The Authority may require Babcock to demonstrate compliance with this Policy, and may request an inspection. Babcock may also appoint an auditor to conduct periodic reviews.

**Reference Documents**

- *Information Barrier Policy between Babcock Phoenix II and Babcock Contract Hire - Team List*
- *Information Barrier Policy between Babcock Phoenix II and Babcock Contract Hire – Babcock Contract Hire Employee Confidentiality Agreement*
- *Information Barrier Policy between Babcock Phoenix II and Babcock Contract Hire – Babcock Phoenix II Employee Confidentiality Agreement*

**Appendix 1 - Information Barrier Policy between Babcock Phoenix II and Babcock  
Contract Hire****Team List**

<b>Phoenix II Team</b>	<b><i>Babcock Contract Hire Team</i></b>

**Appendix 2 - Information Barrier Policy between Babcock Phoenix II and Babcock  
Contract Hire**

**Babcock Contract Hire Employee Confidentiality Agreement**

To: [employee]

You are a member of the Babcock Contract Hire Team that supplies vehicles to the Authority to support the delivery of the Phoenix II contract ("Transactions"). As you are aware, to guard against any perception of a conflict of interest arising, certain information barrier arrangements have been put in place.

These include the fact that whilst there are vehicles being provided by Babcock Contract Hire to support the Phoenix II contract:

- a) You are to only discuss the Transactions with members of the Phoenix II Team on a strictly "at arm's length" basis as supplier and customer;
- b) (except for governance or general administration purposes), you should not forward or give access to incoming or outgoing documentation, or correspondence in relation to the Transactions to any employee of the company other than an existing member of the Babcock Contract Hire Team, or, who by virtue of such forwarding or access becomes a member of the Babcock Contract Hire Team; and
- c) You should ensure that the electronic documentation or correspondence that you create in relation to the Transactions is restricted such that only members of the Babcock Contract Hire Team have access to it.

Please indicate your acceptance of this letter by signing and returning the enclosed copy of this agreement.

CONFIRMED

.....  
[Babcock Contract Hire Team member] signature

.....  
Print name

.....  
Date



**Appendix 3 - Information Barrier Policy between Babcock Phoenix II and Babcock  
Contract Hire**

**Babcock Phoenix II Employee Confidentiality Agreement**

To: [employee]

You are a member of the defined Phoenix II Team that manages vehicles supplied by Babcock Contract Hire to support the delivery of the Phoenix II contract ("Transaction"). As you are aware, to guard against any perception of a conflict of interest arising, certain information barrier arrangements have been put in place.

These include the fact that whilst there are vehicles being provided by Babcock Contract Hire to support the Phoenix II contract:

- a) You are to only discuss the Transactions with members of the Babcock Contract Hire Team on a strictly "at arm's length" basis as customer supplier;
- b) (except for governance or general administration purposes), you should not forward or give access to incoming or outgoing documentation or correspondence in relation to the Transaction to any employee of the company other than an existing member of the defined Phoenix II Team or who by virtue of such forwarding or access becomes a member of the defined Phoenix II Team; and
- c) You should ensure that the profile of any electronic documentation or correspondence that you create in relation to the Transaction is restricted such that only members of the defined Phoenix II Team have access to it.

Please indicate your acceptance of this letter by signing and returning the enclosed copy of this Agreement.

CONFIRMED

.....  
[Phoenix II Team member] signature

.....  
Print name

.....  
Date

**PHOENIX II AGREEMENT SERVICES SCHEDULES**

**SCHEDULE 9.1**

**STAFF TRANSFER**

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## Staff Transfer

### 1 Definitions

In this Schedule 9.1 Part A, the following definitions shall apply:

<b>“DPA”</b>	means the Data Protection Act 1998;
<b>“Employing Sub-Contractor”</b>	means any sub-contractor of the Supplier providing any part of the Services who is or is to be the employer of an Authority employee, a Previous Supplier Employee or an Unexpected Employee;
<b>“Group”</b>	means in relation to a company, that company, any subsidiary or holding company from time to time of that company and any subsidiary from time to time of a holding company of that company (reference to a holding company or a subsidiary means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in sections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee) by way of security or in connection with the taking of security, or (b) its nominee);
<b>“New Provider”</b>	means any replacement service provider or providers engaged to provide the Services (or part thereof) or substantially similar services or part thereof continue to be provided by the Authority after partial termination, termination or expiry of this Contract;
<b>“Previous Supplier”</b>	any supplier performing part of the Services prior to the Relevant Transfer Date;
<b>“Previous Supplier Employee”</b>	means an employee of a Previous Supplier who immediately before the Relevant Transfer Date is assigned to carry out the services to be carried out by the Supplier or sub-contractor under this Contract (such employees being listed in 20160226-PHOENIX_II_TUPE_DATA-OS) who has not been dismissed, resigned, been reassigned or objected to the Relevant Transfer;
<b>“Relevant Transfer”</b>	means a transfer to the Supplier or an Employing sub-contractor of a Previous Supplier Employee pursuant to this Contract and the Transfer Regulations;
<b>“Relevant Transfer Date”</b>	means the date on which a Relevant Transfer is effected for Previous Supplier Employees;
<b>“Relevant Statutory”</b>	has the same meaning as in Regulation 8 of the Transfer

<b>Scheme”</b>	Regulations;
<b>“Services”</b>	required in accordance with Section B of the Agreement relating to the PHOENIX II Fleet Management Service;
<b>“Transfer Regulations”</b>	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time and/or the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006 (as amended from time to time) or any equivalent legislation implementing the Acquired Rights Directive in the relevant jurisdiction, as appropriate;

**PART A****EMPLOYEE TRANSFER ARRANGEMENT ON ENTRY****2 Previous supplier's employees****2.1 Employee Information**

- 2.1.1 No later than three months prior to the Relevant Transfer Date the Authority shall provide to the Supplier the information listed in Appendix 1 of this Schedule 9.1 Part A in respect of Previous Supplier Employees to the extent that such information has been provided to the Authority by the Previous Supplier.
- 2.1.2 The Authority shall provide the Supplier with any update to the information provided under paragraph 2.1.1 as soon as is reasonably practicable, to the extent that such information has been provided to the Authority by the Previous Supplier.
- 2.1.3 The Supplier shall provide any information provided to it by the Authority pursuant to paragraph 2.1.1 to an Employing Sub-Contractor within seven Business Days of receipt to the extent that such Previous Supplier Employees are to transfer to an Employing Sub-Contractor under a Relevant Transfer on the Relevant Transfer Date.
- 2.1.4 The Authority's obligations provided in paragraphs 2.1.1 and 2.1.2 are subject to the Authority and any Previous Supplier's obligations in respect of the DPA and any data provided by the Authority in accordance with paragraphs 2.1.1 and 2.1.2 shall be provided in anonymous form in order to enable its disclosure. The Authority shall provide to the Supplier such data in non-anonymous form no later than 28 days prior to the Relevant Transfer to the extent that the Authority is permitted under the DPA to do so and the Previous Supplier has not already disclosed such data to the Supplier in accordance with the Transfer Regulations.
- 2.1.5 The Authority does not warrant the accuracy of the information provided under paragraphs 2.1.1 and 2.1.2.

**2.2 Obligations in respect of previous supplier employees**

- 2.2.1 The Supplier and the Authority acknowledge (and the Supplier shall procure that the Employing Sub-Contractor acknowledges) that the provision of the Services under this Contract will constitute a Relevant Transfer.
- 2.2.2 The Supplier agrees (and will procure that each Employing Sub-Contractor agrees) that from the Relevant Transfer Date the contracts of employment of any Previous Supplier Employees together with any collective agreements (save insofar as such contracts and such agreements relate to benefits for old age, invalidity or survivors under any occupational pension scheme or otherwise do not transfer pursuant to regulation 4A of the Transfer Regulations) will take effect as if originally made between the Supplier or the Employing Sub-Contractor and the Previous Supplier Employees (or the relevant trade union, as the case may be) subject to any variations to such contracts of employment made pursuant to Regulation 9 of the Transfer Regulations, where applicable.
- 2.2.3 The Parties acknowledge that:
- a Previous Supplier shall have responsibility for all emoluments and outgoings (including, without limitation, all wages, bonuses, commissions, payments in respect of holiday taken before the Relevant Transfer Date as appropriate,

PAYE, national insurance contributions and contributions to retirement benefit schemes) which relate to the Previous Supplier Employees during the period of their employment by that Previous Supplier (such emoluments and outgoings being the “**Relevant Benefits**”) and which have arisen (or relate to) the period prior to the Relevant Transfer Date;

the Authority shall, subject to paragraph 2.2.3(c), indemnify the Supplier from and against any unpaid Relevant Benefits as at the Relevant Transfer Date, where and to the extent that: (i) the Supplier or (as the case may be) any Employing Sub-Contractor on or after the Relevant Transfer Date is or becomes liable to pay any such amount to any Previous Supplier Employee; and (ii) the Authority (having taken all reasonable endeavours to recover such amount) has recovered an amount equal to such unpaid benefits from the Previous Supplier;

the Authority's obligation provided in paragraph 2.2.3(b) shall not apply (and is hereby waived by the Supplier) where the Supplier or any Employing Sub-Contractor (or in each case any other member of its respective Group) was the Previous Supplier responsible for payment of the Relevant Benefits prior to the Relevant Transfer Date.

2.2.4 The Supplier agrees that it will comply with its obligations under sections 257 and 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005.

2.2.5 Save for any liabilities in respect of Previous Supplier Employees under a Relevant Statutory Scheme or Schemes, the Supplier or Employing Sub-Contractor (as the case may be) shall have responsibility for all emoluments and outgoings (including without limitation all wages, bonuses, commissions, payments in respect of holiday taken after the Relevant Transfer Date as appropriate, PAYE, national insurance contributions and contributions to retirement benefit schemes) in relation to the Previous Supplier Employees which has arisen or relate to the period from and including the Relevant Transfer Date and shall indemnify the Authority and the Previous Supplier in respect of the same.

## 2.3 Indemnities

2.3.1 The Supplier shall indemnify and hold harmless the Authority and any Previous Supplier against all demands, claims, liabilities, losses and damages, costs and expenses (including all interest, penalties, legal and other costs and expenses) together with any applicable Value Added and similar taxes or liability for deduction of PAYE tax properly incurred by the Authority or any Previous Supplier arising out of or in connection with:

- (b) any breach by the Supplier and/or any Employing Sub-Contractor of their obligations under Regulation 13 of the Transfer Regulations;
- (c) any act or proposal by the Supplier or any Employing Sub-Contractor prior to or following the Relevant Transfer Date which amounts to a repudiatory breach of contract as referred to in Regulation 4(11) of the Transfer Regulations and/or to make a substantial change in working conditions of any Previous Supplier Employee to the material detriment of that employee. For the purposes of this sub-clause the expressions “repudiatory breach”,

“substantial change” and “material detriment” shall have the same meanings as for the purposes of Regulation 4(9) and 4(11) of the Transfer Regulations; and

- (d) any applicable collective agreement or any applicable arrangement with any trade union or staff association after the Relevant Transfer Date.

### **3 General provisions applicable to previous supplier employees and supplier personnel**

#### **3.1 Supplier Indemnity**

- 3.1.1 The Supplier shall indemnify the Authority and any New Provider against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with the employment or termination of employment by the Supplier or any Employing Sub-Contractor of any person (including the Previous Supplier Employees) engaged in connection with the provision of the Services during the term of this Agreement.

#### **3.2 Authority Indemnity**

- 3.2.1 The Authority shall, subject to paragraph 3.2.2, indemnify the Supplier against any reasonable costs (including reasonable legal costs), losses and expenses and damages, compensation, fines and liabilities arising out of or in connection with the employment or termination of employment by the Authority or any Previous Supplier of any person (including any Previous Supplier Employee) engaged in connection with the provision of services equivalent to PHOENIX II Fleet Management services during the period prior to the Relevant Transfer Date:
  - (a) save to the extent that any and all such costs, losses, expenses, damages, compensation, fines and liabilities have been or are caused or contributed to by any act or omission committed or made by or on behalf of the Supplier and/or any Employing Sub-Contractor; and
  - (b) solely to the extent that the Authority (having taken all reasonable endeavours to recover such costs, losses and expenses and all damages, compensation, fines and liabilities) has recovered such costs, losses and expenses and all damages, compensation, fines and liabilities from the relevant Previous Supplier.
- 3.2.2 The Authority's indemnity obligation provided in paragraph 3.2.1 shall not apply (and is hereby waived by the Supplier) where the Supplier or any Employing Sub-Contractor or any other member of the Supplier's or any Employing Sub-Contractor's respective Group was the Previous Supplier connected with the subject matter of the indemnity.

#### **3.3 Unexpected Subsequent Transferring Employees**

- 3.3.1 If a claim or allegation is made by an employee or former employee of the Authority or a Previous Supplier, where (in the case of a Previous Supplier) such employee or former employee is not named on the list of Previous Supplier Employees (each or any such Authority or Previous Supplier employee being an "**Unexpected Transferring Employee**") that he has or should have transferred to the Supplier and/or an Employing Sub-Contractor by virtue of the Transfer Regulations, the Party receiving the claim or allegation shall notify the other Party (or the Supplier shall notify the Authority on the Employing Sub-Contractor's behalf and the Authority shall



notify the Supplier on the Previous Supplier's behalf) in writing as soon as reasonably practicable and no later than ten Business Days after receiving notification of the Unexpected Transferring Employee's claim or allegation, whereupon:

- (a) the Authority shall (or shall procure that the Previous Supplier shall), as soon as reasonably practicable, offer and/or confirm continued employment to the Unexpected Transferring Employee or take such other steps so as to effect a written withdrawal of the claim or allegation; and
- (b) if the Unexpected Transferring Employee's claim or allegation is not withdrawn or resolved the Authority shall notify the Supplier (who will notify any Employing Sub-Contractor who is a party to such claim or allegation), and the Supplier (insofar as it is permitted) and/or the Employing Sub-Contractor (as appropriate) shall employ the Unexpected Transferring Employee or as soon as reasonably practicable, (subject to compliance with its obligations provided in paragraph 3.3.1(c)), serve notice to terminate the Unexpected Transferring Employee's employment in accordance with his contract of employment; and
- (c) the Authority shall, subject to paragraph 3.3.2, indemnify the Supplier from and against any reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any of the following liabilities incurred by the Supplier or (as appropriate) Employing Sub-Contractor in dealing with or disposing of the Unexpected Transferring Employee's claim or allegation to the extent that:
  - (a) any additional costs of employing the Unexpected Transferring Employee up to the date of dismissal where the Unexpected Transferring Employee has been dismissed in accordance with paragraph 3.3.1(b);
  - (b) any liabilities acquired by virtue of the Transfer Regulations in relation to the Unexpected Transferring Employee;
  - (c) any liabilities relating to the termination of the Unexpected Transferring Employee's employment but excluding such proportion or amount of any liability for unfair dismissal, breach of contract or discrimination attributable:
    - (A) to a failure by the Supplier or a Employing Sub-Contractor to act reasonably to mitigate the costs of dismissing such person;
    - (B) directly or indirectly to the procedure followed by the Supplier or Employing Sub-Contractor in dismissing the Unexpected Transferring Employee; or
    - (C) to the acts/omissions of the Supplier or a Employing Sub-Contractor not wholly connected to the dismissal of that person;
  - (d) any liabilities incurred under a settlement of the Unexpected Transferring Employee's claim which was reached with the express permission of the Authority (not to be unreasonably withheld or delayed);
  - (e) reasonable administrative costs incurred by the Supplier or Employing Sub-Contractor in dealing with the Unexpected Transferring

Employee's claim or allegation, subject to a cap per Unexpected Transferring Employee of £5,000; and

- (f) legal and other professional costs reasonably incurred.

3.3.2 Paragraph 3.3.1(c) shall not apply (and the Supplier shall waive its right to an indemnity thereunder:

- (a) if and to the extent that it fails without reasonable cause to take any action in accordance with any of the timescales referred to in this paragraph 3.4; or
- (b) where the relevant Unexpected Transferring Employee is an employee or former employee of the Supplier, any Employing Sub-Contractor or any other member of its respective Groups;
- (c) (in relation to any Unexpected Transferring Employee of a Previous Supplier only) if and to the extent that the Authority (having taken all reasonable endeavours to recover such amount) fails to recover from the relevant Previous Supplier any amount, which, but for this paragraph 3.3.2, the Authority would be liable to pay to the Supplier under paragraph 3.3.1(c).

### **Post Transfer Reporting**

3.3.3 The Supplier shall upon request by the Authority provide (or shall procure that an Employing Sub-Contractor shall provide) the Authority with the following information in respect of the employees who are wholly or mainly employed, assigned or engaged in providing the Services:

- (a) any proposed, agreed or imposed changes to terms and conditions of service;
- (b) disputes relating to compliance with the Transfer Regulations which are regarded as unresolved by a recognised Trade Union;
- (c) any court action or tribunal proceedings relating to compliance with the Transfer Regulations;
- (d) completed court action or tribunal proceedings relating to compliance with the Transfer Regulations; and
- (e) out of court settlements relating to compliance with the Transfer Regulations if possible having regard to the wording of the settlement.

**Appendix 1****PERSONNEL INFORMATION TO BE RELEASED PURSUANT TO THIS AGREEMENT****PART ONE**

1. The following information (save where that information is included within that statement) will be provided:

**1.1 Personal, Employment and Career**

- (a) Age;
- (b) Security Vetting Clearance;
- (c) Job title;
- (d) Work location;
- (e) Conditioned hours of work;
- (f) Employment Status;
- (g) Details of training and operating licensing required for Statutory and Health and Safety reasons;
- (h) Details of training or sponsorship commitments;
- (i) Standard Annual leave entitlement and current leave year entitlement and record;
- (j) Annual leave reckonable service date;
- (k) Details of disciplinary or grievance proceedings taken by or against transferring employees in the last two years;
- (l) Information of any legal proceedings between employees and their employer within the previous two years or any such proceedings that the transferor has reasonable grounds to believe that an employee may bring against the transferee arising out of their employment with the transferor;
- (m) Issue of Uniform/Protective Clothing;
- (n) Working Time Directive opt-out forms; and
- (o) Date from which the latest period of continuous employment began.

**1.2 Performance Appraisal**

- (a) The current year's Performance Appraisal;

- (b) Current year's training plan (if it exists); and
- (c) Performance Pay Recommendations (PPR) forms completed in the current reporting year, or where relevant, any bonus entitlements;

### 1.3 **Superannuation and Pay**

- (a) Maternity leave or other long-term leave of absence (meaning more than 4 weeks) planned or taken within the last two years;
- (b) Annual salary and rates of pay band/grade;
- (c) Shifts, unsociable hours or other premium rates of pay;
- (d) Overtime history for the preceding twelve-month period;
- (e) Allowances and bonuses for the preceding twelve-month period;
- (f) Details of outstanding loan, advances on salary or debts;
- (g) Cumulative pay for tax and pension purposes;
- (h) Cumulative tax paid;
- (i) National Insurance Number;
- (j) National Insurance contribution rate;
- (k) Other payments or deductions being made for statutory reasons;
- (l) Any other voluntary deductions from pay;
- (m) Pension Scheme Membership;
- (n) For pension purposes, the notional reckonable service date;
- (o) Pensionable pay history for three years to date of transfer;
- (p) Percentage of any pay currently contributed under additional voluntary contribution arrangements; and
- (q) Percentage of pay currently contributed under any added years arrangements.

### 1.4 **Medical**

- (a) Sickness and absence records for the immediately preceding four-year period; and
- (b) Details of any active restoring efficiency case for health purposes.

### 1.5 **Disciplinary**

- (a) Details of any active restoring efficiency case for reasons of performance; and
- (b) Details of any active disciplinary cases where corrective action is on-going.

### 1.6 **Further information**

- (a) Information about specific adjustments that have been made for an individual under the Disability Discrimination Act 1995 or the Equality Act 2010;
- (b) Short term variations to attendance hours to accommodate a domestic situation;
- (c) Individuals that are TA members, or staff may have been granted special leave as a School Governor; and
- (d) Information about any maternity or other statutory leave or other absence from work.

## **PART TWO**

1.7 Information to be provided 28 days prior to the Relevant Transfer Date:

- (a) Employee's full name;
- (b) Date of Birth
- (c) Home address;
- (d) Bank/building society account details for payroll purposes Tax Code.

## 1 Definitions

In this Schedule 9.1 Part B, the following definitions shall apply:

<b>“Employee Liability Information”</b>	has the same meaning as in Regulation 11(2) of the Transfer Regulations;
<b>“Employing Sub-Contractor”</b>	means any sub-contractor of the Supplier providing all or any part of the Services who employs or engages any person in providing the Services;
<b>“Subsequent Relevant Transfer”</b>	means a transfer of the employment of Subsequent Transferring Employees from the Supplier or any Employing Sub-Contractor to a New Provider or the Authority under the Transfer Regulations;
<b>“Subsequent Transfer Date”</b>	means the date on which the transfer of a Subsequent Transferring Employee takes place under the Transfer Regulations;
<b>“Subsequent Transferring Employee”</b>	means an employee wholly or mainly employed or otherwise assigned to the Services (or in respect of partial termination, the relevant part of the Services) whose employment transfers under the Transfer Regulations from the Supplier or any Employing Sub-Contractor to a New Provider;
<b>“Transfer Regulations”</b>	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time and/or the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006 (as amended from time to time), as appropriate;

**PART B**  
**EMPLOYEE TRANSFER ARRANGEMENT ON EXIT**

## **2 Employment**

### **2.1 Information on Re-tender, Partial Termination, Termination or Expiry**

- 2.1.1 No earlier than [two] years preceding the termination, partial termination or Expiry of this Contract or a potential Subsequent Transfer Date or at any time after the service of a notice to terminate this Supplier or the provision of any of the Services (whether in whole or part) or on receipt of a written request by the Authority, the Supplier shall (and shall procure that any Employing Sub-Contractor shall):
- (a) supply to the Authority such information as the Authority may reasonably require in order to consider the application of the Transfer Regulations on the termination, partial termination or expiry of this Contract;
  - (b) supply to the Authority such full and accurate and up-to-date information as may be requested by the Authority including the information listed in Appendix 1 to this Schedule 9.1 Part B relating to the employees who are wholly or mainly employed, assigned or engaged in providing the Services or part of the Services under this Contract who may be subject to a Subsequent Relevant Transfer;
  - (c) provide the information promptly and in any event not later than three months from the date when a request for such information is made and at no cost to the Authority;
  - (d) acknowledge that the Authority will use the information for informing any prospective New Provider for any services which are substantially the same as the Services or part of the Services provided pursuant to this Contract;
  - (e) inform the Authority of any changes to the information provided under paragraph 2.1.1(a) or 2.1.1(b) up to the Subsequent Transfer Date as soon as reasonably practicable.
- 2.1.2 Three months preceding the termination, partial termination or expiry of this Contract or on receipt of a written request from the Authority the Supplier shall:
- (a) ensure that Employee Liability Information and such information listed in Part 1 of Appendix 2 of Part B of this Schedule 9.1 (Staff Transfer) relating to the Subsequent Transferring Employees is provided to the Authority and/or any New Provider;
  - (b) inform the Authority and/or any New Provider of any changes to the information provided under this paragraph 2.1.2 up to any Subsequent Transfer Date as soon as reasonably practicable;
  - (c) enable and assist the Authority and/or any New Provider or any sub-contractor of a New Provider to communicate with and meet those employees and their trade union or other employee representatives.

- 2.1.3 No later than 28 days prior to the Subsequent Transfer Date the Supplier shall provide the Authority and/or any New Provider with a final list of the Subsequent Transferring Employees together with the information listed in Part 2 of Appendix 2 of Part B of this Schedule 9.1 (Personnel Information) relating to the Subsequent Transferring Employees. The Supplier shall inform the Authority and/or New Provider of any changes to this list or information up to the Subsequent Transfer Date.
- 2.1.4 Paragraphs 2.1.1 and 2.1.2 of this Appendix are subject to the Supplier's obligations in respect of the DPA and the Supplier shall use its reasonable endeavours to obtain the consent of its employees (and shall procure that its Sub-Contractors use their reasonable endeavours to obtain the consent of their employees) to the extent necessary under the DPA or provide the data in an anonymous form in order to enable disclosure of the information required under paragraphs 2.1.1 and 2.1.2. The Supplier shall provide to the Authority such data in non-anonymous form no later than 28 days prior to the Subsequent Transfer Date to the extent that the Supplier is permitted under the DPA to do so and the Supplier has not already disclosed such data to the New Provider in accordance with the Transfer Regulations.
- 2.1.5 On notification to the Supplier by the Authority of a New Provider or within the period of six months prior to the Termination Date or after service of a notice to terminate this Contract (whether in whole or in part), whichever is earlier and in any event on receipt of a written request by the Authority, the Supplier shall not and shall procure that an Employing Sub-Contractor shall not:
- (a) materially amend or promise to amend the rates of remuneration or other terms and conditions of employment of any person wholly or mainly employed or engaged in providing the Services under this Contract; or
  - (b) replace or re-deploy from the Services any person wholly or mainly employed or engaged in providing the Services, or materially increase or decrease the number of persons performing the Services under this Contract or the working time spent on the Services (or any part thereof); or
  - (c) reorganise any working methods or assign to any person wholly or mainly employed or engaged in providing the Services (or any part thereof) any duties unconnected with the Services (or any part thereof) under this Contract; or
  - (d) terminate or give notice to terminate the employment of any person wholly or mainly employed or engaged in providing the Services (or any part thereof) under this Contract other than in the case of serious misconduct or for poor performance,
- save in the ordinary course of business and with the prior written consent of the Authority (not to be unreasonably withheld or delayed) and the Supplier shall indemnify and keep indemnified the Authority in respect of any reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any breach of Paragraphs 2.1.1, 2.1.2, 2.1.3 or 2.1.5 of this Schedule 9.1 Part B.
- 2.1.6 The Authority may at any time prior to the period set out in paragraph 2.1.5 of this Schedule 9.1 Part B request from the Supplier any of the information in sections 1(a) to (d) of Appendix 1 and the Supplier shall and shall procure any Sub-Contractor will provide the information requested within 28 days of receipt of that request.



## 2.2 Obligations in Respect of Subsequent Transferring Employees

- 2.2.1 To the extent that the Transfer Regulations apply on expiry, termination or partial termination of this contract, the Supplier shall and shall procure any Employing Sub-Contractor shall and the Authority shall and shall procure that a New Provider shall in such circumstances:
- (a) before and in relation to the Subsequent Transfer Date liaise with each other and shall co-operate with each other in order to implement effectively the smooth transfer of the Subsequent Transferring Employees to the Authority and/or a New Provider; and
  - (b) comply with their respective obligations under the Transfer Regulations including their obligations to inform and consult under Regulation 13 of the Transfer Regulations.

## 2.3 Unexpected Subsequent Transferring Employees

- 2.3.1 If a claim or allegation is made by an employee or former employee of the Supplier or any Employing Sub-Contractor who is not named on the list of Subsequent Transferring Employees provided under paragraph 2.1.3 (an "**Unexpected Subsequent Transferring Employee**") that he has or should have transferred to the Authority and/or New Provider by virtue of the Transfer Regulations, the Party receiving the claim or allegation shall notify the other Party (or the Supplier shall notify the Authority on the Sub-Contractor's behalf and the Authority shall notify the Supplier on the New Provider's behalf) in writing as soon as reasonably practicable and no later than ten Business Days after receiving notification of the Unexpected Subsequent Transferring Employee's claim or allegation, whereupon:
- (a) the Supplier shall (or shall procure that the Employing Sub-Contractor shall), as soon as reasonably practicable, offer and/or confirm continued employment to the Unexpected Subsequent Transferring Employee or take such other steps so as to effect a written withdrawal of the claim or allegation; and
  - (b) if the Unexpected Subsequent Transferring Employee's claim or allegation is not withdrawn or resolved the Supplier shall notify the Authority (who will notify any New Provider who is a party to such claim or allegation), and the Authority (insofar as it is permitted) and/or New Provider (as appropriate) shall employ the Unexpected Subsequent Transferring Employee or as soon as reasonably practicable, (subject to compliance with its obligations provided in paragraph 2.3.1(c)(iii)), serve notice to terminate the Unexpected Subsequent Transferring Employee's employment in accordance with his contract of employment; and
  - (c) the Supplier shall indemnify the Authority against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any of the following liabilities incurred by the Authority or New Provider in dealing with or disposing of the Unexpected Subsequent Transferring Employee's claim or allegation:

- (i) any additional costs of employing the Unexpected Subsequent Transferring Employee up to the date of dismissal where the Unexpected Subsequent Transferring Employee has been dismissed in accordance with paragraph 2.3.1(b);
- (ii) any liabilities acquired by virtue of the Transfer Regulations in relation to the Unexpected Subsequent Transferring Employee;
- (iv) any liabilities relating to the termination of the Unexpected Subsequent Transferring Employee's employment but excluding such proportion or amount of any liability for unfair dismissal, breach of contract or discrimination attributable:
  - (A) to a failure by the Authority or a New Provider to act reasonably to mitigate the costs of dismissing such person;
  - (B) directly or indirectly to the procedure followed by the Authority or a New Provider in dismissing the Unexpected Transferee; or
  - (C) to the acts/omissions of the Authority or a New Provider not wholly connected to the dismissal of that person;
- (iv) any liabilities incurred under a settlement of the Unexpected Subsequent Transferring Employee's claim which was reached with the express permission of the Supplier (not to be unreasonably withheld or delayed);
- (v) reasonable administrative costs incurred by the Authority or New Provider in dealing with the Unexpected Subsequent Transferring Employee's claim or allegation, subject to a cap per Unexpected Subsequent Transferring Employee of £5,000; and
- (vi) legal and other professional costs reasonably incurred.

2.3.2 The Authority shall be deemed to have waived its right to an indemnity under paragraph 2.3.1(c) if and to the extent that it fails without reasonable cause to take, or fails to procure any New Provider takes, any action in accordance with any of the timescales referred to in this paragraph 2.3.

## **2.4 Indemnities on Subsequent transfer under the Transfer Regulations on Partial Termination, Termination or Expiry of the Contract**

2.4.1 If on the expiry, termination or partial termination of the Contract there is a Subsequent Relevant Transfer, the Supplier shall indemnify the Authority and any New Provider against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any claim by any employee or trade union representative or employee representative arising whether before or after the Subsequent Transfer Date out of any failure by the Supplier or any Sub-Contractor to comply with their obligations under Regulation 13 of the Transfer Regulations in relation to any Subsequent Transferring Employee or any other employee of the Supplier or any Sub-Contractor affected by the Subsequent Relevant Transfer (as defined by Regulation 13 of the Transfer Regulations), save to the extent that all reasonable costs (including reasonable legal costs), losses and expenses and all damages,

compensation, fines and liabilities are a result of the act or omission of the Authority or the New Provider.

- 2.4.2 If there is a Subsequent Relevant Transfer, the Authority shall, subject to paragraph 2.4.4, indemnify the Supplier against all reasonable costs (including reasonable legal costs) losses and expenses and any damages, compensation, fines and liabilities arising out of, or in connection with:
- (a) any claim or claims by a Subsequent Transferring Employee at any time on or after the Subsequent Transfer Date which arise as a result of an act or omission of the Authority or a New Provider or a sub-contractor of a New Provider during the period from and including the Subsequent Transfer Date;
  - (b) subject to paragraph 2.4.1, any claim by any employee or trade union representative or employee representative arising whether before or after the Subsequent Transfer Date out of any failure by the Authority or a New Provider or a sub-contractor of a New Provider to comply with their obligations under Regulation 13 of the Transfer Regulations in relation to any Subsequent Transferring Employee or any other employee engaged wholly or mainly in connection with the Services by the New Provider or any other employee of the Authority or any New Provider affected by the Subsequent Relevant Transfer effected by this Contract (as defined by Regulation 13 of the Transfer Regulations),

save to the extent that all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities are a result of the act or omission of the Supplier or any Employing Sub-Contractor.

- 2.4.3 In the event of a Subsequent Relevant Transfer, the Authority shall, subject to paragraph 2.4.4, indemnify the Supplier in respect of any reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and other liabilities arising out of or in connection with or as a result of a substantial change by the Authority or a New Provider or any sub-contractor of a New Provider on or after the Subsequent Transfer Date to the working conditions of any Subsequent Transferring Employee to the material detriment of any such Subsequent Transferring Employee. For the purposes of this paragraph 2.4.3, the expressions "substantial change" and "material detriment" shall have the meanings as are ascribed to them for the purposes of Regulation 4(9) of the Transfer Regulations.
- 2.4.4 The Authority's obligations provided in paragraphs 2.4.2 and 2.4.3 shall (in relation to costs, losses, expenses, damages, compensation, fines and liabilities arising out of or in connection with any claim arising as a result of an act, omission or failure of a New Provider or sub-contractor of a New Provider):
- 2.4.4.1 not apply where the Supplier or the relevant Employing Sub-Contractor or any member of their respective Groups is the relevant New Provider or a sub-contractor of the relevant New Provider: (i) giving rise to the claim; or (ii) making the substantial change to the relevant employee's terms and conditions; forming the subject matter of (respectively) the indemnity provided in paragraph 2.4.2 or the indemnity provided in paragraph 2.4.3.

## **2.5 Contracts (Rights of Third Parties) Act 1999**

- 2.5.1 A Previous Supplier may enforce the terms of paragraph 2.3.1 and 3.1.1 of Part A against the Supplier in accordance with the Contracts (Rights of Third Parties) Act 1999.
- 2.5.2 A New Provider may enforce the terms of paragraph 2.3 and 2.4 of Part B against the Supplier in accordance with the Contracts (Rights of Third Parties) Act 1999.
- 2.5.3 The consent of a Previous Supplier or New Provider (save where the New Provider is the Authority) is not required to rescind, vary or terminate this Contract.
- 2.5.4 Nothing in this paragraph 2.5 shall affect the accrued rights of the New Provider prior to the rescission, variation, expiry or termination of this Contract.

## **2.6 General**

- 2.6.1 The Supplier shall not recover any Costs and/or other losses under this Schedule 9.1 where such Costs and/or losses are recoverable by the Supplier elsewhere in this Contract and/or are recoverable under the Transfer Regulations or otherwise.

**Appendix 2****PERSONNEL INFORMATION TO BE RELEASED PURSUANT TO THIS CONTRACT****PART ONE**

1. Pursuant to Paragraph 2.1.2 of this Schedule 9.1, Part B, the written statement of employment particulars as required by section 1 of the Employment Rights Act 1996 together with the following information (save where that information is included within that statement) which will be provided to the extent it is not included within the written statement of employment particulars:

**1.1 Personal, Employment and Career**

- (a) Age;
- (b) Security Vetting Clearance;
- (c) Job title;
- (d) Work location;
- (e) Conditioned hours of work;
- (f) Employment Status;
- (g) Details of training and operating licensing required for Statutory and Health and Safety reasons;
- (h) Details of training or sponsorship commitments;
- (i) Standard Annual leave entitlement and current leave year entitlement and record;
- (j) Annual leave reckonable service date;
- (k) Details of disciplinary or grievance proceedings taken by or against transferring employees in the last two years;
- (l) Information of any legal proceedings between employees and their employer within the previous two years or such proceedings that the transferor has reasonable grounds to believe that an employee may bring against the transferee arising out of their employment with the transferor;
- (m) Issue of Uniform/Protective Clothing;
- (n) Working Time Directive opt-out forms; and
- (o) Date from which the latest period of continuous employment began.

**1.2 Performance Appraisal**

- (a) The current year's Performance Appraisal;
- (b) Current year's training plan (if it exists); and
- (c) Performance Pay Recommendations (PPR) forms completed in the current reporting year, or where relevant, any bonus entitlements.

**1.3 Superannuation and Pay**

- (a) Maternity leave or other long-term leave of absence (meaning more than 4 weeks) planned or taken during the last two years;
- (b) Annual salary and rates of pay band/grade;
- (c) Shifts, unsociable hours or other premium rates of pay;
- (d) Overtime history for the preceding twelve-month period;
- (e) Allowances and bonuses for the preceding twelve-month period;
- (f) Details of outstanding loan, advances on salary or debts;
- (g) Cumulative pay for tax and pension purposes;
- (h) Cumulative tax paid;
- (i) National Insurance Number;
- (j) National Insurance contribution rate;
- (k) Other payments or deductions being made for statutory reasons;
- (l) Any other voluntary deductions from pay;
- (m) Pension Scheme Membership;
- (n) For pension purposes, the notional reckonable service date;
- (o) Pensionable pay history for three years to date of transfer;
- (p) Percentage of any pay currently contributed under additional voluntary contribution arrangements; and
- (q) Percentage of pay currently contributed under any added years arrangements.

**1.4 Medical**

- (a) Sickness and absence records for the immediately preceding four-year period; and
- (b) Details of any active restoring efficiency case for health purposes.

**1.5 Disciplinary**

- (a) Details of any active restoring efficiency case for reasons of performance; and
- (b) Details of any active disciplinary cases where corrective action is on going.

**1.6 Further information**

- (a) Information about specific adjustments that have been made for an individual under the Disability Discrimination Act 1995 or the Equality Act 2010;
- (b) Short term variations to attendance hours to accommodate a domestic situation;
- (c) Individuals that are TA members, or staff that may have been granted special leave as a School Governor; and
- (d) Information about any maternity or other statutory leave or other absence from work.

**PART TWO****1.7 Information to be provided 28 days prior to the Subsequent Transfer Date:**

- (a) Employee's full name;
- (b) Date of Birth
- (c) Home address;
- (d) Bank/building society account details for payroll purposes Tax Code.

**PHOENIX II AGREEMENT FOR SERVICES SCHEDULES**

**SCHEDULE 9.2**

**KEY PERSONNEL**



Key Personnel

KEY ROLE	NAME OF KEY PERSONNEL	RESPONSIBILITIES /AUTHORITIES	PHASE OF THE PROJECT DURING WHICH THEY WILL BE A MEMBER OF KEY PERSONNEL	MINIMUM PERIOD IN KEY ROLE
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]