

SCHEDULE 18**TUPE, EMPLOYEES AND PENSIONS**

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1. INTERPRETATION

Where a provision in this Schedule imposes an obligation on the Contractor to provide an indemnity, undertaking or warranty, the Contractor shall procure that each of its Sub-Contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Authority, Previous Contractor, New Contractor or New Sub-Contractor, as the case may be.

2. APPLICABLE PARTS OF THIS SCHEDULE

2.1 The following part of this Schedule shall apply to this Contract:

2.1.1 Part 1 (*Staff Transfer on Commencement*)

(a) Part A (Transferring Former Authority Employees at Commencement of Services) – N/A

- (b) Part B (Transferring Previous Contractor Employees at Commencement of Services)
 - i. Annex B1 (*List of Notified Sub-Contractors*)
 - (c) Part C (No Staff Transfer at Commencement of Services) – N/A
 - (d) Part D (Pensions) – this Part may apply.
 - ii. Annex D1 (*CSPS*) – N/A
 - iii. Annex D2 (*NHSPS*) – N/A
 - iv. Annex D3 (*LGPS*) – N/A
 - v. Annex D4 (*TPS*) – N/A
- 2.1.2 Part 2 (*TUPE Surcharge and Redundancy Cost Adjustment*)
- 2.1.3 Part 3 (*Redundancy Surcharge*)
- 2.1.4 Part 4 (*Employment Exit Provisions*) of this Schedule will always apply to this Contract, including:
- (a) Annex 1 (*Staffing Information*)



PART 1: STAFF TRANSFER ON COMMENCEMENT

PART A: NOT USED



**PART B: TRANSFERRING PREVIOUS CONTRACTOR EMPLOYEES AT
COMMENCEMENT OF SERVICES**

1. RELEVANT TRANSFERS

1.1 The Authority and the Contractor agree that:

1.1.1 the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Previous Contractor Employees;

1.1.2 as a result of the operation of the Employment Regulations, the contracts of employment between each Previous Contractor and the Transferring Previous Contractor Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Contractor and/or Notified Sub-Contractor and each such Transferring Previous Contractor Employee; and

1.1.3 notwithstanding the acknowledgement and agreement in **paragraph 1.1.1 (Relevant Transfers)** of this **Part B (Transferring Previous Contractor Employees at Commencement of Services)** above, should it be considered or determined that there is not a Relevant Transfer or that the Employment Regulations do not apply in relation to any of the Transferring Previous Contractor Employees, the Contractor shall (and shall procure that any Notified Sub-Contractor shall), with effect from the commencement of the provision of the Services, treat such Transferring Previous Contractor Employees as if the Employment Regulations did and do apply and that they had and have been subject to a Relevant Transfer to the Contractor (or Notified Sub-Contractor).

1.2 The Authority shall seek to ensure that any Previous Contractor shall comply with all of its / their obligations under the Employment Regulations and shall perform and discharge all of its / their obligations in respect of all the Transferring Previous Contractor Employees in respect of the period up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Contractor shall make, and the

Authority shall seek to ensure that any Previous Contractor makes, any necessary apportionments in respect of any periodic payments.

2. PREVIOUS CONTRACTOR INDEMNITIES

2.1 Subject to **paragraphs 2.2 and 2.3 (Previous Contractor Indemnities)** of this **Part B (Transferring Previous Contractor Employees at Commencement of Services)**, the Authority shall indemnify the Contractor and any Notified Sub-Contractor against any Employee Liabilities arising from or as a result of:

2.1.1 any act or omission by the Previous Contractor in respect of any Transferring Previous Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Previous Contractor Employee arising before the Relevant Transfer Date;

2.1.2 the breach or non-observance by the Previous Contractor arising before the Relevant Transfer Date of:

2.1.2.1 any collective agreement applicable to the Transferring Previous Contractor Employees; and/or

2.1.2.2 any custom or practice in respect of any Transferring Previous Contractor Employees which the Previous Contractor is contractually bound to honour;

2.1.3 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

2.1.3.1 in relation to any Transferring Previous Contractor Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and

2.1.3.2 in relation to any employee who is not a Transferring Previous Contractor Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer their employment from the Previous Contractor to the Contractor and/or any Notified Sub-Contractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other

statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;

- 2.1.4 a failure of the Previous Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Previous Contractor Employees in respect of the period to (but excluding) the Relevant Transfer Date;
- 2.1.5 any claim made by or in respect of any person employed or formerly employed by the Previous Contractor other than a Transferring Previous Contractor Employee for whom it is alleged the Contractor and/or any Notified Sub-Contractor as appropriate may be liable by virtue of this Agreement and/or the Employment Regulations; and
- 2.1.6 any claim made by or in respect of a Transferring Previous Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Previous Contractor Employee relating to any act or omission of the Previous Contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Contractor or any Sub-Contractor to comply with regulation 13(4) of the Employment Regulations.
- 2.2 The indemnities in **paragraph 2.1 (Previous Contractor Indemnities)** of this **Part B (Transferring Previous Contractor Employees at Commencement of Services)** shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Contractor or any Sub-Contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:
- 2.2.1 arising out of the resignation of any Transferring Previous Contractor Employee before the Relevant Transfer Date on account of substantial detrimental changes to their working conditions proposed by the Contractor or any Sub-Contractor to occur in the period from (and including) the Relevant Transfer Date; or
- 2.2.2 arising from the failure by the Contractor and/or any Sub-Contractor to comply with its obligations under the Employment Regulations.
- 2.3 The indemnities in **paragraph 2.1 (Previous Contractor Indemnities)** of this **Part B (Transferring Previous Contractor Employees at Commencement of Services)** shall be subject to:



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- 2.3.1 the Contractor and/or any Notified Sub-Contractor using all reasonable endeavours to mitigate the Employee Liabilities;
- 2.3.2 the Contractor and/or any Notified Sub-Contractor complying with all relevant contractual and statutory obligations; and
- 2.3.3 any claim in respect of the indemnities being notified to the Authority by the Contractor within three (3) months of the Relevant Transfer Date, after such time the indemnity provided in paragraph **2.1 (Previous Contractor Indemnities)** of this **Part B (Transferring Previous Contractor Employees at Commencement of Services)** shall cease to be effective.
- 2.4 If any person who is not identified as a Transferring Previous Contractor Employee claims, or it is determined in relation to any person who is not identified as a Transferring Previous Contractor Employee, that their contract of employment has been transferred from a Previous Contractor to the Contractor and/or any Notified Sub-Contractor pursuant to the Employment Regulations then:
- 2.4.1 the Contractor shall, or shall procure that the Notified Sub-Contractor shall, within five (5) Business Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, to the Previous Contractor; and
- 2.4.2 the Previous Contractor may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Business Days of the notification by the Contractor and / or the Notified Sub-Contractor or take such other reasonable steps as the Previous Contractor considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Legislation.
- 2.5 If an offer referred to in **paragraph 2.4.2 (Previous Contractor Indemnities)** of this **Part B (Transferring Previous Contractor Employees at Commencement of Services)** is accepted, or if the situation has otherwise been resolved by the Previous Contractor and/or the Authority, the Contractor shall, or shall procure that the Notified Sub-Contractor shall, immediately release the person from their employment or alleged employment.
- 2.6 If by the end of the fifteen (15) Business Day period specified in **paragraph 2.4.2 (Previous Contractor Indemnities)** of this **Part B (Transferring Previous Contractor Employees at Commencement of Services)**:
- 2.6.1 no such offer of employment has been made;

2.6.2 such offer has been made but not accepted; or

2.6.3 the situation has not otherwise been resolved,

the Contractor and/or any Notified Sub-Contractor may within five (5) Business Days give notice to terminate the employment or alleged employment of such person.

2.7 Subject to the Contractor and/or any Notified Sub-Contractor acting in accordance with the provisions of **paragraphs 2.4 to 2.6 (Previous Contractor Indemnities)** of this **Part B (Transferring Previous Contractor Employees at Commencement of Services)** and, where possible, in accordance with all applicable proper employment procedures set out in Law, the Authority shall indemnify the Contractor and/or any Notified Sub-Contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of **paragraph 2.6 (Previous Contractor Indemnities)** of this **Part B (Transferring Previous Contractor Employees at Commencement of Services)** provided that the Contractor takes, or shall procure that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.8 The indemnity in **paragraph 2.7 (Previous Contractor Indemnities)** of this **Part B (Transferring Previous Contractor Employees at Commencement of Services)**:

2.8.1 shall not apply to:

2.8.1.1 any claim for:

(a) any contravention of the Equality Act 2010 (or predecessor/successor legislation); or

(b) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

(c) in any case in relation to any alleged act or omission of the Contractor and/or any Sub-Contractor; or

2.8.1.2 any claim that the termination of employment was unfair because the Contractor or Notified Sub-Contractor neglected to follow a fair dismissal procedure; and

2.8.2 shall apply only where the notification referred to in **paragraph 2.4.1 (Previous Contractor Indemnities)** of this **Part B (Transferring Previous Contractor Employees at Commencement of Services)** is made by the Contractor and/or any



Notified Sub-Contractor (as appropriate) to the Authority and, if applicable, the Previous Contractor, within six (6) months of the Relevant Transfer Date.

2.9 If any such person as is described in **paragraph 2.3 (Previous Contractor Indemnities)** of this **Part B (Transferring Previous Contractor Employees at Commencement of Services)** is neither re-employed by the Previous Contractor nor dismissed by the Contractor and/or any Notified Sub-Contractor within the time scales set out in **paragraph 2.6 (Previous Contractor Indemnities)** of this **Part B (Transferring Previous Contractor Employees at Commencement of Services)**, such person shall be treated as having transferred to the Contractor or Notified Sub-Contractor and the Contractor shall, or shall procure that the Notified Sub-Contractor shall, (a) comply with such obligations as may be imposed upon it under the applicable Legislation and (b) comply with the provisions of **Part D (Pensions)** and its Annexes of this Schedule.

2.10 The provisions contained in **paragraph 1 (Relevant Transfers)** of this **Part B (Transferring Previous Contractor Employees at Commencement of Services)** and the indemnities contained in **paragraph 2 (Previous Contractor Indemnities)** of this **Part B (Transferring Previous Contractor Employees at Commencement of Services)** shall not apply in circumstances where the Contractor and / or any Sub-Contractor was a contractor or any sub-contractor of such contractor (or any sub-contractor) of any such sub-contractor or Affiliate of any such contractor or sub-contractor) supplying services to the Authority before the Services Commencement Date that are the same or substantially similar to the Services (or any part of the Services) and, as such, there is no Relevant Transfer. The provisions contained in **paragraph 1 (Relevant Transfers)** of this **Part B (Transferring Previous Contractor Employees at Commencement of Services)** and the indemnities contained in **paragraph 2 (Previous Contractor Indemnities)** of this **Part B (Transferring Previous Contractor Employees at Commencement of Services)** shall also not apply in circumstances where the Contractor was the Operating Sub-Contractor and there is a Relevant Transfer between a Previous Contractor and the Contractor and/or any Sub-Contractor of the Contractor.

3. **CONTRACTOR INDEMNITIES AND OBLIGATIONS**

3.1 Subject to **paragraph 3.2 (Contractor Indemnities and Obligations)** of this **Part B (Transferring Previous Contractor Employees at Commencement of Services)**, the Contractor shall indemnify the Authority and/or the Previous Contractor against any Employee Liabilities arising from or as a result of:

3.1.1 any act or omission by the Contractor or any Sub-Contractor in respect of any Transferring Previous Contractor Employee or any appropriate employee



- representative (as defined in the Employment Regulations) of any Transferring Previous Contractor Employee whether occurring before, on or after the Relevant Transfer Date;
- 3.1.2 the breach or non-observance by the Contractor or any Sub-Contractor on or after the Relevant Transfer Date of:
- 3.1.2.1 any collective agreement applicable to the Transferring Previous Contractor Employee; and/or
- 3.1.2.2 any custom or practice in respect of any Transferring Previous Contractor Employees which the Contractor or any Sub-Contractor is contractually bound to honour;
- 3.1.3 any claim by any trade union or other body or person representing any Transferring Previous Contractor Employees arising from or connected with any failure by the Contractor or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- 3.1.4 any proposal by the Contractor or a Sub-Contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Previous Contractor Employees to their material detriment on or after their transfer to the Contractor or a Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Previous Contractor Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- 3.1.5 any statement communicated to or action undertaken by the Contractor or a Sub-Contractor to, or in respect of, any Transferring Previous Contractor Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Authority and/or the Previous Contractor in writing;
- 3.1.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:



- 3.1.6.1 in relation to any Transferring Previous Contractor Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
- 3.1.6.2 in relation to any employee who is not a Transferring Previous Contractor Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer their employment from the Previous Contractor to the Contractor or a Sub-Contractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- 3.1.7 a failure of the Contractor or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Previous Contractor Employees in respect of the period from (and including) the Relevant Transfer Date;
- 3.1.8 any claim made by or in respect of a Transferring Previous Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Previous Contractor Employee relating to any act or omission of the Contractor or any Sub-Contractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Previous Contractor's failure to comply with its obligations under regulation 13 of the Employment Regulations; and
- 3.1.9 a failure by the Contractor or any Sub-Contractor to comply with its obligations under **paragraph 2.9 (Previous Contractor Indemnities)** of this **Part B (Transferring Previous Contractor Employees at Commencement of Services)**.
- 3.2 The indemnities in **paragraph 3.1 (Contractor Indemnities and Obligations)** of this **Part B (Transferring Previous Contractor Employees at Commencement of Services)**, shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Previous Contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising



from the Previous Contractor's failure to comply with its obligations under the Employment Regulations.

- 3.3 The Contractor shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Previous Contractor Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and any other sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Contractor and the Previous Contractor.

4. **INFORMATION**

The Contractor shall, and shall procure that each Sub-Contractor shall, promptly provide to the Authority and/or at the Authority's direction, the Previous Contractor, in writing such information as is necessary to enable the Authority and/or the Previous Contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Authority shall seek to ensure that the Previous Contractor shall promptly provide to the Contractor and each Notified Sub-Contractor in writing such information as is necessary to enable the Contractor and each Notified Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

5. **PRINCIPLES OF GOOD EMPLOYMENT PRACTICE**

- 5.1 The Contractor shall, and shall procure that each Sub-Contractor shall, comply with any requirement notified to it by the Authority relating to pensions in respect of any Transferring Previous Contractor Employee as set down in:

5.1.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised December 2013;

5.1.2 HM Treasury's guidance: "Staff Transfers from Central Government: A Fair Deal for Staff Pensions" of 1999;

- 5.1.3 HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
- 5.1.4 the New Fair Deal.
- 5.2 Any changes necessary to this Contract as a result of changes to, or any replacement of any statement of practice, paper or other guidance that replaces any of the documentation referred to in **paragraph 5.1 (Principles of Good Employment Practice)** of this **Part B (Transferring Previous Contractor Employees at Commencement of Services)** shall be agreed in accordance with **Schedule 16 (Change Protocol)**.
6. **PENSIONS**
- 6.1 The Contractor shall, and shall procure that each Sub-Contractor shall, comply with:
- 6.1.1 the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff; and
- 6.1.2 **Part D (Pensions)** (and its Annexes) of this Schedule, if applicable.

PART B, ANNEX 1: LIST OF NOTIFIED SUB-CONTRACTORS

[Redacted under FOIA section 43, Commercial interests]



PART C: NOT USED

PART D: PENSIONS**1. PARTICIPATION**

- 1.1 In respect of all or any Fair Deal Employees each of **Part D (Pensions)**, **Annex D1 (CSPS)**, **Annex D3 (LGPS)** and/or **Annex D4 (TPS)** shall apply, as appropriate and this Part D may apply.
- 1.2 The Contractor undertakes to do (and shall procure that any relevant Sub-Contractor shall do) all such things and execute any documents (including any relevant Admission Agreement, if necessary) as may be required to enable the Contractor (or any relevant Sub-Contractor) to participate in the appropriate Statutory Scheme in respect of the Fair Deal Employees and shall bear its own costs in such regard.
- 1.3 The Contractor undertakes to (and shall procure that any Relevant Sub-Contractor shall):
- 1.3.1 pay to the Statutory Schemes all such amounts as are due under the relevant Admission Agreement or otherwise and shall deduct and pay to the Statutory Schemes such employee contributions as are required; and
- 1.3.2 subject to **Part 2 (TUPE Surcharge and Redundancy Cost Adjustment)**, **paragraph 5 (Funding/LGPS Risk Sharing)** of **Part D (Pensions)**, **Annex D3 (LGPS)** and **paragraph 3 (TPS Risk Sharing)** of **Part D (Pensions)**, **Annex D4 (TPS)** of this Schedule, be fully responsible for all other costs, contributions, payments and other amounts relating to its participation in the Statutory Schemes, including for the avoidance of doubt any exit payments and the costs of providing any bond, indemnity or guarantee required in relation to such participation.

2. PROVISION OF INFORMATION

- 2.1 The Contractor undertakes to the Authority:
- 2.1.1 to provide all information which the Authority may reasonably request concerning matters referred to in this **Part D (Pensions)** as expeditiously as possible; and
- 2.1.2 not to issue any announcements to any Fair Deal Employee prior to the Relevant Transfer Date concerning the matters stated in this **Part D (Pensions)** without the consent in writing of the Authority (such consent not to be unreasonably withheld or delayed).

3. INDEMNITIES

- 3.1 The Contractor undertakes to the Authority to indemnify and keep indemnified the Authority and/or any New Contractor and/or any Replacement Sub-Contractor and/or any New Sub-Contractor on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards all and any Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which arise from any breach by the Contractor of this **Part D (Pensions)**, and/or the CSPA Admission Agreement, and/or the LGPS Admission Agreement and/or the TPS Participation Agreement or relates to the payment of benefits under and/or participation in an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Fair Deal Schemes.
- 3.2 The Contractor hereby indemnifies the Authority and/or any New Contractor and/or Replacement Sub-Contractor and/or any New Sub-Contractor from and against all Losses suffered or incurred by it or them which arise from claims by Fair Deal Employees of the Contractor and/or of any Sub-Contractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such Fair Deal Employees which Losses:
- 3.2.1 relate to pension rights in respect of periods of employment on and after the Relevant Transfer Date until the date of termination or expiry of this Contract; or
- 3.2.2 arise out of the failure of the Contractor and/or any relevant Sub-Contractor to comply with the provisions of this **Part D (Pensions)** before the date of termination or expiry of this Contract.
- 3.3 The indemnities in this **Part D (Pensions)** and its **Annexes**:
- 3.3.1 shall survive termination of this Contract; and
- 3.3.2 shall not be subject to any of the caps of liability contained in **clause 66 (Indemnities and Liabilities)**.

4. DISPUTES

- 4.1 The Dispute Resolution Procedure will not apply to this **Part D (Pensions)** and any dispute the Authority and/or the Contractor or between their respective actuaries or the Fund Actuary about any of the actuarial matters referred to in this **Part D (Pensions)** and its **Annexes** shall in the absence of agreement between the Authority and/or the Contractor be referred to an independent Actuary:

- 4.1.1 who will act as an expert and not as an arbitrator;
- 4.1.2 whose decision will be final and binding on the Authority and/or the Contractor;
and
- 4.1.3 whose expenses shall be borne equally by the Authority and/or the Contractor unless the independent Actuary shall otherwise direct.

5. **THIRD PARTY RIGHTS**

- 5.1 The Parties agree that, in respect of **clause 78 (Third Party Rights)**, the Contracts (Rights of Third Parties) Act 1999 applies to this **Part D (Pensions)** to the extent necessary to ensure that the New Contractor, any Replacement Sub-Contractor and/or any New Sub-Contractor and/or any Fair Deal Employee will have the right to enforce any obligation owed to them or it by the Contractor under this **Part D (Pensions)**, in their or its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.
- 5.2 Further, the Contractor must ensure that the Contracts (Rights of Third Parties) Act 1999 will apply to any Sub-Contract to the extent necessary to ensure that the New Contractor, any Replacement Sub-Contractor and/or any New Sub-Contractor and/or any Fair Deal Employee will have the right to enforce any obligation owed to them by the Sub-Contractor in their or its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

6. **TRANSFER TO ANOTHER EMPLOYER/ SUB- CONTRACTORS**

- 6.1 Save on expiry or termination of this Contract, if the employment of any Fair Deal Employee transfers to another employer (by way of a transfer under the Employment Regulations) the Contractor shall and shall procure that any relevant Sub-Contractor shall:
 - 6.1.1 notify the Authority as far as reasonably practicable in advance of the transfer to allow the Authority to make the necessary arrangements for participation with the relevant Statutory Scheme(s);
 - 6.1.2 consult with and inform those Fair Deal Employees of the pension provisions relating to that transfer; and
 - 6.1.3 procure that the employer to which the Fair Deal Employees are transferred (the "**New Employer**") complies with the provisions of this **Part D (Pensions)** and its **Annexes** provided that references to the "Contractor" will become references to the New Employer, references to "Relevant Transfer Date" will become references to the date of the transfer to the New Employer and references to "Fair Deal

Employees" will become references to the Fair Deal Employees so transferred to the New Employer.

7. **PENSION ISSUES ON EXPIRY OR TERMINATION**

The provisions of **Part 4** of this Schedule apply in relation to pension issues on expiry or termination of this Contract.

8. **BROADLY COMPARABLE PENSION SCHEMES**

8.1 If either:

8.1.1 the terms of any of **paragraph 1.2 (Future Service Benefits)** of **Part D (Pensions)**, **Annex D1 (CSPS)** and/or **paragraph 3 (Broadly Comparable Scheme)** of **Part D (Pensions)**, **Annex D3 (LGPS)** and/or **paragraph 2 (Broadly Comparable Scheme)** of **Part D (Pensions)**, **Annex D4 (TPS)** apply; and/or

8.1.2 the Authority agrees, having considered the exceptional cases provided for in New Fair Deal, (such agreement not to be unreasonably withheld) that the Contractor (and/or its Sub-Contractors, if any) need not continue to provide the Fair Deal Employees, who continue to qualify for New Fair Deal protection, with access to the appropriate Statutory Scheme,

the Contractor must (and must, where relevant, procure that each of its Sub-Contractors will ensure that, with effect from the Relevant Transfer Date or if later cessation of participation in the Statutory Scheme until the day before the Service Transfer Date, the relevant Fair Deal Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided under the relevant Statutory Scheme, and then on such terms as may be decided by the Authority.

8.2 Where the Contractor has set up a Broadly Comparable pension scheme or schemes pursuant to the provisions of **paragraph 8.1 (Broadly Comparable Pension Schemes)** of this **Part D (Pensions)**, the Contractor shall (and shall procure that any of its Sub-Contractors shall):

8.2.1 supply to the Authority details of its (or its Sub-Contractor's) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability covering all relevant Fair Deal Employees, as soon as it is able to do so and, in any event, no later than twenty-eight (28) days before the Relevant Transfer Date;

- 8.2.2 fully fund any such Broadly Comparable pension scheme in accordance with the funding requirements set by that Broadly Comparable pension scheme's Actuary or by the Government Actuary's Department for the period ending on the Service Transfer Date;
- 8.2.3 instruct any such Broadly Comparable pension scheme's Actuary to, and to provide all such co-operation and assistance in respect of any such Broadly Comparable pension scheme as the New Contractor and/or CSPS and/or the relevant Administering Authority and/or the Authority and/or the relevant TPS Scheme Manager may reasonably require, to enable the New Contractor to participate in the appropriate Statutory Scheme in respect of any Fair Deal Employee that remain eligible for New Fair Deal protection following a Service Transfer;
- 8.2.4 provide a replacement Broadly Comparable pension scheme with immediate effect for those Fair Deal Employees who are still employed by the Contractor and/or relevant Sub-Contractor and are still eligible for New Fair Deal protection in the event that the Contractor and/or Sub-Contractor's Broadly Comparable pension scheme is terminated;
- 8.2.5 allow and make all necessary arrangements to effect, in respect of any Fair Deal Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the relevant Statutory Scheme and as is relevant on a day for day service basis and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal. For the avoidance of doubt, should the amount offered by the Broadly Comparable pension scheme be less than the amount required by the appropriate Statutory Scheme to fund day for day service ("**Shortfall**"), the Contractor or the Sub-Contractor (as agreed between them) must pay the Statutory Scheme, as required, provided that in the absence of any agreement between the Contractor and any Sub-Contractor, the Shortfall shall be paid by the Contractor; and
- 8.2.6 indemnify the Authority and/or CSPS and/or the relevant Administering Authority and/or the relevant TPS Scheme Manager on demand for any failure to pay the Shortfall as required under **paragraph 8.2.5 (Broadly Comparable Pension Schemes)** of this **Part D (Pensions)**.

Part D, Annex D1: CSPS – NOT USED**1. FUTURE SERVICE BENEFITS**

- 1.1 The Contractor shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the CSPS that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date or became eligible to join on the Relevant Transfer Date and the Contractor shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of the CSPS for service from (and including) the Relevant Transfer Date.
- 1.2 The Contractor undertakes that should it cease to participate in the CSPS for whatever reason at a time when it has CSPS Eligible Employees, that it will, at no extra cost to the Authority, provide to any Fair Deal Employee who immediately prior to such cessation of participation remained a CSPS Eligible Employee with access to a pension scheme which is Broadly Comparable to the CSPS on the date the CSPS Eligible Employees ceased to participate in the CSPS.

Part D, Annex D2: NOT USED

Part D, Annex D3: LGPS – NOT USED**1. CONTRACTOR TO BECOME AN LGPS ADMISSION BODY**

1.1 In accordance with the principles of New Fair Deal, the Contractor and/or any of its Sub-Contractors to which the employment of any LGPS Fair Deal Employee compulsorily transfers as a result of either the award of this Contract or a Relevant Transfer, if not a scheme employer which participates automatically in the LGPS, shall each become an LGPS Admission Body by entering into an LGPS Admission Agreement on or before the Relevant Transfer Date to enable the LGPS Fair Deal Employees to retain either continuous active membership of or eligibility for the LGPS on and from the Relevant Transfer Date for so long as they remain employed in connection with the delivery of the Services under this Contract.

1.2 Any LGPS Fair Deal Employees whether:

- (a) active members of the LGPS immediately before the Relevant Transfer Date; or
- (b) eligible to join the LGPS but not active members of the LGPS immediately before the Relevant Transfer Date

shall be admitted to the LGPS with effect on and from the Relevant Transfer Date.

1.3 The Contractor shall not automatically enrol or re-enrol for the purposes of the Pensions Act 2008 any LGPS Fair Deal Employees in any pension scheme other than the LGPS unless they cease to be eligible for membership of the LGPS.

1.4 The Contractor will (and will procure that its Sub-Contractors (if any) will) provide at its own cost any indemnity, bond or guarantee required by an Administering Authority in relation to an LGPS Admission Agreement.

2. RIGHT OF SET-OFF

The Authority shall have a right to set off against any payments due to the Contractor under the Contract an amount equal to any overdue employer and employee contributions and other payments (and interest payable under the LGPS Regulations) due from the Contractor (or from any relevant Sub-Contractor) under an LGPS Admission Agreement and shall pay such amount to the relevant Fund.

3. BROADLY COMPARABLE SCHEME

3.1 If the Contractor and/or any of its Sub-Contractors is unable to obtain an LGPS Admission Agreement or is otherwise unable to participate in the LGPS whether on commencement or at any other time, the Contractor shall (and procure that its Sub-Contractors shall), with effect

from the Relevant Transfer Date, offer the LGPS Fair Deal Employees membership of a pension scheme which is Broadly Comparable to LGPS on the Relevant Transfer Date in accordance with the provisions of **paragraph 8 (Broadly Comparable Pension Schemes)** of this **Part D (Pensions)**.

- 3.2 If the Contractor and/or any of its Sub-Contractors becomes an LGPS Admission Body in accordance with **paragraph 1.1 (Contractor to become an LGPS Admission Body)** of this **Part D (Pensions), Annex D3 (LGPS)** but the LGPS Admission Agreement is terminated during the term of this Contract for any reason at a time when the Contractor or Sub-Contractors still employs any LGPS Eligible Employees, the Contractor shall (and procure that its Sub-Contractors shall) at no extra cost to the Authority, offer the remaining LGPS Eligible Employees membership of a pension scheme which is Broadly Comparable to the LGPS on the date the LGPS Eligible Employees ceased to participate in the LGPS in accordance with the provisions of **paragraph 8 (Broadly Comparable Pension Schemes)** of this **Part D**.

4. **DISCRETIONARY BENEFITS**

Where the Contractor is an LGPS Admission Body, the Contractor shall award benefits to the LGPS Eligible Employees under the LGPS in circumstances where the LGPS Eligible Employees would have received such benefits had they still been employed by their previous employer. Where such benefits are of a discretionary nature, they shall be awarded on the basis of the previous employer's written policy in relation to such benefits at the time of the Relevant Transfer Date.

5. **FUNDING/ LGPS RISK SHARING**

- 5.1 Subject to **paragraphs 5.4 to 5.10 (Funding/ LGPS Risk Sharing)** of this **Part D (Pensions), Annex D3 (LGPS)**, if at any time during the term of this Contract the Administering Authority, pursuant to the LGPS Admission Agreement or the LGPS Regulations, requires the Contractor or any Sub-Contractor to pay employer contributions or other payments to the Fund in respect of LGPS Participating Employees in aggregate in excess of the LGPS Initial Contribution Rate, the excess of employer contributions above the LGPS Initial Contribution Rate for a Contract Year (the "**LGPS Excess Amount**") shall be paid by the Contractor or the Sub-Contractor, as the case may be, and the Contractor shall be reimbursed by the Authority.
- 5.2 Subject to **paragraphs 5.4 to 5.9 and 5.11 (Funding/ LGPS Risk Sharing)** of this **Part D (Pensions), Annex D3 (LGPS)**, if at any time during the term of this Contract, the

Administering Authority, pursuant to the LGPS Admission Agreement or the LGPS Regulations, requires the Contractor or any Sub-Contractor to pay employer contributions or payments to the Fund in respect of LGPS Participating Employees in aggregate below the LGPS Initial Contribution Rate for a Contract Year, the Contractor shall reimburse the Authority an amount equal to A–B (the "**LGPS Refund Amount**") where:

A = the amount which would have been paid if contributions and payments had been paid equal to the LGPS Initial Contribution Rate in respect of LGPS Participating Employees for that Contract Year; and

B = the amount of contributions or payments actually paid by the Contractor or Sub-Contractor for that Contract Year, as the case may be, to the Fund.

5.3 Subject to **paragraphs 5.4 to 5.10 (Funding/ LGPS Risk Sharing)** of this **Part D (Pensions), Annex D3 (LGPS)**, where the Administering Authority obtains an actuarial valuation and a revised rates and adjustment certificate under the LGPS Regulations and/or the terms of the LGPS Admission Agreement when the LGPS Admission Agreement ceases to have effect and the Contractor or any Sub-Contractor is required to pay any exit payment in respect of LGPS Participating Employees under Regulation 64(2) of the 2013 Regulations (the "**LGPS Exit Payment**"), such LGPS Exit Payment shall be paid by the Contractor or any Sub-Contractor (as the case may be) and the Contractor shall be reimbursed by the Authority in respect of LGPS Participating Employees only.

5.4 The Contractor and any Sub-Contractors shall at all times be responsible for the following costs:

5.4.1 any employer contributions relating to the costs of early retirement benefits arising on redundancy or as a result of business efficiency under Regulation 30(7) of the 2013 Regulations or otherwise;

5.4.2 any payment of Fund benefits to active members on the grounds of ill health or infirmity of mind or body under Regulation 35 of the 2013 Regulations or otherwise;

5.4.3 any payment of Fund benefits to deferred or deferred pensioner members on the grounds of ill health or infirmity of mind or body under Regulation 38 of the 2013 Regulations or otherwise;

5.4.4 any employer contributions relating to the costs of early or flexible retirement where the actuarial reduction is waived in whole or in part or a cost neutral reduction is not applied with the consent of the Contractor or any relevant Sub-



- Contractor including without limitation any decision made under Regulation 30(8) of the 2013 Regulations or Schedule 2 of The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014;
- 5.4.5 any employer contributions relating to the costs of enhanced benefits made at the discretion of the Contractor or any relevant Sub-Contractors including without limitation additional pension awarded under Regulation 31 of the 2013 Regulations or otherwise;
- 5.4.6 any increase to the employer contribution rate resulting from the award of pay increases by the Contractor or relevant Sub-Contractors in respect of all or any of the LGPS Eligible Employees in excess of the pay increases assumed in the Fund's most recent actuarial valuation (unless the Contractor and/or any Sub-Contractor is contractually bound to provide such increases on the Relevant Transfer Date);
- 5.4.7 to the extent not covered above, any other costs arising out of or in connection with the exercise of any discretion or the grant of any consent under the LGPS Regulations by the Contractor or any relevant Sub-Contractors where a member does not have an absolute entitlement to that benefit under the LGPS;
- 5.4.8 any cost of the administration of the Fund that are not met through the Contractor's or Sub-Contractor's employer contribution rate, including without limitation an amount specified in a notice given by the Administering Authority under Regulation 70 of the 2013 Regulations;
- 5.4.9 the costs of any reports and advice requested by or arising from an instruction given by the Contractor or a Sub-Contractor from the Fund Actuary; and/or
- 5.4.10 any interest payable under the 2013 Regulations or LGPS Administration Agreement.
- 5.5 For the purposes of calculating any LGPS Exit Payment, LGPS Excess Amount or LGPS Refund Amount, any part of such an amount which is attributable to any costs which the Contractor or Sub-Contractors are responsible for in accordance with **paragraph 5.4 (Funding/ LGPS Risk Sharing)** of this **Part D (Pensions), Annex D3 (LGPS)** above shall be disregarded and excluded from the calculation. In the event of any dispute as to level of any cost that should be excluded from the calculation, the opinion of the Fund Actuary shall be final and binding.



- 5.6 Where the Administering Authority obtains an actuarial valuation and a revised rates and adjustment certificate under the LGPS Regulations and/or the terms of the LGPS Admission Agreement when the LGPS Admission Agreement ceases to have effect and the Contractor or any Sub-Contractor receives payment of an exit credit payment under Regulation 64(2) of the 2013 Regulations (the "**LGPS Exit Credit**"), the Contractor shall (or procure that any Sub-Contractor shall) reimburse the Authority an amount equal to the LGPS Exit Credit within twenty (20) Business Days of receipt of the LGPS Exit Credit.
- 5.7 The Contractor shall (or procure that the Sub-Contractor shall) notify the Authority in writing within twenty (20) Business Days:
- 5.7.1 of the end of each Contract Year of any LGPS Excess Amount or LGPS Refund Amount due in respect of the Contract Year that has just ended and provide a reasonable summary of how the LGPS Excess Amount or LGPS Refund Amount was calculated; and
- 5.7.2 of being informed by the Administering Authority of any LGPS Exit Payment or LGPS Exit Credit that is determined by as being due from or to the Contractor or a Sub-Contractor and provide a copy of any revised rates and adjustments certificate detailing the LGPS Exit Payment or LGPS Exit Credit and its calculation.
- 5.8 Within twenty (20) Business Days of receiving the notification under **paragraph 5.7 (Funding/ LGPS Risk Sharing)** of this **Part D (Pensions), Annex D3 (LGPS)** above, the Authority shall either:
- 5.8.1 notify the Contractor in writing of its acceptance of the LGPS Excess Amount, LGPS Refund Amount or LGPS Exit Payment;
- 5.8.2 request further information or evidence about the LGPS Excess Amount, LGPS Refund Amount or LGPS Exit Payment from the Contractor; and/or
- 5.8.3 request a meeting with the Contractor to discuss or clarify the information or evidence provided.
- 5.9 Where the LGPS Excess Amount, LGPS Refund Amount or LGPS Exit Payment is agreed following the receipt of further information or evidence or following a meeting in accordance with **paragraph 5.8 (Funding/ LGPS Risk Sharing)** of this **Part D (Pensions), Annex D3 (LGPS)** above, the Authority shall notify the Contractor in writing. In the event that the Contractor and the Authority are unable to agree the amount of the LGPS Excess Amount,

LGPS Refund Amount or LGPS Exit Payment then they shall follow the Dispute Resolution Procedure.

- 5.10 Any LGPS Excess Amount or LGPS Exit Payment agreed by the Authority or in accordance with the Dispute Resolution Procedure shall be paid by the Authority within timescales as agreed between Authority and the Contractor. The amount to be paid by the Authority shall be an amount equal to the LGPS Excess Amount or LGPS Exit Payment less an amount equal to any corporation tax relief which has been claimed in respect of the LGPS Excess Amount or LGPS Exit Payment by the Contractor or a Sub-Contractor.
- 5.11 Any LGPS Refund Amount agreed by the Authority or in accordance with the Dispute Resolution Procedure as payable by the Contractor or any Sub-Contractor to the Authority, shall be paid by the Contractor or any Sub-Contractor forthwith as the liability has been agreed. In the event the Contractor or any Sub-Contractor fails to pay any agreed LGPS Refund Amount, the Authority shall demand in writing the immediate payment of the agreed LGPS Refund Amount by the Contractor and the Contractor shall make payment within seven (7) Business Days of such demand.

Part D, Annex D4: TPS – NOT USED**1. CONTRACTOR TO BECOME AN ACCEPTED EMPLOYER**

- 1.1 In accordance with the principles of New Fair Deal, the Contractor and/or any of its Sub-Contractors to which the employment of any TPS Fair Deal Employee compulsorily transfers as a result of either the award of this Contract or a Relevant Transfer, if not a scheme employer which participates automatically in the TPS, shall each become an Accepted Employer by entering into a TPS Participation Agreement on or before the Relevant Transfer Date to enable the TPS Fair Deal Employees to retain either continuous active membership of or eligibility for the TPS on and from the Relevant Transfer Date for so long as they remain employed in connection with the delivery of the Services under this Contract.
- 1.2 If the Contractor and/or any of its Sub-Contractors is unable to obtain a TPS Participation Agreement or is otherwise unable to participate in accordance with **paragraph 1.1 (Contractor to Become an Accepted Employer)** of this **Part D (Pensions), Annex D4 (TPS)** because the TPS Scheme Manager will not allow it to participate in the TPS, the Contractor shall (and procure that its Sub-Contractors shall), comply with the provisions of **paragraph 2.1 (Broadly Comparable Scheme)** of this **Part D (Pensions), Annex D4 (TPS)** below and of **paragraph 8 (Broadly Comparable Pension Schemes)** of this **Part D (Pensions)**.
- 1.3 Unless **paragraph 1.2 (Contractor to Become an Accepted Employer)** of this **Part D (Pensions), Annex D4 (TPS)** above applies, all and any TPS Fair Deal Employees whether:
- 1.3.1 active members of the TPS (or a Broadly Comparable pension scheme) immediately before the Relevant Transfer Date; or
- 1.3.2 eligible to join the TPS (or a Broadly Comparable pension scheme) but not active members of the TPS (or a Broadly Comparable pension scheme) immediately before the Relevant Transfer Date
- shall be admitted to the TPS with effect on and from the Relevant Transfer Date.
- 1.4 The Contractor and/or any of its Sub-Contractors shall not automatically enrol or re-enrol for the purposes of the Pensions Act 2008 any TPS Fair Deal Employees in any pension scheme other than the TPS unless they cease to be eligible for membership of the TPS.
- 1.5 The Contractor will (and will procure that its Sub-Contractors (if any) will) provide at its own cost any indemnity, bond or guarantee required by the TPS Scheme Manager in relation to a TPS Participation Agreement.



2. **BROADLY COMPARABLE SCHEME**

2.1 If the Contractor and/or any of its Sub-Contractors is unable to obtain a TPS Participation Agreement or is otherwise unable to participate in accordance with **paragraph 1.1 (Contractor to Become an Accepted Employer)** of this **Part D (Pensions), Annex D4 (TPS)** because the TPS Scheme Manager will not allow it to participate in the TPS, the Contractor shall (and procure that its Sub-Contractors shall), with effect from the Relevant Transfer Date, offer the TPS Fair Deal Employees membership of a pension scheme which is Broadly Comparable to TPS on the Relevant Transfer Date in accordance with the provisions of **paragraph 8 (Broadly Comparable Pension Schemes)** of this **Part D (Pensions)**.

2.2 If the Contractor and/or any of its Sub-Contractors becomes an Accepted Employer in accordance with **paragraph 1.1 (Contractor to Become an Accepted Employer)** of this **Part D (Pensions), Annex D4 (TPS)** but the TPS Participation Agreement is terminated during the term of this Contract for any reason at a time when the Contractor or Sub-Contractors still employs any TPS Eligible Employees, the Contractor shall (and procure that its Sub-Contractors shall) at no extra cost to the Authority, offer the remaining TPS Eligible Employees membership of a pension scheme which is Broadly Comparable to the TPS on the date the TPS Eligible Employees ceased to participate in the TPS in accordance with the provisions of **paragraph 8 (Broadly Comparable Pension Schemes)** of this **Part D (Pensions)**.

3. **TPS RISK SHARING**

3.1 Subject to **paragraphs 3.3 to 3.6 (TPS Risk Sharing)** of this **Part D (Pensions), Annex D4 (TPS)**, if at any time during the term of this Contract the TPS Scheme Manager requires the Contractor or any Sub-Contractor to pay employer contributions in accordance with Regulation 192 of the TPS Regulations in aggregate in excess of the TPS Initial Contribution Rate, the excess of employer contributions above the TPS Initial Contribution Rate for a Contract Year (the "**TPS Excess Amount**") shall be paid by the Contractor or the Sub-Contractor, as the case may be, and the Contractor shall be reimbursed by the Authority in accordance with **paragraphs 3.3 to 3.6 (TPS Risk Sharing)** of this **Part D (Pensions), Annex D4 (TPS)** below.

3.2 Subject to **paragraphs 3.3 to 3.5 and 3.7 (TPS Risk Sharing)** of this **Part D (Pensions), Annex D4 (TPS)**, if at any time during the term of this Contract, the TPS Scheme Manager requires the Contractor or any Sub-Contractor to pay employer contributions in accordance with Regulation 192 of the TPS Regulations in respect of the TPS Fair Deal Employees in aggregate below the TPS Initial Contribution Rate for a Contract Year, the Contractor shall reimburse the Authority an amount equal to A–B (the "**TPS Refund Amount**") where:

- A = the amount which would have been paid if contributions had been paid equal to the TPS Initial Contribution Rate for that Contract Year; and
- B = the amount of contributions actually paid by the Contractor or Sub-Contractor for that Contract Year, as the case may be, to the TPS.
- 3.3 The Contractor shall (or procure that the Sub-Contractor shall) notify the Authority in writing within twenty (20) Business Days of the end of each Contract Year of any TPS Excess Amount or TPS Refund Amount due in respect of the Contract Year that has just ended and provide a reasonable summary of how the TPS Excess Amount or TPS Refund Amount was calculated.
- 3.4 Within twenty (20) Business Days of receiving the notification under **paragraph 3.3 (TPS Risk Sharing)** of this **Part D (Pensions), Annex D4 (TPS)** above, the Authority shall either:
- 3.4.1 notify the Contractor in writing of its acceptance of the TPS Excess Amount or TPS Refund Amount;
- 3.4.2 request further information or evidence about the TPS Excess Amount or TPS Refund Amount from the Contractor; and/or
- 3.4.3 request a meeting with the Contractor to discuss or clarify the information or evidence provided.
- 3.5 Where the TPS Excess Amount or TPS Refund Amount is agreed following the receipt of further information or evidence or following a meeting in accordance with **paragraph 3.4 (TPS Risk Sharing)** of this **Part D (Pensions), Annex D4 (TPS)** above, the Authority shall notify the Contractor in writing. In the event that the Contractor and the Authority are unable to agree the amount of the TPS Excess Amount or TPS Refund Amount then they shall follow the Dispute Resolution Procedure.
- 3.6 Any TPS Excess Amount agreed by the Authority or in accordance with the Dispute Resolution Procedure shall be paid by the Authority within timescales as agreed between Authority and Contractor. The amount to be paid by the Authority shall be an amount equal to the TPS Excess Amount less an amount equal to any corporation tax relief which has been claimed in respect of the TPS Excess Amount by the Contractor or a Sub-Contractor.
- 3.7 Any TPS Refund Amount agreed by the Authority or in accordance with the Dispute Resolution Procedure as payable by the Contractor or any Sub-Contractor to the Authority, shall be paid by the Contractor or any Sub-Contractor forthwith as the liability has been agreed. In the event the Contractor or any Sub-Contractor fails to pay any agreed TPS Refund Amount, the Authority shall demand in writing the immediate payment of the agreed TPS

Refund Amount by the Contractor and the Contractor shall make payment within seven (7) Business Days of such demand.

PART 2: TUPE SURCHARGE AND REDUNDANCY COST ADJUSTMENT**1. TUPE COST VERIFICATION**

- 1.1 The Contractor has priced the Anticipated TUPE Costs in the Base Case.
- 1.2 Where a Relevant Transfer takes place, or will take place, the Contractor (or Notified Sub-Contractor) shall, no later than thirty (30) Business Days after the Relevant Transfer Date, compare its Anticipated TUPE Costs against its Actual TUPE Costs and:
- 1.2.1 the Contractor shall submit to the Authority:
- 1.2.1.1 notice that no TUPE Risk Premium or TUPE Risk Reduction is required, together with a breakdown and supporting evidence for the Authority to corroborate and assess that this is the case;
- 1.2.1.2 notice that a TUPE Risk Reduction is required together with a breakdown and supporting evidence as may be reasonably required for the Authority to corroborate and assess the calculation of the TUPE Risk Reduction; or
- 1.2.1.3 notice that a TUPE Risk Premium is required together with a breakdown and supporting evidence as may be reasonably required for the Authority to corroborate and assess the calculation of the TUPE Risk Premium.
- 1.3 The Contractor will be required to comply with **paragraph 1.2 (TUPE Cost Verification)** of this **Part 2 (TUPE Surcharge and Redundancy Cost Adjustment)** notwithstanding the fact that it may have been the Previous Contractor and accordingly there is not a Relevant Transfer. In these circumstances, the "Relevant Transfer Date" shall be read as meaning the date on which the employees of the Previous Contractor would have transferred had there been a Relevant Transfer.
- 1.4 Where a TUPE Risk Premium or TUPE Risk Reduction relates in whole or in part to any Notified Sub-Contractor, the Contractor shall be entitled to submit a request for payment of a TUPE Risk Premium or notice of a TUPE Risk Reduction in accordance with this **Part 2 (TUPE Surcharge and Redundancy Cost Adjustment)** on behalf of itself and any Notified Sub-Contractor.
- 1.5 Where the number of Transferring Previous Contractor Employees differs from that expected to transfer when Anticipated TUPE Costs were priced, **paragraph 6 (Relevant Headcount**

Adjustments) of this **Part 2 (TUPE Surcharge and Redundancy Cost Adjustment)** shall apply.

- 1.6 The Contractor shall not be prevented from submitting a request for a TUPE Risk Premium by virtue of the fact that it was the Previous Contractor and accordingly there is not a Relevant Transfer of any Transferring Previous Contractor Employees except in circumstances where such TUPE Risk Premium results from inaccurate or incomplete data provided by the Contractor, any member of the Contractor's Group, the SPV or any other Previous Contractor. Where the Contractor was the Previous Contractor, the Authority can still recover a TUPE Risk Reduction under **paragraphs 4 (TUPE Risk Reduction)** of this **Part 2 (TUPE Surcharge and Redundancy Cost Adjustment)**. In these circumstances, the definition of Transferring Previous Contractor Employee shall be read as meaning those employees of the Previous Contractor who would have been identified as Transferring Previous Contractor Employees had there been a Relevant Transfer.
- 1.7 When calculating the TUPE Risk Premium under **paragraph 2 (TUPE Risk Premium)**, the TUPE Risk Reduction under **paragraph 4 (TUPE Risk Reduction)** or a financial adjustment as a result of a Relevant Headcount Adjustment described in **paragraph 6 (Relevant Headcount Adjustments)** of this **Part 2 (TUPE Surcharge and Redundancy Cost Adjustment)**, the Contractor shall not be entitled to recover in respect of costs under this **Part 2** in circumstances where the **LGPS Risk Sharing** provisions of **paragraph 5 (Funding/ LGPS Risk Sharing)** of **Part D (Pensions), Annex D3 (LGPS)** and the **TPS Risk Sharing** provisions of **paragraph 3 (TPS Risk Sharing)** of **Part D (Pensions), Annex D4 (TPS)** apply to such costs. For the avoidance of doubt, the Contractor shall not be entitled to recover more than once in respect of the same costs.

2. **TUPE RISK PREMIUM**

- 2.1 The Contractor may request a TUPE Risk Premium on behalf of itself or a Notified Sub-Contractor and the Authority may grant the request, if the Contractor can evidence any inaccuracies or omissions in the relevant TUPE Information provided by the Authority at Competition for the purpose of the Contractor's bid for this Contract and included in the Contractor's Anticipated TUPE Costs in relation to any costs arising directly from the contract of employment of the Transferring Previous Contractor Employee assigned to the Services or any part of the Services, and where the ITT and FRT Guidance has been followed and a full breakdown and supporting evidence is submitted in support of a request for a TUPE Risk Premium. Where the Contractor and/or Notified Sub-Contractor does not use the TUPE Information provided and/or does not calculate the Anticipated TUPE Costs in accordance with the TUPE Information and/or ITT and FRT Guidance then it shall not be permitted to

recover any TUPE Risk Premium but this shall not prevent the Authority recovering under the TUPE Risk Reduction provisions.

2.2 A TUPE Risk Premium shall not apply in respect of:

2.2.1 any Relevant Pay Award; or

2.2.2 any other pay award which is applied by the Contractor and/or a Sub-Contractor in respect of the Transferring Previous Contractor Employees whether this takes effect before, on or after the Services Commencement Date.

2.3 On receipt of the Contractor's calculation of the TUPE Risk Premium the Authority shall either:

2.3.1 notify the Contractor in writing of acceptance of the TUPE Risk Premium;

2.3.2 request further information/evidence; and/or

2.3.3 request a meeting to discuss/clarify the evidence provided.

2.4 Where the TUPE Risk Premium is accepted in accordance with **paragraph 2.3.1 (TUPE Risk Premium)** of this **Part 2 (TUPE Surcharge and Redundancy Cost Adjustment)** or agreed following the receipt of further information/evidence or following a meeting in accordance with **paragraphs 2.3.2 and/or 2.3.3 (TUPE Risk Premium)** of this **Part 2 (TUPE Surcharge and Redundancy Cost Adjustment)**, the Authority shall notify the Contractor in writing to confirm the TUPE Risk Premium to apply and to confirm whether this will be applied as an adjustment to the Monthly Contract Price in accordance with **Schedule 14 (Payment Mechanism)** or by way of some other means to be agreed between the Parties.

2.5 In the event that the Parties are unable to agree the TUPE Risk Premium the Parties shall follow the Dispute Resolution Procedure.

3. ANNUAL REVIEW OF TUPE RISK PREMIUM

3.1 The TUPE Risk Premium shall be reviewed by the Authority at the commencement of each Contract Year starting with the year commencing 1 April 2027, unless as otherwise agreed with the Authority.

3.2 The Contractor shall submit to the Authority, no later than twenty (20) Business Days prior to the beginning of each Contract Year, evidence of any change to the TUPE Count in the

previous Contract Year or since it was last adjusted and shall warrant to the Authority the accuracy of the information provided in relation to the TUPE Count.

- 3.3 The Authority shall cease to be liable to pay the TUPE Risk Premium in respect of:
- 3.3.1 a particular Transferring Previous Contractor Employee who is promoted or moved into a different role by the Contractor and/or Sub-Contractor from the role detailed in the TUPE Information;
 - 3.3.2 a particular Transferring Previous Contractor Employee whose terms and conditions of employment are amended by the Contractor and/or Sub-Contractor; or
 - 3.3.3 a particular Transferring Previous Contractor Employee assigned to the Services or any part of the Services from the date upon which they cease to be employed by the Contractor or a Sub-Contractor or assigned to the Services or any part of the Services (whichever occurs the earliest).
- 3.4 If a Transferring Previous Contractor Employee falls within any of the circumstances detailed in **paragraph 3.3 (Annual Review of TUPE Risk Premium)** of this **Part 2 (TUPE Surcharge and Redundancy Cost Adjustment)** part way through a Contract Year, the TUPE Risk Premium allocated to that employee will be deducted on a pro rata basis.
- 3.5 The Contractor shall advise the Authority within twenty (20) Business Days of any of the circumstances detailed in **paragraph 3.3 (Annual Review of TUPE Risk Premium)** of this **Part 2 (TUPE Surcharge and Redundancy Cost Adjustment)** occurring, details of the relevant circumstances and to which Transferring Previous Contractor Employee the circumstances apply, and shall warrant the accuracy of such information.
- 3.6 On receipt of the Contractor's calculation of the TUPE Risk Premium submitted pursuant to **paragraph 3.2 (Annual Review of TUPE Risk Premium)** of this **Part 2 (TUPE Surcharge and Redundancy Cost Adjustment)** the Authority shall either:
- 3.6.1 notify the Contractor in writing of acceptance of the adjusted TUPE Risk Premium; or
 - 3.6.2 request further information/evidence; and/or
 - 3.6.3 request a meeting to discuss/clarify the evidence provided.



- 3.7 Where the adjustment to the TUPE Risk Premium is accepted in accordance with **paragraph 3.6.1 (Annual Review of TUPE Risk Premium)** of this **Part 2** or agreed following the receipt of further information/evidence or following a meeting, in accordance with **paragraphs 3.6.2 and/or 3.6.3 (Annual Review of TUPE Risk Premium)** of this **Part 2 (TUPE Surcharge and Redundancy Cost Adjustment)**, the Authority shall notify the Contractor in writing to confirm the adjusted TUPE Risk Premium that will apply and to confirm whether this will be applied as an adjustment to the Monthly Contract Price in accordance with **Schedule 14 (Payment Mechanism)** or by way of some other means to be agreed between the Parties.
- 3.8 In the event that the Contractor and the Authority are unable to agree the adjustment to the TUPE Risk Premium, they shall follow the Dispute Resolution Procedure.
- 3.9 The adjusted TUPE Risk Premium shall be used as the benchmark in the subsequent annual review of the TUPE Risk Premium.
- 3.10 Where the adjusted TUPE Risk Premium is more than the TUPE Risk Premium in the previous Contract Year, the TUPE Risk Premium shall not be adjusted.

4. **TUPE RISK REDUCTION**

- 4.1 On receipt of the Contractors calculation of the TUPE Risk Reduction the Authority shall either:
- 4.1.1 notify the Contractor in writing of acceptance of the TUPE Risk Reduction;
 - 4.1.2 request further information/evidence; and/or
 - 4.1.3 request a meeting to discuss/clarify the evidence provided.
- 4.2 Where the TUPE Risk Reduction is accepted in accordance with **paragraph 4.1.1 (TUPE Risk Reduction)** of this **Part 2 (TUPE Surcharge and Redundancy Cost Adjustment)** or agreed following the receipt of further information/evidence or following a meeting in accordance with **paragraphs 4.1.2 and/or 4.1.3 (TUPE Risk Reduction)** of this **Part 2 (TUPE Surcharge and Redundancy Cost Adjustment)**, the Authority shall notify the Contractor in writing to confirm the TUPE Risk Reduction to apply and to confirm how, following discussion with the Contractor, this will be paid, for example (but not limited to) whether it will be payment of an annual one-off lump sum by the Contractor, an adjustment to the Monthly Contract Price or whether the Contractor will use the payment to re-invest in the Services.



4.3 Where the Contractor or Notified Sub-Contractor has not calculated the Anticipated TUPE Costs in accordance with the ITT and FRT Guidance the Authority may calculate the TUPE Risk Reduction using either the Anticipated TUPE Costs as they should have been calculated or those which have been provided by the Contractor, whichever leads to a higher TUPE Risk Reduction.

4.4 In the event that the Parties are unable to agree the TUPE Risk Reduction the Parties shall follow the Dispute Resolution Procedure.

5. PAY AWARDS

5.1 In the event that a Relevant Pay Award occurs, the provisions of **paragraph 11.3.3 (Operational Services Available Prisoner Place Payment)** of **Schedule 14 (Payment Mechanism)** shall apply.

5.2 In circumstances where the Contractor agrees a pay award with the Transferring Previous Contractor Employees following the Services Commencement Date, no adjustment to the Base Case or Contract Price shall be applicable and the Contractor shall not be able to recover any TUPE Risk Premium in relation to such pay award whether it takes effect before, on or after the Services Commencement Date.

6. RELEVANT HEADCOUNT ADJUSTMENTS

6.1 It is recognised that the number of Transferring Previous Contractor Employees expected to transfer and included in the Anticipated TUPE Costs may differ from the number that actually transfers to the Contractor or the Notified Sub-Contractor on the Relevant Transfer Date. In these circumstances, the contents of this **paragraph 6 (Relevant Headcount Adjustments)** of this **Part 2 (TUPE Surcharge and Redundancy Cost Adjustment)** will apply.

6.2 If the number of Transferring Previous Contractor Employees is less than the number expected to have transferred and included in the Anticipated TUPE Costs then the Contractor will notify the Authority of this no later than thirty (30) Business Days after the Relevant Transfer Date and the Authority, having consulted with the Contractor, will determine whether the Contractor and/or Notified Sub-Contractor needs to employ any other employee/s to fulfil the role/s of those Transferring Previous Contractor Employees who were expected to transfer at bid stage and included in the Anticipated TUPE Costs but who did not actually transfer on the Relevant Transfer Date and, if so, whether the provisions of **paragraph 11.3.4 (Operational Services Available Prisoner Place Payment)** of **Schedule 14 (Payment Mechanism)** should apply. In circumstances where the Previous Contractor becomes the Contractor the Authority will determine whether such provisions should apply.



- 6.3 If the number of Transferring Previous Contractor Employees is more than the number who were expected to transfer and included in the Anticipated TUPE Costs then:
- 6.3.1 the Contractor will notify the Authority of this no later than thirty (30) Business Days after the Relevant Transfer Date; and
- 6.3.2 the Authority and the Contractor will work together to determine whether such employees should be retained within the Services (in which case in addition the Authority will determine whether costs should be adjusted in accordance with the provisions of **paragraph 11.3.4 (Operational Services Available Prisoner Place Payment)** of **Schedule 14 (Payment Mechanism)**) or whether it would be more appropriate for the Contractor and/or the Notified Sub-Contractor to conduct a redundancy exercise, in which case the Parties will work together to agree an appropriate redundancy exercise and the basis on which the Contractor will be reimbursed in respect of any costs under limbs (a) & (b) of the definition of Actual Redundancy Cost and notice pay.
- 6.4 In circumstances where the Previous Contractor becomes the Contractor or the Previous Contractor is a member of the Contractor's Group, the Contractor will not be able to benefit from the financial adjustments for a Relevant Headcount Adjustment referred to in this **paragraph 6 (Relevant Headcount Adjustments)** of this **Part 2** save as expressly approved by the Authority in accordance with **paragraph 6.2 (Relevant Headcount Adjustments)** of this **Part 2 (TUPE Surcharge and Redundancy Cost Adjustment)**. If the adjustments arise as a result of events agreed by the Authority that occur between bid stage and the Services Commencement Date then the Authority will consider this on a case by case basis.
- 6.5 In the event that the Parties are unable to agree how the provisions of this **paragraph 6 (Relevant Headcount Adjustments)** of this **Part 2 (TUPE Surcharge and Redundancy Cost Adjustment)** should apply then the Parties shall follow the Dispute Resolution Procedure.
7. **REDUNDANCY RISK PREMIUM AND REDUNDANCY RISK REDUCTION**
- 7.1 Where the Contractor identifies that the expected number of Transferring Previous Contractor Employees exceeds the number that it requires to deliver the Services and/or that there is a skills mis-match between any of the expected Transferring Previous Contractor Employees and the employees it needs to deliver the services, then it will include within the price it submits as part of its bid for this Contract the Anticipated Redundancy Cost for each such potential surplus employee as separate line items.



- 7.2 Where a Relevant Transfer takes place (or **paragraph 7.6 (Redundancy Risk Premium and Redundancy Risk Reduction)** of this **Part 2 (TUPE Surcharge and Redundancy Cost Adjustment)** below applies), the Contractor shall no later than twelve (12) months following the Relevant Transfer Date compare its Anticipated Redundancy Cost against its Actual Redundancy Cost for each employee for whom an Anticipated Redundancy Cost was included in its Base Case as at the Commencement Date and:
- 7.2.1 submit to the Authority:
- 7.2.1.1 notice that no Redundancy Risk Premium or Redundancy Risk Reduction is required, together with a breakdown and supporting evidence for the Authority to corroborate and assess that this is the case;
- 7.2.1.2 notice that a Redundancy Risk Reduction is required together with a breakdown and supporting evidence as may be reasonably required for the Authority to corroborate and assess the calculation of the Redundancy Risk Reduction; or
- 7.2.1.3 notice that a Redundancy Risk Premium is required together with a breakdown and supporting evidence as may be reasonably required for the Authority to corroborate and assess the calculation of the Redundancy Risk Premium.
- 7.3 The Contractor will be required to comply with **paragraph 7.2 (Redundancy Risk Premium and Redundancy Risk Reduction)** of this **Part 2 (TUPE Surcharge and Redundancy Cost Adjustment)** notwithstanding the fact that it may have been the Previous Contractor and accordingly there is not a Relevant Transfer. In these circumstances, the "Relevant Transfer Date" shall be read as meaning the date on which the employees of the Previous Contractor would have transferred had there been a Relevant Transfer.
- 7.4 Where a Redundancy Risk Premium or Redundancy Risk Reduction relates in whole or in part to any Notified Sub-Contractor, the Contractor shall be entitled to submit a request for payment of a Redundancy Risk Premium or notice of a Redundancy Risk Reduction in accordance with this **Part 2 (TUPE Surcharge and Redundancy Cost Adjustment)** on behalf of itself and any Notified Sub-Contractor.
- 7.5 For the avoidance of doubt, the Contractor cannot recover under both the TUPE Risk Premium and Redundancy Risk Premium in respect of the same Transferring Previous Contractor Employees. However, where an expected Transferring Previous Contractor Employee in

respect of whom the Contractor has submitted an Anticipated Redundancy Cost in its Base Case as at the Commencement Date is not made redundant due to the non-transfer of a different expected Transferring Previous Contractor Employee, then the Authority will consider allowing the Contractor to include such employee in the TUPE Surcharge mechanism.

- 7.6 The Contractor shall not be prevented from submitting a request for a Redundancy Risk Premium by virtue of the fact that it or a Notified Sub-Contractor was the Previous Contractor and accordingly there is not a Relevant Transfer of any Transferring Previous Contractor Employees except in circumstances where such Redundancy Risk Premium results from inaccurate or incomplete data provided by the Contractor, any member of the Contractor's Group, the SPV or any other Previous Contractor or Sub-Contractor of the Contractor and used for the purposes of Anticipated Redundancy Cost. Where the Contractor or a Notified Sub-Contractor was the Previous Contractor, the Authority can still recover a Redundancy Risk Reduction. In these circumstances, the definition of Transferring Previous Contractor Employee shall be read as meaning those employees of the Previous Contractor who would have been identified as Transferring Previous Contractor Employees had there been a Relevant Transfer and the definition of Relevant Transfer shall be the Services Commencement Date.
- 7.7 Where the Contractor and/or Notified Sub-Contractor does not use the TUPE Information provided and/or does not calculate the Anticipated Redundancy Cost or Actual Redundancy Cost in accordance with the guidance given in the ITT and FRT Guidance then it shall not be permitted to recover any Redundancy Risk Premium, but this shall not prevent the Authority recovering under the Redundancy Risk Reduction.

REDUNDANCY RISK PREMIUM

- 7.8 The Contractor may request a Redundancy Risk Premium on behalf of itself or a Notified Sub-Contractor and the Authority may grant the request, if the Contractor can evidence any inaccuracies or omissions in the relevant TUPE Information provided by the Authority at Competition for the purpose of the Contractor's bid for this Contract and included in the Contractor's Anticipated Redundancy Cost and where a full breakdown and supporting evidence is submitted in support of a request for a Redundancy Risk Premium and the Contractor can evidence compliance with the ITT and FRT Guidance.



- 7.9 On receipt of the Contractor's calculation of the Redundancy Risk Premium the Authority shall either:
- 7.9.1 notify the Contractor in writing of acceptance of the Redundancy Risk Premium;
 - 7.9.2 request further information/evidence; and/or
 - 7.9.3 request a meeting to discuss/clarify the evidence provided.
- 7.10 Where the Redundancy Risk Premium is accepted in accordance with **paragraph 7.9.1 (Redundancy Risk Premium)** of this **Part 2 (TUPE Surcharge and Redundancy Cost Adjustment)** or agreed following the receipt of further information/evidence or following a meeting in accordance with **paragraphs 7.9.2 and/or 7.9.3 (Redundancy Risk Premium)** of this **Part 2 (TUPE Surcharge and Redundancy Cost Adjustment)**, the Authority shall notify the Contractor in writing to confirm the Redundancy Risk Premium to apply and to confirm how this will be paid.
- 7.11 In the event that the Parties are unable to agree the Redundancy Risk Premium the Parties shall follow the Dispute Resolution Procedure.

REDUNDANCY RISK REDUCTION

- 7.12 On receipt of the Contractor's calculation of the Redundancy Risk Reduction the Authority shall either:
- 7.12.1 notify the Contractor in writing of acceptance of the Redundancy Risk Reduction;
 - 7.12.2 request further information/evidence; and/or
 - 7.12.3 request a meeting to discuss/clarify the evidence provided.
- 7.13 Where the Redundancy Risk Reduction is accepted in accordance with **paragraph 7.12.1 (Redundancy Risk Reduction)** of this **Part 2 (TUPE Surcharge and Redundancy Cost Adjustment)** or agreed following the receipt of further information/evidence or following a meeting in accordance with **paragraphs 7.9.2 and/or 7.9.3 (Redundancy Risk Reduction)** of this **Part 2 (TUPE Surcharge and Redundancy Cost Adjustment)**, the Authority shall notify the Contractor in writing to confirm the Redundancy Risk Reduction to apply and to confirm how, following discussion with the Contractor, this will be paid by the Contractor, for example (but not limited to) whether it will be payment of a one-off lump sum by the Contractor, an adjustment to the Monthly Contract Price or whether the Contractor will use the payment to re-invest in the Services.

- 7.14 For the avoidance of doubt, any Transferring Previous Contractor Employees expected to transfer but who did not transfer and in respect of whom an Anticipated Redundancy Cost was submitted by the Contractor as part of its bid for this Contract the Anticipated Redundancy Cost will either be removed from the Contractor's final Base Case or repaid under the Redundancy Risk Reduction provisions.
- 7.15 In relation to any Transferring Previous Contractor Employee for whom an Anticipated Redundancy Cost was in its Base Case as at the Commencement Date but who was not made redundant within twelve (12) months of the Relevant Transfer Date (or where **paragraph 7.5 (Redundancy Risk Premium and Redundancy Risk Reduction)** of this **Part 2 (TUPE Surcharge and Redundancy Cost Adjustment)** applies within twelve (12) months of the Services Commencement Date), the Authority will be able to recover under the Redundancy Risk Reduction the costs under limbs (a) & (b) of the definition of Anticipated Redundancy Cost included in Tab 21 of the Base Case as at the Commencement Date. The Contractor will be able to retain the Direct Employment Costs submitted as part of its bid for such employee and included in its Base Case as at the Commencement Date.
- 7.16 In the event that the Parties are unable to agree the Redundancy Risk Reduction the Parties shall follow the Dispute Resolution Procedure.
8. **RIGHT OF AUDIT**
- 8.1 The Authority reserves the right to review and audit the calculation of the TUPE Risk Premium and/or TUPE Risk Reduction, financial adjustments following a Relevant Headcount Adjustment, Relevant Pay Award and/or Redundancy Cost Adjustment at any time.
- 8.2 Where an overpayment of the TUPE Risk Premium and/or Redundancy Risk Premium or underpayment of the TUPE Risk Reduction and/or Redundancy Risk Reduction or over- or under-payment following a Relevant Headcount Adjustment is identified following a review and/or audit carried out or by any other means, the Contractor shall repay to the Authority any over payment of the TUPE Risk Premium and/or Redundancy Risk Premium and/or other overpayment or make a payment to the Authority in respect of the TUPE Risk Reduction, and/or Redundancy Risk Reduction and/or other underpayment within twenty (20) Business Days of being notified by the Authority.
9. **GROUP INCOME PROTECTION**
- 9.1 For the avoidance of doubt, the Authority shall have no liability to the Contractor or any Notified Sub-Contractor in respect of the provision of any group income protection scheme,



or any payments which are or may become due under such group income protection scheme, to any Transferring Previous Contractor Employees.

PART 3: REDUNDANCY SURCHARGE**1. INTRODUCTION**

- 1.1 Subject to **paragraph 3.1 (Non-application of this Part)** of this **Part 3 (Redundancy Surcharge)**, this Schedule sets out the process for determining the Service Change Redundancy Surcharge in the event that the Authority makes a change to the Services which results in the removal or reduction of any Services or closure of any of the buildings within the Prison.

2. SERVICE CHANGE REDUNDANCY SURCHARGE

- 2.1 Subject to **paragraphs 2.2, 2.3 and 2.4 (Service Change Redundancy Surcharge)** of this **Part 3 (Redundancy Surcharge)** where the Contractor or any Notified Sub-Contractor makes or intends to make a Redundancy Payment in relation to any termination for redundancy made as a direct result of any Authority Change or RRAPP Band Activation Notice or APP Band Deactivation Notice which has resulted in a Prison building closure or a reduction or removal of Services, the Contractor may be entitled to a Service Change Redundancy Surcharge.

- 2.2 The Contractor shall not be entitled to a Service Change Redundancy Surcharge under **paragraph 2.1 (Service Change Redundancy Surcharge)** of this **Part 3 (Redundancy Surcharge)** unless it has, before any relevant termination for redundancy is made:

2.2.1 consulted the Authority about the proposal to make any such termination for redundancy;

2.2.2 provided the Authority with written estimates of any relevant Redundancy Payment together with a breakdown of such estimates and such supporting evidence as the Authority may reasonably request to corroborate and assess the calculations; and

2.2.3 provided the Authority with details of the steps the Contractor, or the Notified Sub-Contractor (as applicable), has taken (or proposes to take) to mitigate such costs in accordance with **paragraph 2.4 (Service Change Redundancy Surcharge)** of this **Part 3 (Redundancy Surcharge)**; and

2.2.4 confirmed the employee to whom the Redundancy Payment relates was assigned to the relevant building being closed or Services being removed or reduced on the date on which the Contractor was notified of the Authority Change or RRAPP

Band Activation Notice or APP Band Deactivation Notice. If the Contractor is unsure whether an individual is so assigned, it shall consult with the Authority whose view shall be determinative.

- 2.3 The Contractor shall not be entitled to a Service Change Redundancy Surcharge under **paragraph 2.1 (Service Change Redundancy Surcharge)** of this **Part 3 (Redundancy Surcharge)** unless it, or the notified Sub-Contractor (as applicable), has followed a fair dismissal procedure and complied with all contractual and legislative requirements (save for a breach of notice entitlement where payment is made on termination in satisfaction of the employee's claim for damages) in respect of each termination for redundancy to which the Service Change Redundancy Surcharge relates.
- 2.4 The Contractor shall (or, where relevant, shall procure that the notified Sub-Contractor shall) avoid having to make, or mitigate the extent of, any Redundancy Payment by:
- 2.4.1 redeploying any relevant person where it is practicable to do so;
 - 2.4.2 where redeployment is not practicable, taking reasonable steps to minimise the amount of Redundancy Payment, including requiring employees to work their notice where this is practicable;
 - 2.4.3 complying with the law and any reasonable instructions of the Authority.
- 2.5 The Contractor shall not be entitled to a Service Change Redundancy Surcharge under **paragraph 2.1 (Service Change Redundancy Surcharge)** of this **Part 3 (Redundancy Surcharge)** unless:
- 2.5.1 the Contractor (or, where relevant, Notified Sub-Contractor) has consulted with the Authority, pursuant to **paragraph 2.2 (Service Change Redundancy Surcharge)** of this **Part 3 (Redundancy Surcharge)**, within one month of receiving notice from the Authority of the Authority Change or RRAPP Band Activation Notice or APP Band Deactivation Notice; and
 - 2.5.2 the employment of any employee to whom the Redundancy Payment relates is terminated for redundancy no later than one month after the relevant building closure or removal or reduction of Service(s).
- 2.6 On receipt of the Contractor's calculation of the Redundancy Payments in accordance with **paragraph 2.2 (Service Change Redundancy Surcharge)** of this **Part 3 (Redundancy Surcharge)** the Authority shall either:



- 2.6.1 notify the Contractor in writing of acceptance of the Service Change Redundancy Surcharge relating to the Authority Change or RRAPP Band Activation Notice or APP Band Deactivation Notice; and/or
- 2.6.2 request further information/evidence; and/ or
- 2.6.3 request a meeting to discuss/clarify the evidence provided.
- 2.7 Where the Service Change Redundancy Surcharge is agreed following the receipt of further information/evidence or following a meeting, the Authority shall notify the Contractor in writing.
- 2.8 In the event that the Contractor and the Authority are unable to agree the Service Change Redundancy Surcharge, they shall follow the Dispute Resolution Procedure.
- 2.9 Where the Service Change Redundancy Surcharge arises and is agreed in accordance with **paragraph 2.7 (Service Change Redundancy Surcharge)** of this **Part 3 (Redundancy Surcharge)**;
- 2.9.1 in respect of that which has arisen as a result of a RRAPP Band Activation or a APP Band Deactivation, the Authority will pay the Service Change Redundancy Surcharge in accordance with **Schedule 14 (Payment Mechanism)**; and
- 2.9.2 in respect of that which has arisen as a result of an Authority Change the Authority will pay the Service Change Redundancy Surcharge within three (3) months of the cost being agreed.
- 2.10 The Authority shall not be liable under this **Part 3 (Redundancy Surcharge)** for any costs associated with Applicable Contractor Personnel (whether relating to redundancy, redeployment or otherwise) other than the Redundancy Payments which are recoverable under the Service Change Redundancy Surcharge.
3. **NON-APPLICATION OF THIS PART**
- 3.1 This **Part 3 (Redundancy Surcharge)** shall not apply on the expiry or termination of this Contract (including partial termination).



PART 4: EMPLOYMENT EXIT PROVISIONS

1. PRE-SERVICE TRANSFER OBLIGATIONS

1.1 The Contractor agrees that within twenty (20) Business Days of the earliest of:

- 1.1.1 receipt of a notification from the Authority of a Service Transfer or intended Service Transfer;
- 1.1.2 receipt of the giving of notice of early termination or any Partial Termination of this Contract;
- 1.1.3 the date which is twelve (12) Months before the end of the Term; and
- 1.1.4 receipt of a written request of the Authority at any time, provided that the Authority shall only be entitled to make one such request in any six (6) Month period,

it shall provide in a suitably anonymised format so as to comply with the Data Protection Legislation, the Contractor's Provisional Contractor Personnel List, together with the Staffing Information in relation to the Contractor's Provisional Contractor Personnel List and it shall provide an updated Contractor's Provisional Contractor Personnel List at such intervals as are reasonably requested by the Authority.

1.2 At least twenty (20) Business Days prior to the Service Transfer Date, the Contractor shall provide to the Authority or at the direction of the Authority to any New Contractor and/or any New Sub-Contractor:

- 1.2.1 the Contractor's Final Contractor Personnel List, which shall identify which of the Contractor's Staff are Transferring Contractor Employees; and
- 1.2.2 the Staffing Information in relation to the Contractor's Final Contractor Personnel List (insofar as such information has not previously been provided).

1.3 The Authority shall be permitted to use and disclose information provided by the Contractor under **paragraphs 1.1 and 1.2 (Pre-Service Transfer Obligations)** of this **Part 4 (Employment Exit Provisions)** for the purpose of informing any prospective New Contractor and/or New Sub-Contractor.



- 1.4 The Contractor warrants, for the benefit of the Authority, any New Contractor, and any New Sub-Contractor that all information provided pursuant to **paragraphs 1.1 and 1.2 (Pre-Service Transfer Obligations)** of this **Part 4 (Employment Exit Provisions)** shall be true and accurate in all material respects at the time of providing the information.
- 1.5 From the date of the earliest event referred to in **paragraphs 1.1.1, 1.1.2 and 1.1.3 (Pre-Service Transfer Obligations)** of this **Part 4 (Employment Exit Provisions)**, the Contractor agrees, that it shall not, and agrees to procure that each Sub-Contractor shall not, assign any person to the provision of the Services who is not listed on the Contractor's Provisional Contractor Personnel List and shall not without the approval of the Authority (not to be unreasonably withheld or delayed):
- 1.5.1 replace or re-deploy any Contractor's Staff listed on the Contractor Provisional Contractor Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person they replace;
 - 1.5.2 make, promise, propose, permit or implement any material changes to the terms and conditions of employment of the Contractor's Staff (including pensions and any payments connected with the termination of employment);
 - 1.5.3 increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Contractor's Staff save for fulfilling assignments and projects previously scheduled and agreed;
 - 1.5.4 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Contractor's Provisional Contractor Personnel List;
 - 1.5.5 increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
 - 1.5.6 terminate or give notice to terminate the employment or contracts of any persons on the Contractor's Provisional Contractor Personnel List save by due disciplinary process,

and shall promptly notify, and procure that each Sub-Contractor shall promptly notify, the Authority or, at the direction of the Authority, any New Contractor and any New Sub-Contractor of any notice to terminate employment given by the Contractor or relevant Sub-



Contractor or received from any persons listed on the Contractor's Provisional Contractor Personnel List regardless of when such notice takes effect.

- 1.6 During the Contract Period, the Contractor shall provide, and shall procure that each Sub-Contractor shall provide, within twenty (20) Business Days, to the Authority any information the Authority may reasonably require relating to the manner in which the Services are organised, which shall include:
- 1.6.1 the numbers of Contractor's Staff engaged in providing the Services;
 - 1.6.2 the percentage of time spent by each member of Contractor's Staff engaged in providing the Services;
 - 1.6.3 the extent to which each employee qualifies for membership of any of the Statutory Schemes or any Broadly Comparable scheme set up pursuant to the provisions of any of the **Annexes to Part D (Pensions) of Part 1 (Staff Transfer on Commencement)** of this Schedule (as appropriate); and
 - 1.6.4 a description of the nature of the work undertaken by each member of Contractor's Staff by location.
- 1.7 The Contractor shall provide, and shall procure that each Sub-Contractor shall provide, all reasonable cooperation and assistance to the Authority, any New Contractor and/or any New Sub-Contractor to ensure the smooth transfer of the Transferring Contractor Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Contractor Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within five (5) Business Days following the Service Transfer Date, the Contractor shall provide, and shall procure that each Sub-Contractor shall provide, to the Authority or, at the direction of the Authority, to any New Contractor and/or any New Sub-Contractor (as appropriate), in respect of each person on the Contractor's Final Contractor Personnel List who is a Transferring Contractor Employee:
- 1.7.1 the most recent month's copy pay slip data;
 - 1.7.2 details of cumulative pay for tax and pension purposes;
 - 1.7.3 details of cumulative tax paid;
 - 1.7.4 updated tax code as at the Service Transfer Date if changes have occurred since the details were previously provided;



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- 1.7.5 updated details of any voluntary deductions from pay as at the Service Transfer Date if changes have occurred since the details were previously provided;
- 1.7.6 a copy of the personnel file and all other records regarding the service of the Transferring Contractor Employees;
- 1.7.7 all such data and information as may be required at law or as required by the trustee or manager of the relevant pension scheme/s in which the Contractor or any Sub-Contractor operates from time to time and in which the Transferring Contractor Employees have been members;
- 1.7.8 all information required to meet the minimum record keeping requirements under the Working Time Regulations 1998 and the National Minimum Wage Regulations 2015; and
- 1.7.9 updated bank/building society or other account details for payroll purposes if they have changed since they were previously provided.
- 1.8 From the date of the earliest event referred to in **paragraphs 1.1.1, 1.1.2 and 1.1.3 (Pre-Service Transfer Obligations)** of this **Part 4 (Employment Exit Provisions)**, the Contractor agrees that within twenty (20) Business Days of a request from the Authority it shall and shall procure that each Sub-Contractor shall use reasonable endeavours to comply with any reasonable request to align and assign Supplier Personnel to any future delivery model proposed by the Authority for Replacement Services within thirty (30) Business Days or such longer timescale as may be agreed.
- 1.9 Any changes necessary to this Contract as a result of alignment referred to in **paragraph 1.8 (Pre-Service Transfer Obligations)** of this **Part 4 (Employment Exit Provisions)** shall be agreed in accordance with **Schedule 16 (Change Protocol)**.
2. **EMPLOYMENT REGULATIONS EXIT PROVISIONS**
- 2.1 The Authority and the Contractor acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Agreement or otherwise) resulting in the Services being undertaken by a New Contractor and/or a New Sub-Contractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations will apply. The Authority and the Contractor further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the

Contractor and/or any Sub-Contractor and the Transferring Contractor Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the New Contractor and/or a New Sub-Contractor (as the case may be) and each such Transferring Contractor Employee.

2.2 The Contractor shall, and shall procure that each Sub-Contractor shall, comply with all its obligations under the Employment Regulations and, in particular, obligations in respect of the Transferring Contractor Employees arising under the Employment Regulations in respect of the period up to (but excluding) the Service Transfer Date and shall perform and discharge, and procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of any person identified in the Contractor's Final Contractor Personnel List and all the Transferring Contractor Employees arising in respect of the period up to (but excluding) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, pay for accrued but untaken holiday, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Statutory Schemes and any requirement to set up a broadly comparable pension scheme which in any case are attributable in whole or in part to the period ending on (but excluding) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:

2.2.1 the Contractor and/or the Sub-Contractor (as appropriate); and

2.2.2 the New Contractor and/or New Sub-Contractor.

2.3 Subject to **paragraph 2.4 (Employment Regulations Exit Provisions)** of this **Part 4 (Employment Exit Provisions)**, the Contractor shall indemnify the Authority and/or the New Contractor and/or any New Sub-Contractor against any Employee Liabilities arising from or as a result of:

2.3.1 any act or omission of the Contractor or any Sub-Contractor in respect of any Transferring Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Contractor Employee whether occurring before, on or after the Service Transfer Date;

2.3.2 the breach or non-observance by the Contractor or any Sub-Contractor occurring before but excluding the Service Transfer Date of:

2.3.2.1 any collective agreement applicable to the Transferring Contractor Employees; and/or



- 2.3.2.2 any other custom or practice with a trade union or staff association in respect of any Transferring Contractor Employees which the Contractor or any Sub-Contractor is contractually bound to honour;
- 2.3.3 any claim by any trade union or other body or person representing any Transferring Contractor Employees arising from or connected with any failure by the Contractor or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising before but excluding the Service Transfer Date;
- 2.3.4 any failure by the Contractor or any Sub-Contractor to comply with its obligations (including its obligations to maintain records) under the Working Time Regulations 1998, National Minimum Wage Act 1998 and any/all associated National Minimum Wage Regulations in the period prior to the Service Transfer Date in respect of any Transferring Contractor Employees or workers (current or past) including, but not limited to any failure to maintain adequate records which meet the minimum requirements for record-keeping and/or failure to deliver the same to the Authority, a New Contractor and/or New Sub-Contractor on request;
- 2.3.5 the provision of inaccurate or incomplete information pursuant to **paragraphs 1.1, 1.2 and 1.6 (Pre-Service Transfer Obligations)** of this **Part 4 (Employment Exit Provisions)**, irrespective of whether or not the Authority, the New Contractor or any New-Subcontractor has an ability via another contractual mechanism to recover unanticipated employment costs from the Authority;
- 2.3.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- 2.3.6.1 in relation to any Transferring Contractor Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before but excluding the Service Transfer Date; and
- 2.3.6.2 in relation to any employee who is not identified in the Contractor's Final Contractor Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer their employment from the Contractor to the Authority and/or New Contractor and/or any New Sub-Contractor, to the extent that the proceeding, claim or demand by HMRC or other



statutory authority relates to financial obligations arising before but excluding the Service Transfer Date;

- 2.3.7 a failure of the Contractor or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Contractor Employees in respect of the period up to (and including) the Service Transfer Date;
- 2.3.8 any claim made by or in respect of any person employed or formerly employed by the Contractor or any Sub-Contractor other than a Transferring Contractor Employee identified in the Contractor's Final Contractor Personnel List for whom it is alleged the Authority and/or the New Contractor and/or any New Sub-Contractor may be liable by virtue of this Agreement and/or the Employment Regulations; and
- 2.3.9 any claim made by or in respect of a Transferring Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Contractor Employee relating to any act or omission of the Contractor or any Sub-Contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Authority and/or New Contractor to comply with regulation 13(4) of the Employment Regulations.
- 2.4 The indemnities in **paragraph 2.3 (Employment Regulations Exit Provisions)** of this **Part 4 (Employment Exit Provisions)** shall not apply to the extent that the Employee Liabilities arise or are attributable to any act or omission of the New Contractor and/or any New Sub-Contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:
- 2.4.1 arising out of the resignation of any Transferring Contractor Employee before the Service Transfer Date on account of substantial detrimental changes to their terms and conditions of employment or working conditions proposed by the New Contractor and/or any New Sub-Contractor to occur in the period on or after the Service Transfer Date; or
- 2.4.2 arising from the New Contractor's failure, and/or New Sub-Contractor's failure, to comply with its obligations under the Employment Regulations.
- 2.5 If any person who is not identified in the Contractor's Final Contractor Personnel List claims, or it is determined in relation to any person who is not identified in the Contractor's Final



Contractor Personnel List, that their contract of employment has been transferred from the Contractor or any Sub-Contractor to the New Contractor and/or New Sub-Contractor pursuant to the Employment Regulations, then:

2.5.1 the Authority shall procure that the New Contractor shall, or any New Sub-Contractor shall, within five (5) Business Days of becoming aware of that fact, give notice in writing to the Contractor; and

2.5.2 the Contractor may offer (or may procure that a Sub-Contractor may offer) employment to such person within fifteen (15) Business Days of the notification by the New Contractor and/or any and/or New Sub-Contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with the applicable Legislation.

2.6 If such offer is accepted, or if the situation has otherwise been resolved by the Contractor or a Sub-Contractor, the Authority shall procure that the New Contractor shall, or procure that the New Sub-Contractor shall, immediately release or procure the release of the person from their employment or alleged employment.

2.7 If after the fifteen (15) Business Day period specified in **paragraph 2.5.2 (Employment Regulations Exit Provisions)** of this **Part 4 (Employment Exit Provisions)** has elapsed:

2.7.1 no such offer of employment has been made;

2.7.2 such offer has been made but not accepted; or

2.7.3 the situation has not otherwise been resolved,

the Authority shall advise the New Contractor and/or New Sub-Contractor, as appropriate that it may within five (5) Business Days give notice to terminate the employment or alleged employment of such person.

2.8 Subject to the New Contractor and/or New Sub-Contractor acting in accordance with the provisions of **paragraphs 2.5 to 2.7 (Employment Regulations Exit Provisions)** of this **Part 4 (Employment Exit Provisions)**, and in accordance with all applicable proper employment procedures set out in applicable Legislation, the Contractor shall indemnify the New Contractor and/or New Sub-Contractor against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of **paragraph 2.7 (Employment Regulations Exit Provisions)** of this **Part 4 (Employment Exit Provisions)** provided that



the New Contractor takes, or shall procure that the New Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.9 The indemnity in **paragraph 2.8 (Employment Regulations Exit Provisions)** of this **Part 4 (Employment Exit Provisions)**:

2.9.1 shall not apply to:

2.9.1.1 any claim for:

- (a) any contravention of the Equality Act 2010 (or predecessor/successor legislation); or
- (b) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the New Contractor and/or New Sub-Contractor; or

2.9.1.2 any claim that the termination of employment was unfair because the New Contractor and/or New Sub-Contractor neglected to follow a fair dismissal procedure; and

2.9.2 shall apply only where the notification referred to in **paragraph 2.5.1 (Employment Regulations Exit Provisions)** of this **Part 4 (Employment Exit Provisions)** is made by the New Contractor and/or New Sub-Contractor to the Contractor within six (6) Months of the Service Transfer Date.

2.10 If any such person as is described in **paragraph 2.5 (Employment Regulations Exit Provisions)** of this **Part 4 (Employment Exit Provisions)** is neither re-employed by the Contractor or any Sub-Contractor nor dismissed by the New Contractor and/or New Sub-Contractor within the time scales set out in **paragraphs 2.5 to 2.7 (Employment Regulations Exit Provisions)** of this **Part 4 (Employment Exit Provisions)**, such person shall be treated as a Transferring Contractor Employee.

2.11 The Contractor shall, and shall procure that each Sub-Contractor shall, promptly provide to the Authority and any New Contractor and/or New Sub-Contractor, in writing such information as is necessary to enable the Authority, the New Contractor and/or New Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Authority shall procure that the New Contractor and/or New Sub-Contractor, shall promptly provide to the Contractor and each Sub-Contractor in writing such



information as is necessary to enable the Contractor and each Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

- 2.12 The Contractor shall, and shall procure that each Sub-Contractor shall, provide all reasonable assistance and documentation required by the Authority, a New Contractor and/or a New Sub-Contractor required by them in connection with any query, claim, dispute or proceedings arising after a Service Transfer Date but relating to a Transferring Contractor Employee.
- 2.13 Subject to **paragraph 2.14 (Employment Regulations Exit Provisions)** of this **Part 4 (Employment Exit Provisions)**, the Authority shall procure that the New Contractor indemnifies the Contractor on its own behalf and on behalf of any New Sub-Contractor and its sub-contractors against any Employee Liabilities arising from or as a result of:
- 2.13.1 any act or omission of the New Contractor and/or New Sub-Contractor in respect of any Transferring Contractor Employee identified in the Contractor's Final Contractor Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Contractor Employee;
 - 2.13.2 the breach or non-observance by the New Contractor and/or New Sub-Contractor on or after the Service Transfer Date of:
 - 2.13.2.1 any collective agreement applicable to the Transferring Contractor Employees identified in the Contractor's Final Contractor Personnel List; and/or
 - 2.13.2.2 any custom or practice in respect of any Transferring Contractor Employees identified in the Contractor's Final Contractor Personnel List which the New Contractor and/or New Sub-Contractor is contractually bound to honour;
 - 2.13.3 any claim by any trade union or other body or person representing any Transferring Contractor Employees identified in the Contractor's Final Contractor Personnel List arising from or connected with any failure by the New Contractor and/or New Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;
 - 2.13.4 any proposal by the New Contractor and/or New Sub-Contractor to change the terms and conditions of employment or working conditions of any Transferring Contractor Employees identified in the Contractor's Final Contractor Personnel List on or after their transfer to the New Contractor or New Sub-Contractor (as the

case may be) on the Service Transfer Date, or to change the terms and conditions of employment or working conditions of any person identified in the Contractor's Final Contractor Personnel List who would have been a Transferring Contractor Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations or otherwise) before the Service Transfer Date as a result of or for a reason connected to such proposed changes;

- 2.13.5 any statement communicated to or action undertaken by the New Contractor or New Sub-Contractor to, or in respect of, any Transferring Contractor Employee identified in the Contractor's Final Contractor Personnel List before but excluding the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Contractor in writing;
- 2.13.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- 2.13.6.1 in relation to any Transferring Contractor Employee identified in the Contractor's Final Contractor Personnel List, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
- 2.13.6.2 in relation to any employee who is not a Transferring Contractor Employee identified in the Contractor's Final Contractor Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer their employment from the Contractor or Sub-Contractor, to the New Contractor or New Sub-Contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;
- 2.13.7 a failure of the New Contractor or New Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Contractor Employees identified in the Contractor's Final Contractor Personnel List in respect of the period from (and including) the Service Transfer Date; and

- 2.13.8 any claim made by or in respect of a Transferring Contractor Employee identified in the Contractor's Final Contractor Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Contractor Employee relating to any act or omission of the New Contractor or New Sub-Contractor in relation to obligations under regulation 13 of the Employment Regulations.
- 2.14 The indemnities in **paragraph 2.13 (Employment Regulations Exit Provisions)** of this **Part 4 (Employment Exit Provisions)** shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Contractor and/or any Sub-Contractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Contractor and/or any Sub-Contractor (as applicable) to comply with its obligations under the Employment Regulations.

PART 4, ANNEX 1: STAFFING INFORMATION**EMPLOYEE INFORMATION (ANONYMISED)****NAME OF TRANSFEROR:****NUMBER OF EMPLOYEES IN-SCOPE TO TRANSFER:****COMPLETION NOTES**

- 1** *IF YOU HAVE ANY KEY SUB-CONTRACTORS, PLEASE COMPLETE ALL THE ABOVE INFORMATION FOR ANY STAFF EMPLOYED BY SUCH KEY SUB-CONTRACTOR(S) IN A SEPARATE SPREADSHEET.*
- 2** *THIS SPREADSHEET IS USED TO COLLECT INFORMATION FROM THE CURRENT EMPLOYER (TRANSFEROR) ABOUT EMPLOYEES PERFORMING THE RELEVANT SERVICES TO HELP PLAN FOR A POTENTIAL TUPE TRANSFER. SOME OR ALL OF THIS INFORMATION MAY BE DISCLOSED TO BIDDERS AS PART OF A PROCUREMENT PROCESS. THE INFORMATION SHOULD NOT REVEAL THE EMPLOYEES' IDENTITIES.*
- 3** *IF THE INFORMATION CANNOT BE INCLUDED ON THIS FORM, ATTACH THE ADDITIONAL INFORMATION, SUCH AS RELEVANT POLICIES, AND CROSS REFERENCE TO THE ITEM NUMBER AND EMPLOYEE NUMBER WHERE APPROPRIATE.*



| EMPLOYEE DETAILS & KEY TERMS | | | | | | | |
|---|------------------|---------------------|----------------------|---------------------------------|--|---|---|
| DETAILS | JOB TITLE | GRADE / BAND | WORK LOCATION | DATE OF BIRTH (DD/MM/YY) | EMPLOYMENT STATUS (FOR EXAMPLE, EMPLOYEE, FIXED-TERM EMPLOYEE, SELF-EMPLOYED, AGENCY WORKER)? | CONTINUOUS SERVICE DATE (DD/MM/YY) | DATE EMPLOYMENT STARTED WITH EXISTING EMPLOYER |
| EMP NO 1 | | | | | | | |
| EMP NO 2 | | | | | | | |
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| EMPLOYEE DETAILS & KEY TERMS | | | | | | | |
|---|---|--|---|--|--|---|---|
| DETAILS | CONTRACT END DATE (IF FIXED TERM CONTRACT OR TEMPORARY CONTRACT) | CONTRACTUAL NOTICE PERIOD | CONTRACTUAL WEEKLY HOURS | REGULAR OVERTIME HOURS PER WEEK | MOBILITY OR FLEXIBILITY CLAUSE IN CONTRACT? | PREVIOUSLY TUPE TRANSFERRED TO ORGANISATION? IF SO, PLEASE SPECIFY (I) DATE OF TRANSFER, (II) NAME OF TRANSFEROR, AND (III) WHETHER EX PUBLIC SECTOR | ANY COLLECTIVE AGREEMENTS? |
| EMP NO 1 | | | | | | | |
| EMP NO 2 | | | | | | | |



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Commercial

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| | ASSIGNMENT | CONTRACTUAL PAY AND BENEFITS | | | | | | |
|----------------|--|---------------------------------------|--|--|--------------------------|---------------------------------|-----------------------------|-----------------------------|
| DETAILS | % OF WORKING TIME DEDICATED TO THE PROVISION OF SERVICES UNDER THE CONTRACT | SALARY (OR HOURLY RATE OF PAY) | PAYMENT INTERVAL (WEEKLY / FORTNIGHTLY / MONTHLY) | BONUS PAYMENT FOR PREVIOUS 12 MONTHS (PLEASE SPECIFY WHETHER CONTRACTUAL OR | PAY REVIEW METHOD | FREQUENCY OF PAY REVIEWS | AGREED PAY INCREASES | NEXT PAY REVIEW DATE |

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| | | | | DISCRETIONARY ENTITLEMENT) | | | | |
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CONTRACTUAL PAY AND BENEFITS

| DETAILS | ANY EXISTING OR FUTURE COMMITMENT TO TRAINING | CAR ALLOWANCE (£ PER YEAR) | LEASE OR COMPANY | ANY OTHER ALLOWANCES PAID (E.G. SHIFT | PRIVATE MEDICAL INSURANCE (PLEASE | LIFE ASSURANCE (XSALARY) | LONG TERM DISABILITY | ANY OTHER |
|----------------|--|---|-----------------------------|--|--|---|-------------------------------------|----------------------|
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| | THAT HAS A TIME-OFF OR FINANCIAL IMPLICATION | | CAR DETAILS | ALLOWANCE, STANDBY ALLOWANCE, TRAVEL ALLOWANCE) | SPECIFY WHETHER SINGLE OR FAMILY COVER) | | / PHI (% OF SALARY) | BENEFITS IN KIND |
|---------------------|---|--|------------------------|--|--|--|--------------------------------|-----------------------------|
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| CONTRACTUAL PAY AND BENEFITS | | | | | | |
|-------------------------------------|---|---------------------------------|--|--|---------------------------------------|--|
| DETAILS | ANNUAL LEAVE ENTITLEMENT (EXCLUDING BANK HOLIDAYS) | BANK HOLIDAY ENTITLEMENT | METHOD OF CALCULATING HOLIDAY PAY (I.E. BASED ON FIXED SALARY ONLY OR INCL. ENTITLEMENTS TO VARIABLE REMUNERATION SUCH AS BONUSES, ALLOWANCES, COMMISSION OR OVERTIME PAY?) | MATERNITY OR PATERNITY OR SHARED PARENTAL LEAVE ENTITLEMENT AND PAY | SICK LEAVE ENTITLEMENT AND PAY | REDUNDANCY PAY ENTITLEMENT (STATUTORY / ENHANCED / CONTRACTUAL / DISCRETIONARY) |
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| PENSIONS | | | | | | |
|-----------------|---|---|---|---|--|---|
| DETAILS | EMPLOYEE PENSION CONTRIBUTION RATE | EMPLOYER PENSION CONTRIBUTION RATE | PLEASE PROVIDE THE NAME OF THE PENSION SCHEME AND A LINK TO THE PENSION SCHEME WEBSITE | IS THE SCHEME AN OCCUPATIONAL PENSION SCHEME AS DEFINED IN THE PENSION SCHEMES ACT 1993? | IF THE SCHEME IS NOT AN OCCUPATIONAL PENSION SCHEME, WHAT TYPE OF SCHEME IS IT? E.G. PERSONAL PENSION SCHEME? | TYPE OF PENSION PROVISION E.G. DEFINED BENEFIT (CARE OR FINAL SALARY, AND WHETHER A PUBLIC SECTOR SCHEME E.G. CSPS, NHSPS, LGPS ETC. OR A BROADLY COMPARABLE SCHEME) OR A DEFINED CONTRIBUTION SCHEME OR AN AUTO |
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| PENSIONS | | | | | | |
|-----------------|---|--|---|---|---|--|
| DETAILS | IF THE EMPLOYEE IS IN THE LOCAL GOVERNMENT | IF THE EMPLOYEE IS IN THE CIVIL | IF THE EMPLOYEE IS IN THE NHSPS, | IF THE EMPLOYEE IS IN A BROADLY COMPARABLE | DID FAIR DEAL OR ANY OTHER SIMILAR PENSION PROTECTION FOR EX-PUBLIC SECTOR | IF FAIR DEAL, BEST VALUE OR OTHER PENSION |
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| | PENSION SCHEME, PLEASE SUPPLY DETAILS OF FUND AND ADMINISTERING AUTHORITY. | SERVICE PENSION SCHEME, PLEASE PROVIDE DETAILS OF THE ADMISSION AGREEMENT. | PLEASE PROVIDE DETAILS OF THE DIRECTION LETTER. | PENSION SCHEME, PLEASE SUPPLY A COPY OF THE GAD CERTIFICATE OF BROAD COMPARABILITY. | EMPLOYEES APPLY TO THE EMPLOYEE WHEN THEY TUPE TRANSFERRED INTO YOUR EMPLOYMENT? IF SO, WHAT WAS THE NATURE OF THAT PROTECTION (E.G. RIGHT TO PARTICIPATE IN A PUBLIC SECTOR PENSION SCHEME, OR A BROADLY COMPARABLE SCHEME, OR TO BULK TRANSFER PAST PENSION SERVICE INTO THEIR CURRENT SCHEME)? | PROTECTION APPLIED, WHICH PUBLIC SECTOR EMPLOYER DID THEY ORIGINALLY TRANSFER OUT OF AND WHEN? |
|-----------------|---|---|--|--|--|---|
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| OTHER | | | |
|----------|----------------------|--------------------------------|-----------------------------|
| DETAILS | SECURITY CHECK LEVEL | SECURITY CLEARANCE EXPIRY DATE | ADDITIONAL INFO OR COMMENTS |
| EMP NO 1 | | | |
| EMP NO 2 | | | |
| EMP NO | | | |