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ATTACHMENT 15-8 OF THE SPECIAL TERMS

PSN CONNECTIVITY

CALL-OFF TERMS

SCHEDULE 7.1

STAFF TRANSFER

1. INTRODUCTION

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

1.1.1 the application of the Employment Regulations to this Agreement; and

1.1.2 pensions pursuant to Appendix 1 of this Schedule.

2. APPLICATION OF THE EMPLOYMENT REGULATIONS ON THE COMMENCEMENT OF THE SERVICES BY THE CONTRACTOR

2.1 The Customer Authority shall, based upon a reasonable assessment of the facts, state in Appendix 14 of the Call-Off Form which parts of this Paragraph 2, as set out in Parts A, B and C (Parts B and C may both apply) shall apply to this Agreement.

PART A

2.2 The Customer Authority and the Contractor shall proceed on the basis that the commencement of the provision of the Services by the Contractor under this Agreement shall not be a "relevant transfer" to which the Employment Regulations shall apply in relation to any employees of the Customer Authority or any Outgoing Service Provider. In the circumstances, the Customer Authority and the Contractor agree that no employees of the Customer Authority or any Outgoing Service Provider nor any liabilities in respect of any former employees of the Customer Authority or any Outgoing Service Provider shall transfer to the Contractor by virtue of the operation of the Employment Regulations.

2.3 If any employee of the Customer Authority or an Outgoing Service Provider claims or it is determined that his contract of employment has been transferred from the Customer

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Authority or an Outgoing Service Provider to the Contractor pursuant to the Employment Regulations then:

- 2.3.1 the Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Customer Authority (which may include, at the Customer Authority's option, notice to any Outgoing Service Provider);
- 2.3.2 the Customer Authority may or may procure that an Outgoing Service Provider may offer employment to such person within fifteen (15) Working Days of the notification by the Contractor or take such other steps as it considers appropriate to deal with the matter;
- 2.3.3 if such offer is accepted (or if the situation has otherwise been resolved by the Customer Authority or an Outgoing Service Provider), the Contractor shall immediately release the person from his/her employment;
- 2.3.4 if after the fifteen (15) Working Day period has elapsed, no such offer of employment has been made or such offer has been made but not accepted or the situation has not otherwise been resolved, the Contractor may within five (5) Working Days give notice to terminate the employment of such person;
- 2.3.5 subject to Paragraph 2.4 below and subject to the Contractor acting in this way or in such other way as may be agreed between the Customer Authority and the Contractor, the Customer Authority shall ~~(as applicable) indemnify, or use~~ reasonable endeavours to procure that the Outgoing Service Provider shall indemnify, the Contractor against:
- 2.3.5.1 all Employee Liabilities arising out of such termination or otherwise arising out of the employment of such person by the Contractor; and/or
- 2.3.5.2 any direct employment costs (if any) associated with the employment of such person by the Contractor up to the date of termination of such person's employment.
- 2.3.6 If such person is neither re-employed by the Customer Authority or the Outgoing Service Provider nor dismissed by the Contractor within the

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timescales set out in this Paragraph 2.3, such person shall be treated as having transferred to the Contractor by virtue of the operation of the Employment Regulations and the Contractor shall comply with such obligations as may be imposed upon it under Employment Regulations or otherwise by Law.

2.4 The indemnity in Paragraph 2.3.5 above shall only apply where the notification referred to in Paragraph 2.3.1 above is made by the Contractor ~~to the Customer Authority~~ within six (6) months of the Operational Service Commencement Date.

2.4A If any former employee of the Customer Authority or an Outgoing Service Provider claims that he was dismissed from his employment with the Customer Authority or an Outgoing Service Provider and that liabilities associated with that dismissal have transferred to the Contractor by virtue of the operation of the Employment Regulations then the Customer Authority shall ~~(as applicable) indemnify, or~~ use reasonable endeavours to procure that the Outgoing Service Provider shall indemnify, the Contractor against such liabilities. This indemnity shall only apply where the Contractor notifies ~~the Customer Authority~~ of the claim within six (6) months of the Operational Service Commencement Date.

PART B

2.5 With effect from each Transfer Date, the contracts of employment of the Transferring Outgoing Service Provider Employees identified pursuant to this Agreement as being assigned by the Outgoing Service Providers to services which are being replaced by the Services (or in circumstances where separate parts of the Services are commenced by the Contractor at different times, by the relevant Service Tranche) shall as a result of the Employment Regulations take effect (except in ~~relation to~~ so far as such contracts of employment relate to benefits for old age, survivors and invalidity under any occupational pension scheme ~~benefits~~ excluded under regulation 10 of the Employment Regulations) as if they were originally agreed between the Contractor and those Transferring Outgoing Service Provider Employees except where any of the Transferring Outgoing Service Provider Employees have in advance of the Transfer Date:

2.5.1 resigned;

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- 2.5.2 been dismissed by the Outgoing Service Provider;
- 2.5.3 been re-deployed by the Outgoing Service Provider so that they are no longer assigned to those services which are being replaced by the Services commenced by the Contractor on the Transfer Date; or
- 2.5.4 objected to transferring to the Contractor in accordance with regulation 4(7) of the Employment Regulations.
- 2.6 In circumstances where a Transfer Date occurs more than fifteen (15) Working Days after the Effective Date:
- 2.6.1 the Customer Authority shall (where reasonably possible) provide or procure that the Outgoing Service Providers provide, as may be reasonably requested by the Contractor:
- 2.6.1.1 an up-to-date list of all employees, agents, consultants and contractors who are engaged in or mainly assigned to the provision of services which are to be replaced by the relevant Service Tranche;
- 2.6.1.2 Staffing Information in relation to such employees;
- 2.6.2 the Customer Authority ~~and shall~~ shall or shall procure that the Outgoing Service Provider shall liaise with the Contractor ~~shall~~ shall to seek (in liaison with any relevant Connected PSN Connectivity Contractors ~~and Outgoing Service Providers~~) to agree by no later than ~~ten~~ thirty (~~10~~ 30) Working Days before the Transfer Date a final list of Transferring Outgoing Service Provider Employees who shall transfer pursuant to the Employment Regulations on that Transfer Date. If agreement is reached those persons shall be the Transferring Outgoing Service Provider Employees for the relevant Transfer Date; and
- 2.6.3 if agreement is not reached in accordance with Paragraph 2.6.2 above, the Customer Authority shall or shall procure that the Outgoing Service Provider shall determine based upon a reasonable assessment of the facts the final list of relevant Transferring Outgoing Service Provider Employees and confirm that in writing to the Contractor no later than ~~five~~ fifteen (~~5~~ 15) Working Days before

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the Transfer Date. Those persons shall be the Transferring Outgoing Service Provider Employees for the relevant Transfer Date.

2.7 If any person who is not a Transferring Outgoing Service Provider Employee claims or it is determined that his/her contract of employment has been transferred from an Outgoing Service Provider to the Contractor as at the Transfer Date or pursuant to the Employment Regulations then:

2.7.1 the Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Customer Authority (which may include, at the Customer Authority's option, notice to the Outgoing Service Provider);

2.7.2 the Customer Authority may procure that an Outgoing Service Provider offers employment to such person within fifteen (15) Working Days of the notification by the Contractor;

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

2.7.4 if after the fifteen (15) Working Day period has elapsed, no such offer of employment has been made or such offer has been made but not accepted or the situation has not been otherwise resolved, the Contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

2.8 Subject to the Contractor acting in the way set out in Paragraph 2.7 above or in such other way as may be agreed between the Contractor and the Customer Authority, the Customer Authority shall procure that the Outgoing Service Providers shall (in respect of their employees or former employees employed immediately prior to the Transfer Date) indemnify the Contractor against:

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

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

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2.9 The indemnity in Paragraph 2.8 above shall not apply:

2.9.1 to any claim for discrimination including but not limited to sex, race, disability, sexual orientation, religion or belief or age discrimination in relation to any alleged act or omission of the Contractor or to any claim that the termination of employment was unfair because the Contractor neglected to follow in whole or in part a fair dismissal procedure;

2.9.2 to any claim by any person in respect of whom the notification given to the Customer Authority under Paragraph 2.7.1 above is received by the Customer Authority more than six (6) months after the Transfer Date; and

2.9.3 if such person is neither re-employed by an Outgoing Service Provider nor dismissed by the Contractor within the timescales set out in Paragraph 2.7 above, in which case such person shall be treated as having transferred to the Contractor who shall be responsible for all liabilities arising in respect of any such person.

2.10 The Contractor shall comply with its duties and the Customer Authority shall procure that the Outgoing Service Providers shall comply with their duties under regulation 13 of the Employment Regulations (or otherwise) to inform and consult with employee representatives/employees. The Contractor shall promptly provide, and the Customer Authority shall procure that the Outgoing Service Providers promptly provide, to the other Party in writing such information as is necessary to carry out their respective duties under regulation 13 of the Employment Regulations (or otherwise).

2.11 The Contractor shall and shall procure that any sub-contractor shall co-operate with any pre-transfer consultation by the Outgoing Service Provider under Part IV of TULRCA.

2.12 ~~2.11~~ ~~2.11~~ In respect of the Transferring Outgoing Service Provider Employees there shall be apportioned as at the Transfer Date pro rata all emoluments and outgoings (including all wages, benefits, bonuses, PAYE, and employers' NICs) between the Contractor and the Outgoing Service Providers. The Customer Authority shall procure that the Outgoing Service Provider shall be responsible for the period up to the Transfer Date and the Contractor shall be responsible for the Transfer Date and the

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period thereafter, except that there shall be no apportionment payments in respect of the Transferring Outgoing Service Provider Employees' holiday entitlements.

2.13 ~~2.12~~ ~~2.12~~ The Customer Authority shall procure that the Outgoing Service Providers:

2.13.1 ~~2.12.1~~ ~~2.12.1~~ pay all salaries and provide all other benefits and make all appropriate deductions and payments in respect of all Transferring Outgoing Service Provider Employees up to, but not including, the Transfer Date;

2.13.2 ~~2.12.2~~ ~~2.12.2~~ indemnify the Contractor from and against all Employee Liabilities awarded against or incurred by the Contractor as a result of or in connection with:

2.13.2.1 ~~2.12.2.1~~ ~~2.12.2.1~~ the employment or termination of employment by an Outgoing Service Provider of any Transferring Outgoing Service Provider Employee in the period up to but not including the Transfer Date. This indemnity shall not apply where such claim arises out of the resignation of any such Transferring Outgoing Service Provider Employee before the Transfer Date on account of substantial detrimental changes to his contract of employment that are proposed or shall occur as a consequence of the actions of the Contractor in the period on or after the Transfer Date;

2.13.2.2 ~~2.12.2.2~~ ~~2.12.2.2~~ the employment or termination of employment by an Outgoing Service Provider of any existing or former employee of the Outgoing Service Provider (who is not a Transferring Outgoing Service Provider Employee) in the period up to but not including the Transfer Date in respect of which such employee claims that the Contractor has inherited liability from the Outgoing Service Provider by virtue of the Employment Regulations and this Agreement; or

2.13.2.3 ~~2.12.2.3~~ ~~2.12.2.3~~ any failure by the Outgoing Service Provider to comply with its obligations under regulation 13 of the Employment Regulations to inform and consult with employee representatives/employees (other than to the extent such failure is as a result of a failure by the Contractor to comply with regulation 13 of

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the Employment Regulations to inform and consult with employee representatives/employees); and

2.13.3 ~~2.12.3~~ ~~2.12.3~~ provide true, accurate and complete copies of all original employment records relating to the Transferring Outgoing Service Provider Employees on the Transfer Date.

2.14 ~~2.13~~ ~~2.13~~ The Contractor shall:

2.14.1 ~~2.13.1~~ ~~2.13.1~~ pay all salaries and provide all other benefits and make all appropriate deductions and payments in respect of all Transferring Outgoing Service Provider Employees for the duration of their employment with the Contractor in the period on and after the Transfer Date;

2.14.2 ~~2.13.2~~ ~~2.13.2~~ indemnify the Customer Authority and the Outgoing Service Providers from and against all Employee Liabilities awarded against or incurred by the Customer Authority or the Outgoing Service Providers as a result of or in connection with:

2.14.2.1 ~~2.13.2.1~~ ~~2.13.2.1~~ the employment or termination of employment by the Contractor of any Transferring Outgoing Service Provider Employee in the period on and after the Transfer Date;

2.14.2.2 ~~2.13.2.2~~ ~~2.13.2.2~~ NOT USED

2.14.2.3 ~~2.13.2.3~~ ~~2.13.2.3~~ any claim brought by or on behalf of any Transferring Outgoing Service Provider Employee arising out of the resignation of such Transferring Outgoing Service Provider Employee before the Transfer Date on account of substantial detrimental changes to his contract of employment that are proposed or shall occur as a consequence of the actions of the Contractor in the period on or after the Transfer Date except where such employee's resignation has been based upon incorrect information given by the Outgoing Service Provider or the Customer Authority to the Transferring Outgoing Service Provider Employee or to any representatives of the Transferring Outgoing Service Provider Employee; or

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2.14.2.4 ~~2.13.2.4~~ ~~2.13.2.4~~ any failure by the Contractor to provide sufficient information to the Outgoing Service Providers in respect of any measures that the Contractor envisages taking after the relevant Transfer Date to enable the Outgoing Service Providers to comply with its obligations under regulation 13 of the Employment Regulations (or otherwise) to inform and consult with employee representatives/employees;

2.15 ~~2.14~~ ~~2.14~~ In all cases where Other PSN Connectivity Contractors may be subject to a transfer of employees from the same Outgoing Service Provider(s), the Contractor shall work cooperatively with such Other PSN Connectivity Contractors to ensure that the process is, from the point of view of the relevant employees, a consistent and co-ordinated one and that communications with the employees and Outgoing Service Provider are appropriate and coordinated and do not require duplication of effort. The Customer Authority shall procure that the Other PSN Connectivity Contractors cooperate in the same way.

2.16 ~~2.15~~ ~~2.15~~ If an employment tribunal or higher court on appeal decides that the Employment Regulations (or otherwise) did not apply to the provision of the Services under this Agreement, and the Transferring Outgoing Service Provider Employees are held to continue to be employees of the Outgoing Service Provider despite the purported transfer, then the Contractor shall, subject to Paragraphs 2.5.1 to 2.5.4 (inclusive) above and save in circumstances set out in Paragraph ~~2.16~~ ~~2.16~~ 2.17 below:

2.16.1 ~~2.15.1~~ ~~2.15.1~~ immediately offer in writing to employ the Transferring Outgoing Service Provider Employees; and

2.16.2 ~~2.15.2~~ ~~2.15.2~~ treat them as having been so employed on an on-going basis with effect from the Transfer Date,

on the same terms and conditions upon which they would have been employed had the Employment Regulations (or otherwise) applied.

2.17 ~~2.16~~ ~~2.16~~ Where the employment or purported employment of any Transferring Outgoing Service Provider Employee with the Outgoing Service Provider has otherwise subsequently come to an end in the normal course of business, the

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Outgoing Service Provider shall treat them as having been so employed up to the end of that employment or purported employment.

PART C

2.18 ~~2.17~~ ~~2.17~~ With effect from each Transfer Date, the contracts of employment of the Transferring Customer Authority Employees identified pursuant to this Agreement as being assigned by the Customer Authority to services which are being replaced by the Services (or in circumstances where separate parts of the Services are commenced by the Contractor at different times, by the relevant Service Tranche) shall as a result of the Employment Regulations take effect (except in relation to so far as such contracts of employment relate to benefits for old age, survivors and invalidity under any occupational pension scheme benefits excluded under regulation 10 of the Employment Regulations) as if they were originally agreed between the Contractor and those Transferring Customer Authority Employees except where any of the Transferring Customer Authority Employees have in advance of the Transfer Date:

2.18.1 ~~2.17.1~~ ~~2.17.1~~ resigned;

2.18.2 ~~2.17.2~~ ~~2.17.2~~ been dismissed by the Customer Authority;

2.18.3 ~~2.17.3~~ ~~2.17.3~~ been re-deployed by the Customer Authority so that they are no longer assigned to those services which are being replaced by the Services commenced by the Contractor on the Transfer Date; or

2.18.4 ~~2.17.4~~ ~~2.17.4~~ objected to transferring to the Contractor in accordance with regulation 4(7) of the Employment Regulations.

2.19 ~~2.18~~ ~~2.18~~ In circumstances where a Transfer Date occurs more than fifteen (15) Working Days after the Effective Date:

2.19.1 ~~2.18.1~~ ~~2.18.1~~ the Customer Authority shall provide (where reasonably possible) and as may be reasonably requested by the Contractor:

2.19.1.1 ~~2.18.1.1~~ ~~2.18.1.1~~ an up-to-date list of all employees, agents, consultants and contractors who are engaged in or mainly assigned

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to the provision of services which are to be replaced by the relevant Service Tranche;

2.19.1.2 ~~2.18.1.2~~ ~~2.18.1.2~~ Staffing Information in relation to such employees;

2.19.2 ~~2.18.2~~ ~~2.18.2~~ the Customer Authority and the Contractor shall seek to agree by no later than ~~ten~~thirty (~~10~~30) Working Days before the Transfer Date a final list of Transferring Customer Authority Employees who shall transfer pursuant to the Employment Regulations on that Transfer Date. If agreement is reached those persons shall be the Transferring Customer Authority Employees for the relevant Transfer Date; and

2.19.3 ~~2.18.3~~ ~~2.18.3~~ if agreement is not reached in accordance with Paragraph ~~2.18.2~~ ~~2.18.2~~ 2.19.2 above, the Customer Authority shall determine the final list of relevant Transferring Customer Authority Employees and confirm that in writing to the Contractor no later than ~~five~~fifteen (~~5~~15) Working Days before the Transfer Date. Those persons shall be the Transferring Customer Authority Employees for the relevant Transfer Date.

2.20 ~~2.19~~ ~~2.19~~ If any person who is not a Transferring Customer Authority Employee claims or it is determined that his/her contract of employment has been transferred from the Customer Authority to the Contractor as at the Transfer Date or pursuant to the Employment Regulations then:

2.20.1 ~~2.19.1~~ ~~2.19.1~~ the Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Customer Authority;

2.20.2 ~~2.19.2~~ ~~2.19.2~~ the Customer Authority may offer employment to such person within fifteen (15) Working Days of the notification by the Contractor;

2.20.3 ~~2.19.3~~ ~~2.19.3~~ if such offer of employment is accepted, the Contractor shall immediately release the person from his/her employment or alleged employment;

2.20.4 ~~2.19.4~~ ~~2.19.4~~ if after the fifteen (15) Working Days period has elapsed, no such offer of employment has been made or such offer has been made but not accepted or the situation has not otherwise been resolved, the Contractor may

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within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

2.21 ~~2.20~~ ~~2.20~~ Subject to the Contractor acting in the way set out in Paragraph ~~2.192.192.20~~ above or in such other way as may be agreed between the Contractor and the Customer Authority, the Customer Authority shall (in respect of its employees or former employees employed immediately prior to the Transfer Date) indemnify the Contractor against:

2.21.1 ~~2.20.1~~ ~~2.20.1~~ all Employee Liabilities arising out of such termination or otherwise arising out of the employment of such person by the Contractor; and/or

2.21.2 ~~2.20.2~~ ~~2.20.2~~ any direct employment costs (if any) associated with the employment of such person by the Contractor up to the date of termination of such person's employment.

2.22 ~~2.21~~ ~~2.21~~ The indemnity in Paragraph ~~2.202.202.21~~ above shall not apply:

2.22.1 ~~2.21.1~~ ~~2.21.1~~ to any claim for discrimination including but not limited to sex, race, disability, sexual orientation, religion or belief or age discrimination in relation to any alleged act or omission of the Contractor or to any claim that the termination of employment was unfair because the Contractor neglected to follow in whole or in part a fair dismissal procedure;

2.22.2 ~~2.21.2~~ ~~2.21.2~~ to any claim by any person in respect of whom the notification given to the Customer Authority under Paragraph ~~2.19.12.19.12.20.1~~ above is received by the Customer Authority more than six (6) months after the Transfer Date; and

2.22.3 ~~2.21.3~~ ~~2.21.3~~ if such person is neither re-employed by the Customer Authority nor dismissed by the Contractor within the timescales set out in Paragraph ~~2.192.192.20~~ above, in which case such person shall be treated as having transferred to the Contractor who shall be responsible for all liabilities arising in respect of any such person.

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2.23 ~~2.22 2.22~~ The Contractor and the Customer Authority shall comply with their duties under regulation 13 of the Employment Regulations (or otherwise) to inform and consult with employee representatives/employees. The Parties shall promptly provide to each other in writing such information as is necessary to carry out their respective duties under regulation 13 of the Employment Regulations (or otherwise) to inform and consult with employee representatives/employees.

2.24 The Contractor shall and shall procure that any sub-contractor shall co-operate with any pre-transfer consultation by the Outgoing Service Provider under Part IV of TULRCA.

2.25 ~~2.23 2.23~~ In respect of the Transferring Customer Authority Employees there shall be apportioned as at the Transfer Date pro rata all emoluments and outgoings (including all wages, benefits, bonuses, PAYE, and employers' NICs) between the Contractor and the Customer Authority. The Customer Authority shall be responsible for the period up to the Transfer Date and the Contractor shall be responsible for the Transfer Date and the period thereafter, except that there shall be no apportionment payments in respect of the Transferring Customer Authority Employees' holiday entitlements.

2.26 ~~2.24 2.24~~ The Customer Authority shall:

2.26.1 ~~2.24.1 2.24.1~~ pay all salaries and provide all other benefits and make all appropriate deductions and payments in respect of all Transferring Customer Authority Employees up to, but not including, the Transfer Date;

2.26.2 ~~2.24.2 2.24.2~~ indemnify the Contractor from and against all Employee Liabilities awarded against or incurred by the Contractor as a result of or in connection with:

2.26.2.1 ~~2.24.2.1 2.24.2.1~~ the employment or termination of employment by the Customer Authority of any Transferring Customer Authority Employee in the period up to but not including the Transfer Date. This indemnity shall not apply where such claim arises out of the resignation of any such Transferring Customer Authority Employee before the Transfer Date on account of substantial detrimental changes to his contract of employment that are proposed or shall

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occur as a consequence of the actions of the Contractor in the period on or after the Transfer Date;

[2.26.2.2](#) ~~2.24.2.2~~ ~~2.24.2.2~~ the employment or termination of employment by the Customer Authority of any existing or former employee of the Customer Authority (who is not a Transferring Customer Authority Employee) in the period up to but not including the Transfer Date in respect of which such employee claims that the Contractor has inherited liability from the Customer Authority by virtue of the Employment Regulations and this Agreement; or

[2.26.2.3](#) ~~2.24.2.3~~ ~~2.24.2.3~~ any failure by the Customer Authority to comply with its obligations under regulation 13 of the Employment Regulations (or otherwise) to inform and consult with employee representatives/employees (other than to the extent any such failure is as a result of a failure by the Contractor to comply with regulation 13 of the Employment Regulations (or otherwise) to inform and consult with employee representatives/employees); and

[2.26.3](#) ~~2.24.3~~ ~~2.24.3~~ provide true, accurate and complete copies of all employment records relating to the Transferring Customer Authority Employees on the Transfer Date.

[2.27](#) ~~2.25~~ ~~2.25~~ The Contractor shall:

[2.27.1](#) ~~2.25.1~~ ~~2.25.1~~ pay all salaries and provide all other benefits and make all appropriate deductions and payments in respect of all Transferring Customer Authority Employees for the duration of their employment with the Contractor in the period on and after the Transfer Date;

[2.27.2](#) ~~2.25.2~~ ~~2.25.2~~ indemnify the Customer Authority from and against all Employee Liabilities awarded against or incurred by the Customer Authority as a result of or in connection with:

[2.27.2.1](#) ~~2.25.2.1~~ ~~2.25.2.1~~ the employment or termination of employment by the Contractor of any Transferring Customer Authority Employee in the period on and after the Transfer Date;

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2.27.2.2 ~~2.25.2.2~~ ~~2.25.2.2~~ NOT USED

2.27.2.3 ~~2.25.2.3~~ ~~2.25.2.3~~ any claim brought by or on behalf of any Transferring Customer Authority Employee arising out of the resignation of such Transferring Customer Authority Employee before the Transfer Date on account of substantial detrimental changes to his contract of employment that are proposed or shall occur as a consequence of the actions of the Contractor in the period on or after the Transfer Date except where such employee's resignation has been based upon incorrect information given by the Customer Authority to the Transferring Customer Authority Employee or to any representatives of the Transferring Customer Authority Employee; or

2.27.2.4 ~~2.25.2.4~~ ~~2.25.2.4~~ any failure by the Contractor to provide sufficient information to the Customer Authority in respect of any measures that the Contractor envisages taking after the relevant Transfer Date to enable the Customer Authority to comply with its obligations under regulation 13 of the Employment Regulations to inform and consult with employee representatives/employees;

2.28 ~~2.26~~ ~~2.26~~ If an employment tribunal or higher court on appeal decides that the Employment Regulations (or otherwise) did not apply to the provision of the Services under this Agreement, and the Transferring Customer Authority Employees are held to continue to be employees of the Customer Authority despite the purported transfer, then the Contractor shall, subject to Paragraphs ~~2.17.12.17.12.18.1~~ to ~~2.17.42.17.42.18.4~~ (inclusive) above and save in circumstances set out in Paragraph ~~2.272.272.29~~ below:

2.28.1 ~~2.26.1~~ ~~2.26.1~~ immediately offer in writing to employ the Transferring Customer Authority Employees; and

2.28.2 ~~2.26.2~~ ~~2.26.2~~ treat them as having been so employed on an on-going basis with effect from the Transfer Date,

on the same terms and conditions upon which they would have been employed had the Employment Regulations (or otherwise) applied.

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2.29 ~~2.27~~ ~~2.27~~ Where the employment or purported employment of any Transferring Customer Authority Employees with the Customer Authority has otherwise subsequently come to an end in the normal course of business, the Customer Authority shall treat them as having been so employed up to the end of that employment or purported employment.

3. APPLICATION OF THE EMPLOYMENT REGULATIONS ON TERMINATION OF THE PROVISION OF THE SERVICES BY THE CONTRACTOR OR AT THE END OF THE TERM

This Agreement envisages that, subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination of this Agreement, or part, or cessation of the Services (or part thereof) by the Contractor or any Sub-contractor, or otherwise) resulting in Replacement Services being undertaken by the Customer Authority or the Replacement Contractor. Such change in the identity of the supplier of such services shall be a “**Termination Transfer**”. A Termination Transfer may be a Staff Transfer and in such event, the Customer Authority or the Replacement Contractor, would inherit liabilities in respect of the Termination Transferring Employees pursuant to the Employment Regulations.

4. PRE-SERVICE TRANSFER OBLIGATIONS

4.1 The Contractor agrees, subject to compliance with the Data Protection Legislation, that within twenty (20) Working Days of the earliest of:

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

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4.1.4 receipt of a written request of the Customer Authority at any time (provided that the Customer Authority shall only be entitled to make one such request in any six (6) month period),

that it shall provide the Contractor's Provisional Staff List and the Staffing Information in relation to all those employees listed on the Contractor's Provisional Staff List to the Customer Authority or, at the direction of the Customer Authority, to the Replacement Contractor and it shall provide an updated Contractor's Provisional Staff List at such intervals as are reasonably requested by the Customer Authority and in any event ~~fourteen~~ (~~14~~fourteen~~twenty-eight~~ (4428) Working Days before the Termination Transfer Date.

4.2 On receipt of the updated Contractor's Provisional Staff List, the Customer Authority shall either approve the Contractor's Provisional Staff List in which case it shall constitute the Contractor's Final Staff List or, if the Customer Authority does not approve the Contractor's Provisional Staff List, it shall so advise the Contractor and the Parties shall use reasonable endeavours to reach an agreement on the Contractor's Final Staff List. If no such agreement can be reached ~~fourteen~~ (~~14~~fourteen~~twenty-eight~~ (4428) Working Days before the Termination Transfer Date, the Customer Authority shall determine (acting reasonably) the Contractor's Final Staff List. The Contractor's Final Staff List shall identify which of the Contractor Personnel named are Termination Transferring Employees ~~be complete and accurate in all material respects~~. To the extent that the provision of Personal Data regarding those individuals detailed on the Contractor's Final Staff List is, under the Data Protection Legislation, subject to the consent of such individuals the Contractor shall use its reasonable endeavours to obtain such consent. Where it is not able to do so, it shall provide the Contractor's Final Staff List on a suitably anonymised basis so as to comply with Data Protection Legislation.

4.3 Subject to compliance with the Data Protection Legislation, the Customer Authority shall use and disclose the Contractor's Provisional Staff List, the Contractor's Final Staff List and the Staffing Information in relation to such employees for informing any tenderer or other prospective Replacement Contractor for any services which are substantially the same type of services (or any part thereof) as the Services, provided that the Customer Authority imposes on such third party obligations of confidence that

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are no less onerous than the Customer Authority has to the Contractor in relation to that information.

- 4.4 Upon reasonable request by the Customer Authority and subject to compliance with the Data Protection Legislation, the Contractor shall provide the Customer Authority or at the request of the Customer Authority, the Replacement Contractor, with access (on reasonable notice and during normal working hours) to such employment records as the Customer Authority reasonably requests and shall allow the Customer Authority or the Replacement Contractor to have copies of any such documents.
- 4.5 The Contractor warrants that the Contractor's Provisional Staff List, the Contractor's Final Staff List and the Staffing Information provided in relation to those listed shall be true and accurate and complete in all material respects.
- 4.6 From the date of the earliest event referred to in Paragraphs 4.1.1 to 4.1.3 above, the Contractor agrees that it shall not assign any person to the provision of the Services (or the relevant part) which is the subject of a Termination Transfer who is not listed in the Contractor's Provisional Staff List and shall not without the Approval of the Customer Authority (not to be unreasonably withheld or delayed):
- 4.6.1 increase the total number of employees listed on the Contractor's Provisional Staff List save as may be necessary in order to fulfil assignments and projects previously scheduled and agreed by the Customer Authority;
- 4.6.2 make, agree to make, propose or permit any material changes to the terms and conditions of employment of any employees listed on the Contractor's Provisional Staff List;
- 4.6.3 increase the proportion of working time spent on the Services (or the relevant part) by any of the Contractor Personnel save as may be necessary in order to fulfil assignments and projects previously scheduled and agreed by the Customer Authority;
- 4.6.4 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Contractor's Provisional Staff List;

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4.6.5 replace any Contractor Personnel listed on the Contractor's Provisional Staff List or deploy any other person to perform the Services (or the relevant part) or terminate or give notice to terminate the employment or contracts of any persons on the Contractor's Provisional Staff List save for:

4.6.5.1 the execution of assigned operations as detailed in Paragraph 4.6.1 and 4.6.3 above; and/or

4.6.5.2 replacing voluntary resignations, staff absence due to maternity leave, death, retirement or ill-health, staff terminated by due disciplinary process; and/or

4.6.5.3 ~~4.6.5.2 4.6.5.2~~ replacing voluntary resignations, staff absence due to maternity leave, death, retirement or ill-health, staff terminated by due disciplinary process to satisfy the fulfilment of previously agreed work streams provided that any replacement is employed on the same terms and conditions of employment as the person he/she replaces; and

4.6.6 the Contractor shall promptly notify the Customer Authority in writing or, at the direction of the Customer Authority, the Replacement Contractor of any notice to terminate employment given to or received from any persons listed on the Contractor's Provisional Staff List regardless of when such notice takes effect.

4.7 Within seven (7) Working Days following the Termination Transfer Date, the Contractor shall provide to the Customer Authority or the Replacement Contractor, in respect of each person on the Contractor's Final Staff List who is a Termination Transferring Employee:

4.7.1 the most recent month's copy pay slip data;

4.7.2 details of cumulative pay for tax and pension purposes;

4.7.3 details of cumulative tax paid;

4.7.4 tax code;

4.7.5 details of any voluntary deductions from pay; and

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4.7.6 bank/building society account details for payroll purposes.

5. TERMINATION TRANSFERS

5.1 The Customer Authority shall or shall procure that the Replacement Contractor shall (as the case may be) comply with its duties, and the Contractor shall comply with its duties, under regulation 13 of the Employment Regulations. The Customer Authority shall or shall procure that the Replacement Contractor shall (as the case may be) promptly provide, and the Contractor shall promptly provide, to the other Party in writing such information as is necessary to carry out their respective duties under regulation 13 of the Employment Regulations.

5.2 The Customer Authority shall procure that any Replacement Contractor shall co-operate with any pre-transfer consultation by the Contractor under Part IV of TULRCA.

5.3 ~~5.2~~ ~~5.2~~ In respect of the Termination Transferring Employees there shall be apportioned as at the Termination Transfer Date pro rata all emoluments and outgoings (including all wages, benefits, bonuses, PAYE, and employers' NICs) between the Contractor and the Replacement Contractor or the Customer Authority (as the case may be). The Contractor shall be responsible for the period up to and including the Termination Transfer Date and the Replacement Contractor or the Customer Authority (as the case may be) shall be responsible for the period thereafter, except that there shall be no apportionment payments in respect of the Termination Transferring Employees' holiday entitlements.

5.4 ~~5.3~~ ~~5.3~~ The Contractor shall:

5.4.1 ~~5.3.1~~ ~~5.3.1~~ pay all salaries and provide all other benefits and make all appropriate deductions and payments in respect of all Termination Transferring Employees up to and including the Termination Transfer Date; and

5.4.2 ~~5.3.2~~ ~~5.3.2~~ indemnify the Customer Authority and the Replacement Contractor from and against all Employee Liabilities awarded against or incurred by the Customer Authority or the Replacement Contractor (as the case may be) as a result of or in connection with:

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5.4.2.1 ~~5.3.2.1~~ ~~5.3.2.1~~ the employment or termination of employment by the Contractor of any Termination Transferring Employee in the period up to and including the Termination Transfer Date. This indemnity shall not apply where such claim arises out of the resignation of any such Termination Transferring Employee on or before the Termination Transfer Date on account of substantial detrimental changes to his contract of employment that are proposed or shall occur as a consequence of the actions of the Customer Authority or Replacement Contractor (as the case may be) in the period after the Termination Transfer Date;

5.4.2.2 ~~5.3.2.2~~ ~~5.3.2.2~~ the employment or termination of employment by the Contractor of any existing or former employee of the Contractor (who is not a Termination Transferring Employee) in the period up to and including the Termination Transfer Date in respect of which such employee claims that the Customer Authority or the Replacement Contractor has inherited liability from the Contractor by virtue of the Employment Regulations and this Agreement; or

5.4.2.3 ~~5.3.2.3~~ ~~5.3.2.3~~ any failure by the Contractor to comply with its obligations under regulation 13 of the Employment Regulations (other than where any such failure is as a result of a failure by the Replacement Contractor or the Customer Authority (if it is providing the Replacement Services) to provide sufficient information to the Contractor); and

5.4.3 ~~5.3.3~~ ~~5.3.3~~ procures that true, accurate and complete copies of all original employment records relating to the Termination Transferring Employees are provided to the Replacement Contractor or the Customer Authority (if it is providing the Replacement Services) on the Termination Transfer Date.

5.5 ~~5.4~~ ~~5.4~~ The Customer Authority shall procure that the Replacement Contractor (or the Customer Authority itself if it provides the relevant Replacement Services) shall:

5.5.1 ~~5.4.1~~ ~~5.4.1~~ pay all salaries and provide all other benefits and make all appropriate deductions and payments in respect of all Termination Transferring

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Employees for the duration of their employment with the Replacement Contractor or the Customer Authority (as the case may be) in the period after the Termination Transfer Date; and

5.5.2 ~~5.4.2~~ ~~5.4.2~~ indemnify the Contractor from and against all Employee Liabilities awarded against or incurred by the Contractor as a result of or in connection with:

5.5.2.1 ~~5.4.2.1~~ ~~5.4.2.1~~ the employment or termination of employment by the Replacement Contractor or the Customer Authority of any Termination Transferring Employee in the period after the Termination Transfer Date;

5.5.2.2 ~~5.4.2.2~~ ~~5.4.2.2~~ NOT USED

5.5.2.3 ~~5.4.2.3~~ ~~5.4.2.3~~ any claim brought by or on behalf of any Termination Transferring Employee arising out of the resignation of such Termination Transferring Employee on or before the Termination Transfer Date on account of substantial detrimental changes to his contract of employment that are proposed or shall occur as a consequence of the actions of the Replacement Contractor or the Customer Authority (if it is providing the Replacement Services) in the period after the Termination Transfer Date; or

5.5.2.4 ~~5.4.2.4~~ ~~5.4.2.4~~ any failure by the Replacement Contractor or the Customer Authority (if it is providing the Replacement Services) to provide sufficient information to the Contractor as reasonably requested by the Contractor to enable the Contractor to comply with its obligations under regulation 13 of the Employment Regulations;

5.6 ~~5.5~~ ~~5.5~~ If any person who is not a Termination Transferring Employee claims or it is determined that his contract of employment has been transferred from the Contractor to the Customer Authority or the Replacement Contractor pursuant to a Staff Transfer, or claims that his employment would have so transferred had he not resigned, then:

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- 5.6.1 ~~5.5.1~~ ~~5.5.1~~ the Customer Authority or the Replacement Contractor shall (as the case may be), within seven (7) Working Days of becoming aware of that fact, give notice in writing to the Contractor;
- 5.6.2 ~~5.5.2~~ ~~5.5.2~~ the Contractor may offer employment to such person within twenty one (21) Working Days of the notification by the Customer Authority or the Replacement Contractor;
- 5.6.3 ~~5.5.3~~ ~~5.5.3~~ if such offer of employment is accepted, the Customer Authority or the Replacement Contractor shall immediately release the person from his employment;
- 5.6.4 ~~5.5.4~~ ~~5.5.4~~ if after that period has elapsed, no such offer of employment has been made or such offer has been made but not accepted, the Customer Authority or the Replacement Contractor may within seven (7) Working Days give notice to terminate the employment of such person;
- 5.6.5 ~~5.5.5~~ ~~5.5.5~~ subject to the Customer Authority or the Replacement Contractor acting in this way or in such other way as may be agreed in writing between the Contractor and the Customer Authority or the Replacement Contractor, the Contractor shall indemnify the Customer Authority and the Replacement Contractor against:
- 5.6.5.1 ~~5.5.5.1~~ ~~5.5.5.1~~ all Employment Liabilities arising out of such termination or otherwise arising out of the employment of such person by the Customer Authority or the Replacement Contractor; and/or
- 5.6.5.2 ~~5.5.5.2~~ ~~5.5.5.2~~ any direct employment costs (if any) associated with the employment of such person by the Customer Authority or the Replacement Contractor up to the date of termination of such person's employment.
- 5.6.6 ~~5.5.6~~ ~~5.5.6~~ If such person is neither re-employed by the Contractor nor dismissed by the Customer Authority or the Replacement Contractor within the timescales set out in this Paragraph ~~5.5.5.5.6~~, such person shall be treated as a Termination Transferring Employee.

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5.7 ~~5.6~~ ~~5.6~~ The indemnity in Paragraph ~~5.5~~ ~~5.5~~ ~~5.5~~ ~~5.6~~ ~~5.5~~ above shall not apply:

5.7.1 ~~5.6.1~~ ~~5.6.1~~ to any claim for discrimination including but not limited to sex, race, disability, sexual orientation, religion or belief or age discrimination in relation to any alleged act or omission of the Replacement Contractor or the Customer Authority or to any claim that the termination of employment was unfair because the Replacement Contractor or the Customer Authority (as the case may be) neglected to follow in whole or in part a fair dismissal procedure;

5.7.2 ~~5.6.2~~ ~~5.6.2~~ to any claim by any person in respect of whom the notification given to the Contractor under Paragraph ~~5.5~~ ~~5.5~~ ~~5.5~~ ~~5.6~~ ~~5.1~~ above is received by the Contractor more than six (6) months after the Transfer Date; and

5.7.3 ~~5.6.3~~ ~~5.6.3~~ if such person is neither re-employed by the Contractor nor dismissed by the Replacement Contractor or the Customer Authority within the timescales set out in Paragraph ~~5.5~~ ~~5.5~~ ~~5.5~~ ~~5.6~~ above.

5.7 The indemnities given by the Contractor under this Schedule 7.1 exclude any liability for which the Customer Authority or any Replacement Contractor is responsible under Paragraph 5.4.2 above which arises from a Termination Transferring Employee's period of continuous employment prior to the relevant Termination Transfer Date.

6. THIRD PARTY RIGHTS

The Contracts (~~Right~~~~Right~~~~Rights~~ of Third Parties) Act 1999 ("**CRITPA**") shall apply to Paragraphs 5, 7 and 8 of this Schedule to the extent necessary that any employee representatives and/or any Replacement Contractor shall have the right to enforce the rights, obligations owed to and/or indemnities given to them by the Contractor under those Paragraphs in their own right pursuant to clause 1(1) of CRITPA.

7. PROVISIONS WHERE TRANSFER REGULATIONS DO NOT APPLY

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

7.1.1 the Customer Authority or the Replacement Contractor may, in its absolute discretion, make to any of the employees listed on the Contractor's Provisional

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Staff List or any Contractor Personnel wholly or mainly assigned to the Services an offer, in writing, to employ that employee under a new contract of employment to take effect on the day after the termination referred to in Paragraph 7.1.2 below or at the earliest reasonable opportunity;

7.1.2 when the offer has been made by the Customer Authority or the Replacement Contractor in accordance with Paragraph 7.1.1 above and accepted by any employee or worker, the Contractor shall permit the employee or worker to leave its employment, as soon as practicable depending on the business needs of the Contractor, which could be without the employee or worker having worked his full notice period, if the employee so requests and where operational obligations allow;

7.1.3 if the employee does not accept an offer of employment made by the Customer Authority or the Replacement Contractor in accordance with Paragraph 7.1.1 above, the employee shall remain employed by the Contractor and all Employee Liabilities in relation to the employee shall remain with the Contractor;

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

8. CONDUCT OF CLAIMS

8.1 This Paragraph 8 shall apply to the conduct, by a Party from whom an indemnity is sought under this Schedule, of claims made by a third person against a party having (or claiming to have) the benefit of the indemnity. The Party having, or claiming to have, the benefit of the indemnity is referred to as the “**Beneficiary**” and the party giving the indemnity is referred to as the “**Indemnifier**”.

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

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- 8.3 Subject to Paragraphs 8.4 and 8.5 below, on the giving of a notice by the Beneficiary pursuant to Paragraph 8.2 above, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all (but not part only) of the liability arising out of the Claim, the Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to its reasonable satisfaction against all costs and expenses that it may incur by reason of such action) be entitled to dispute the Claim in the name of the Beneficiary at the Indemnifier's own expense and take conduct of any defence, dispute, compromise or appeal of the Claim and of any incidental negotiations relating to the Claim. If the Indemnifier does elect to conduct the Claim, the Beneficiary shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of such Claim and, subject to Paragraph 8.5 below, the Beneficiary shall not make any admission which could be prejudicial to the defence or settlement of the Claim without the prior written consent of the Indemnifier.
- 8.4 With respect to any Claim conducted by the Indemnifier pursuant to Paragraph 8.3 above:
- 8.4.1 the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the Claim;
 - 8.4.2 the Indemnifier shall not bring the name of the Beneficiary into disrepute;
 - 8.4.3 the Indemnifier shall not pay or settle such Claim without the prior written consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
 - 8.4.4 the Indemnifier shall conduct the Claim with all due diligence.
- 8.5 The Beneficiary shall be entitled to have conduct of the Claim and shall be free to pay or settle any Claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Agreement if:
- 8.5.1 the Indemnifier is not entitled to take conduct of the Claim in accordance with Paragraph 8.3 above;
 - 8.5.2 the Indemnifier fails to notify the Beneficiary in writing of its intention to take conduct of the relevant Claim within twenty (20) Working Days of the notice

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

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

Sensitive claims

8.6 With respect to any Claim for which the Customer Authority or the Contractor are the Beneficiary and the conduct of which the Customer Authority or Contractor acting reasonably, considers is likely to have an adverse impact on the general public's perception of the Customer Authority or the Contractor ("**Sensitive Claim**"), the Indemnifier shall only be entitled to take conduct of any defence, dispute, compromise or appeal of the Sensitive Claim with the Beneficiary's prior written consent. If the Beneficiary withholds such consent and elects to conduct the defence, dispute, compromise or appeal of the Sensitive Claim itself, it shall conduct the Sensitive Claim with all due diligence and if any failure to do so results in an increase in the amount recoverable by the Beneficiary in respect of an indemnity under this Agreement, the Indemnifier shall only be liable to indemnify the Beneficiary in respect of that amount which would have been recoverable by the Beneficiary had it conducted the Sensitive Claim with all due diligence.

8.7 The Beneficiary shall be free at any time to give written notice to the Indemnifier that it is retaining or taking over (as the case may be) the conduct of any Claim, to which Paragraph 8.3 above applies notwithstanding that it does not have the right to do so pursuant to Paragraph 8.3 above if, in the reasonable opinion of the Beneficiary, the Claim is, or has become, a Sensitive Claim. In such cases, the provisions of Paragraph 8.6 above shall apply.

Recovery of sums

8.8 If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the Claim, the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:

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8.8.1 an amount equal to the sum recovered (or the value of the discount, credit, saving, relief, other benefit or amount otherwise obtained) less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering or obtaining the same; and

8.8.2 the amount paid to the Beneficiary by the Indemnifier in respect of the Claim under the relevant indemnity,

provided that there shall be no obligation on the Beneficiary to pursue such recovery and that the Indemnifier is repaid only to the extent that the amount of such recovery aggregated with any sum recovered from the Indemnifier exceeds any loss sustained by the Beneficiary (including for this purpose any Losses sustained by the Beneficiary which may be excluded by Clause 42 (Limitations on Liability) from being recovered from the Indemnifier).

Insurance

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

Mitigation

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

Taxation

8.11 If any payment by one Party under an indemnity in this Agreement is subject to income tax or corporation tax (or any tax replacing either or both of them) in the hands of the recipient (or a withholding made by the paying Party in respect of tax), the recipient may demand in writing to the Party making the payment that the payment shall be increased by such amount as would ensure that, after taking into account any such tax payable in respect of such additional amount, the recipient receives and retains a net sum equal to the amount it would have otherwise received had the payment not been subject to such tax or withholding.

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9. SUB-CONTRACTORS

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

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APPENDIX 1

PENSIONS

PURPOSE AND STRUCTURE OF THIS APPENDIX

[Guidance Note: This schedule is not used unless either of Part B or Part C of schedule 7.1 is required. If this schedule is required, the sections marks [**] below must be completed. Please ensure that the purpose and structure of this appendix is read as it not only applies on commencement but will apply on termination/expiry of the Contract]***

~~***[Guidance Note: This schedule is not used unless either of Part B or Part C of schedule 7.1 is required. If this schedule is required, the sections marks [*** **] below must be completed. Please ensure that the purpose and structure of this appendix is read as it not only applies on commencement but will apply on termination/expiry of the Contract]***~~

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

This Appendix 1 comprises five (5) sections:

- Section A contains definitions which apply for the purposes of this Appendix 1 only;
- Section B contains provisions governing the pensions aspects of any compulsory transfer of any Transferring Pensionable Customer Employee;
- Section C contains provisions governing the pensions aspects of any compulsory transfer of any Second Generation Fair Deal Employee to the Contractor from any Outgoing Service Provider;
- Section D contains provisions governing the resolution of any dispute relating to actuarial calculations required under this Appendix 1; and

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- Section E contains provisions governing the pensions aspects of the termination of the Services or any part of them.

SECTION A – DEFINITIONS FOR PENSIONS MATTERS

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

“Actuary”	a Fellow of either the Institute of Actuaries or Faculty of Actuaries or any successor to such a body;
“Broadly Comparable”	in respect of a pension scheme, a status demonstrated by the issue by the Government Actuary’s Department of a broad comparability certificate relating to the [*** insert name of relevant public sector pension scheme ***];
“Contractor’s Actuary”	an Actuary employed by [*** insert name of firm ***] who is advising the Contractor in relation to the pensions aspects of this Agreement;
“Contractor’s Actuary’s Letter One”	the letter in the agreed form signed by the Contractor’s Actuary and the Customer’s Actuary, a copy of which is attached to this Appendix 1 and identified as Contractor’s Actuary’s Letter One;
“Contractor’s Actuary’s Letter Two”	the letter in the agreed form signed by the Contractor’s Actuary and the Outgoing Service Provider’s Actuary, a copy of which is attached to this Appendix 1 and identified as Contractor’s Actuary’s Letter Two;

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~~[Note to Bidders: If the Services will commence on a series of future dates which are unknown at the date of this Agreement (or just one future date), definitions of the Contractor's Actuary's Letter One and Contractor's Actuary's Letter Two may require revision:~~

~~“a letter based on the draft letter from the [specify] Actuary to the [specify]'s Actuary, agreed at or prior to the date of this Agreement between the [insert party] and the [insert party] and dated [insert date]. A copy of such draft letter is attached to this Appendix 1. The letter shall, as far as reasonably possible, be based on such draft letter. Actuarial bases used by the [specify]'s Actuary to calculate the underlying transfer value at any Transfer Date shall be either (a) those set out in the appendices to the draft letter or (b) those which the [specify]'s Actuary considers appropriate at the time of finalising the draft letter; any variation in the letter as compared with the draft letter shall be confined to legitimate changes to actuarial practice since date of this Agreement as described at limb (b) of this definition.”]~~

“Contractor’s Scheme”	a pension scheme established or nominated by the Contractor which is Broadly Comparable at the effective date of the compulsory transfer of employment of any Transferring Pensionable Customer Employee from the Customer to the Contractor;
“Customer’s Actuary”	an Actuary employed by [*** insert name of firm ***] who is advising the Customer in relation to the pensions aspects of this Agreement/the Government Actuary’s Department;
“Employee”	any Transferring Pensionable Customer Employee or Second Generation Fair Deal Employee;
“Outgoing Service Provider’s Actuary”	an Actuary employed by [*** insert name of firm ***] who is advising the Outgoing Service Provider in relation to pension aspects of this Agreement or its contract with the Customer, as appropriate;
“Outgoing Service Provider’s Actuary’s	the letter in the agreed form signed by the Outgoing Service Provider’s Actuary and the Customer’s Actuary, a copy of

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Letter”	which is attached to this Appendix 1 and identified as Outgoing Service Provider’s Actuary’s Letter;
“Outgoing Service Provider’s Scheme”	a pension scheme established or nominated by the Outgoing Service Provider which was Broadly Comparable at the effective date of a relevant transfer (to which the Employment Regulations applied) of any Second Generation Fair Deal Employee from the Customer to the Outgoing Service Provider;
“Payment Date”	as appropriate, the first Working Day more than twenty eight (28) days after the date when the last of the Paragraph 5 Provisos and/or the Paragraph 12 Provisos of this Appendix 1 has been satisfied;
[*** “PCSPS”	the Principal Civil Service Pension Scheme as laid before Parliament on 19 November 1974 under section 2(11) of the Superannuation Act 1972 and subsequently amended; ***] <i>[Guidance Note: Where the applicable public sector scheme is not the PCSPS, this definition and all reference to PCSPS throughout this appendix should be amended as appropriate; where more than one public sector scheme is involved this schedule will apply separately to each scheme and each bulk transfer of pension rights]</i>
[*** “PCSPS Actuary”	an Actuary employed by Hewitt or such other firm engaged from time to time to advise on PCSPS; ***]
[*** “PCSPS Actuary’s Letter”	the letter in the agreed form signed by the PCSPS Actuary and the Customer’s Actuary, a copy of which is attached to this Appendix 1 and identified as PCSPS Actuary’s Letter; ***]
“Pension Service Credit”	a period of pensionable service under the Contractor’s Scheme credited to any Employee in respect of the rights accrued by the Employee under, as appropriate, [*** PCSPS

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	<p>***] or the Outgoing Service Provider's Scheme (including, for the avoidance of doubt and in respect of any Second Generation Fair Deal Employee, rights transferred into the Outgoing Service Provider's Scheme from [*** PCSPS ***]) calculated on a day for day, year for year basis (or such other appropriate basis as is agreed between the [*** PCSPS Actuary ***] and the Contractor's actuary if the actuarial differences between the Contractor's Scheme and [*** PCSPS ***] or the Outgoing Service Provider's Scheme, as appropriate, so require);</p>
<p>“Required Transfer Amount One”</p>	<p>the amount calculated in accordance with the assumptions, principles and adjustments (but excluding any timing adjustment in respect of the period after the Transfer Date) contained in the Contractor's Actuary's Letter One as representing the amount required to fund the Pension Service Credit for each Transferring Pensionable Customer Employee who takes up Transfer Option One;</p>
<p>“Required Transfer Amount Two”</p>	<p>the amount calculated in accordance with the assumptions, principles and adjustments (but excluding any timing adjustment in respect of the period after the Transfer Date) contained in the Contractor's Actuary's Letter Two as representing the amount required to fund the Pension Service Credit for each Second Generation Fair Deal Employee who takes up Transfer Option Two;</p>
<p>“Second Generation Fair Deal Employee”</p>	<p>each Transferring Outgoing Service Provider Employee who, immediately before the commencement of his employment with the Outgoing Service Provider, was a member of the PCSPS who was either :</p> <p>[*** in reckonable service as defined by rule 1.5 of the 1972 Section of the PCSPS ***]; or</p> <p>an active member as defined by rule A.1(4) of the 2002</p>

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	Section of the PCSPS ***]; or an active member as defined by rule A.1(4) of the 2007 Section of the PCSPS ***];
“Top Up One”	the amount calculated in accordance with Paragraph 7.8 of this Appendix 1;
“Top Up Two”	the amount calculated in accordance with Paragraph 14.8 of this Appendix 1;
“Transfer Amount One”	the amount calculated in accordance with the assumptions, principles and adjustments contained in the [*** PCSPS Actuary’s Letter ***] as representing, for each Transferring Pensionable Customer Employee who takes up Transfer Option One, the value of his accrued rights under [*** PCSPS ***] on a past service reserve basis as at the Transfer Date, adjusted to the Payment Date in accordance with the timing adjustment in the [*** PCSPS Actuary’s Letter ***];
“Transfer Amount Two”	the amount calculated in accordance with the assumptions, principles and adjustments contained in the Outgoing Service Provider’s Actuary’s Letter as representing, for each Second Generation Fair Deal Employee who takes up Transfer Option Two, the value of his accrued rights under the Outgoing Contractor’s Scheme and the value of rights he had accrued under [*** PCSPS ***] and transferred into the Outgoing Contractor’s Scheme, on a past service reserve basis as at the Transfer Date, adjusted to the Payment Date in accordance with the timing adjustment in the Outgoing Service Provider’s Actuary’s Letter;
“Transfer Option One”	an option given to each Transferring Pensionable Customer Employee to transfer rights (excluding any rights in nuvos) accrued under [*** PCSPS ***] before the Transfer Date, from

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	[*** PCSPS ***] to the Contractor's Scheme;
"Transfer Option Two"	an option given to each Second Generation Fair Deal Employee to transfer rights (excluding any rights in a scheme or section Broadly Comparable to nuvos) accrued under [*** PCSPS ***] and transferred into the Outgoing Service Provider's Scheme and accrued under the Outgoing Service Provider's Scheme, from the Outgoing Service Provider's Scheme to the Contractor's Scheme;
"Transfer Option Deadline"	the first Working Day to fall at least three (3) months after Transfer Option One or Transfer Option Two has been sent to each Employee, as applicable;
"Transferee Employer"	any employer of Transferring Outgoing Service Provider Employees immediately after a transfer which is a relevant transfer (to which the Employment Regulations applied) of any Service; and
"Transferring Pensionable Customer Employee"	<p>each Transferring Customer Authority Employee whose employment is compulsorily transferred to the Contractor and who, immediately before such compulsory transfer, was a member of the PCSPS who was either:</p> <p>[***in reckonable service as defined by rule 1.5 of the 1972 Section of the PCSPS ***]; or</p> <p>an active member as defined by rule A.1(4) of the 2002 Section of the PCSPS ***]; or</p> <p>an active member as defined by rule A.1(4) of the 2007 Section of the PCSPS ***].</p> <p>[Note to Bidders: The Customer will notify the Contractor in writing during the early competitive dialogue phase of the procurement process whether or not it will pay any shortfall between Transfer Amount One/Transfer Amount</p>

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	<i>Two and the amount required by the trustees of the Contractor's Scheme to fund the Pension Service Credit in the Contractor's Scheme in respect of each Transferring Pensionable Customer Employee/Second Generation Fair Deal Employee who takes up Transfer Option One/ Transfer Option Two]</i>
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SECTION B – PENSIONS ON A TRANSFER OF ANY TRANSFERRING PENSIONABLE CUSTOMER EMPLOYEE

1. ESTABLISHMENT OF THE CONTRACTOR'S SCHEME

- 1.1 The Contractor undertakes to establish or nominate the Contractor's Scheme on or before the Transfer Date.
- 1.2 The Contractor undertakes to supply all material details of the Contractor's Scheme to the Customer at least twenty one (21) Working Days before the Transfer Date. This must include evidence showing that a certificate from the Government Actuary's Department certifying that the Contractor's Scheme is Broadly Comparable will be in force as at the Transfer Date.

2. JOINING THE CONTRACTOR'S SCHEME

- 2.1 The Contractor shall procure that each Transferring Pensionable Customer Employee is admitted to the Contractor's Scheme as an active member with effect on and from the Transfer Date.
- 2.2 The Customer shall procure that each Transferring Pensionable Customer Employee is informed of such admission at least five (5) Working Days before the Transfer Date.

3. TRANSFER OPTION ONE AND PENSION SERVICE CREDIT

- 3.1 The Customer shall use all reasonable endeavours to procure that Transfer Option One is sent to each Transferring Pensionable Customer Employee no later than ten (10) Working Days following the receipt by the Contractor or the Contractor's Actuary, as appropriate, of all such information and documentation as is relevant in relation to

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the description of Transfer Option One.

- 3.2 This Paragraph 3.2 is subject always to prior receipt of Transfer Amount One and, if relevant, Top Up One, if any, by the trustees of the Contractor's Scheme in accordance with Paragraph[s] 5 and 7 respectively of this Appendix 1. The Contractor shall procure that each Transferring Pensionable Customer Employee who takes up Transfer Option One is granted his Pension Service Credit as soon as reasonably practicable following receipt of Transfer Amount One and, where relevant, Top Up One, if any, in accordance with Paragraph[s] 5 and 7 respectively of this Appendix 1.

4. CALCULATION AND VERIFICATION OF TRANSFER AMOUNT ONE

- 4.1 The Customer shall use all reasonable endeavours to procure that the [*** PCSPS Actuary ***] calculates the Transfer Amount One within three (3) months after the Transfer Option Deadline.
- 4.2 The Customer shall use all reasonable endeavours to procure that the Contractor's Actuary is notified of the Transfer Amount One, and any appropriate underlying methodology, within three (3) months after the Transfer Option Deadline.
- 4.3 The Contractor shall procure that, within one (1) month after having been notified of the Transfer Amount One, the Contractor's Actuary verifies such calculation or sets out in writing to the [*** PCSPS Actuary ***] his reasons for not verifying such calculation.
- 4.4 This Paragraph 4.4 applies where the Contractor's Actuary sets out in writing his reasons for not verifying the calculation of the Transfer Amount One in accordance with Paragraph 4.3 of this Appendix 1. Where this Paragraph 4.4 applies, the Customer and the Contractor shall, as appropriate, use all reasonable endeavours to procure that the Contractor's Actuary and the [*** PCSPS Actuary ***] work together to agree the Transfer Amount One within a period agreed to be reasonable by the Contractor's Actuary and the [*** PCSPS Actuary ***].
- 4.5 The Customer and the Contractor shall, as appropriate, use all reasonable endeavours to procure that the [*** PCSPS Actuary ***] and the Contractor's Actuary shall act reasonably and shall cooperate with each other for the purposes of this Paragraph 4.
- 4.6 If the Contractor's Actuary and the [*** PCSPS Actuary ***] fail to agree the Transfer

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Amount One in accordance with Paragraph 4.4 of this Appendix 1, Paragraph 15 of this Appendix 1 shall apply.

5. PAYMENT OF TRANSFER AMOUNT ONE

5.1 Paragraph 5 of this Appendix 1 is subject always to the Paragraph 5 Provisos contained in Paragraph 5.4 below.

5.2 The Customer shall use all reasonable endeavours to procure that the Transfer Amount One is transferred in cash to the trustees of the Contractor's Scheme on the Payment Date.

5.3 The Contractor agrees, following resolution of all material queries in a time period agreed to be reasonable by both the Contractor and the Customer, to fully accept the outcome of the exercise of Transfer Option One. The Contractor agrees to use all reasonable endeavours to procure that the trustees of the Contractor's Scheme shall accept the Transfer Amount One and, where relevant, Top Up One, if any.

5.4 The Paragraph 5 Provisos are:

5.4.1 the Transfer Option Deadline has passed;

5.4.2 the Customer has provided to the trustees of the Contractor's Scheme completed and signed forms of consent in respect of the transfer of accrued rights under [*** PCSPS ***] from each Transferring Pensionable Customer Employee who takes up Transfer Option One;

5.4.3 a contracting-out certificate in respect of the Contractor's Scheme has been issued which covers the employment of the Transferring Pensionable Customer Employees;

5.4.4 the Transfer Amount One has been agreed under Paragraph 4 of this Appendix 1; and

5.4.5 the trustees of the Contractor's Scheme have confirmed in writing (and have not revoked that confirmation) to the administrators of [*** PCSPS ***] that they are ready, willing and able to receive the Transfer Amount One and, where relevant, Top Up One, if any.

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6. CONTRACTOR'S FURTHER OBLIGATIONS

6.1 The Contractor covenants with the Customer that the Contractor shall:

- 6.1.1 use all reasonable endeavours to secure the status of the Contractor's Scheme as a registered pension scheme under the Finance Act 2004 or any statutory modification or re-enactment of that Act;
- 6.1.2 procure that the Contractor's Scheme is contracted-out on a salary-related basis using the reference scheme test;
- 6.1.3 procure that the Contractor's Scheme is able to and shall accept a bulk past service transfer;
- 6.1.4 procure that no amendments are made to the provisions of the Contractor's Scheme which would cause it to cease to be certified by the Government Actuary's Department as Broadly Comparable, and in respect of such certification, a certificate was supplied in accordance with Paragraph 1.2 of this Appendix 1, prior to the date on which payment of the Transfer Amount One and, where relevant, Top Up One, if any, is made to the Contractor's Scheme under Paragraph[s] 5 and 7 respectively of this Appendix 1; and
- 6.1.5 procure that the benefits offered under the Contractor's Scheme for each Transferring Pensionable Customer Employee in respect of employment after the Transfer Date are Broadly Comparable.

6.2 The Contractor shall comply with any applicable obligations under section 258 of the Pensions Act 2004.

6.3 Any change in the benefits under the Contractor Scheme (without prejudice to paragraph 6.1.5 above) which are introduced after the commencement of the Agreement in order to reflect changes in the PCSPS shall result in an adjustment to the Financial Model in accordance with Schedule 5.4 (Financial Model).

7. REQUIRED TRANSFER AMOUNT ONE AND TOP UP ONE

7.1 Paragraph 7 of this Appendix 1 applies where the Customer has notified the Contractor that it will pay any shortfall between the Transfer Amount and the amount required by

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the trustees of the Contractor's Scheme to fund the Pension Service Credit in the Contractor's Scheme in respect of each Transferring Pensionable Customer Employee who takes up Transfer Option One.

- 7.2 The Contractor shall procure that the Contractor's Actuary calculates the Required Transfer Amount One within three (3) months of the Transfer Option Deadline.
- 7.3 The Contractor shall procure that the [*** PCSPS Actuary ***] is notified of the Required Transfer Amount One, and any appropriate underlying methodology, within three (3) months of the Transfer Option Deadline.
- 7.4 The Customer shall procure that, within one (1) month of having been notified of the Required Transfer Amount One, the [*** PCSPS Actuary ***] verifies such calculation or sets out in writing to the Contractor's Actuary his reasons for not verifying such calculation.
- 7.5 This Paragraph 7.5 applies where the [*** PCSPS Actuary ***] sets out in writing his reasons for not verifying the calculation of the Required Transfer Amount One in accordance with Paragraph 7.4 of this Appendix 1. Where this Paragraph 7.5 applies, the Customer and the Contractor, as appropriate, shall use all reasonable endeavours to procure that the [*** PCSPS Actuary ***] and the Contractor's Actuary work together to agree the Required Transfer Amount One within a period agreed to be reasonable by the [*** PCSPS Actuary ***] and the Contractor's Actuary.
- 7.6 The Customer and the Contractor, as appropriate, shall use all reasonable endeavours to procure that the [*** PCSPS Actuary ***] and the Contractor's Actuary act reasonably and cooperate with each other for the purposes of this Paragraph 7.
- 7.7 If the [*** PCSPS Actuary ***] and the Contractor's Actuary fail to agree the Required Transfer Amount One in accordance with Paragraph 7.5 of this Appendix 1, Paragraph 15 of this Appendix 1 shall apply.
- 7.8 Where relevant, as soon as reasonably possible after the calculation and verification or determination of the Required Transfer Amount One, as appropriate, Top Up One shall be calculated (ignoring, for the purposes of this calculation, any timing adjustment relating to the period after the Payment Date) by the Contractor's Actuary and verified by the [*** PCSPS Actuary ***], in accordance with the following formula:

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B minus A as varied in accordance with C but subject to D, where:

A means the Transfer Amount One;

B means the Required Transfer Amount One;

(ignoring, for the purposes of this calculation, any timing adjustment relating to the period after the Transfer Date);

C means the timing adjustment contained in the Contractor's Actuary's Letter for the period on and from the Transfer Date up to and including the Payment Date; and

D means that Top Up One shall be deemed to be zero where such calculation produces a negative result.

7.9 Where relevant, the Customer shall pay Top Up One (as adjusted by the timing adjustment set out in the Contractor's Actuary's Letter for the period from the Payment Date through to the date on which payment is made), if any, to the Contractor no later than five (5) Working Days from the date of the calculation and verification or, as appropriate, determination of Top Up One.

7.10 Where relevant, the Contractor shall, immediately on receipt of Top Up One, pay Top Up One to the trustees of the Contractor's Scheme.

SECTION C – PENSIONS ON TRANSFER OF ANY SECOND GENERATION FAIR DEAL EMPLOYEE

8. ESTABLISHMENT OF THE CONTRACTOR'S SCHEME

8.1 The Contractor undertakes to establish or nominate the Contractor's Scheme on or before the Transfer Date.

8.2 The Contractor undertakes to supply all material details of the Contractor's Scheme to the Customer at least twenty one (21) Working Days before the Transfer Date. This must include evidence that a valid certificate from the Government Actuary's Department certifying that the Contractor's Scheme is Broadly Comparable will be in force at the Transfer Date.

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9. JOINING THE CONTRACTOR'S SCHEME

- 9.1 The Contractor shall procure that each Second Generation Fair Deal Employee is admitted to the Contractor's Scheme as an active member with effect on and from the Transfer Date.
- 9.2 The Customer shall procure that each Second Generation Fair Deal Employee is informed of such admission at least five (5) Working Days before the Transfer Date.

10. TRANSFER OPTION TWO AND PENSION SERVICE CREDIT

- 10.1 The Contractor shall use all reasonable endeavours to procure that Transfer Option Two is sent to each Second Generation Fair Deal Employee no later than ten (10) Working Days following the receipt by the Contractor or the Contractor's Actuary, as appropriate, of all such information and documentation as is relevant in relation to the description of the Transfer Option Two.
- 10.2 This Paragraph 10.2 is subject always to prior receipt of Transfer Amount Two and, where relevant, Top Up Two, if any, by the trustees of the Contractor's Scheme in accordance with Paragraphs 12 and 14 respectively of this Appendix 1. The Contractor shall procure that each Second Generation Fair Deal Employee who takes up Transfer Option Two is granted his Pension Service Credit as soon as reasonably practicable following receipt of the Transfer Amount Two and, where relevant, Top Up Two, if any, in accordance with Paragraphs 12 and 14 respectively of this Appendix 1.

11. CALCULATION AND VERIFICATION OF TRANSFER AMOUNT TWO

- 11.1 The Customer shall use all reasonable endeavours to procure that the Outgoing Service Provider's Actuary (or for the purposes of this Paragraph, the Customer Actuary where the Customer determines at its sole discretion, this is not practical or possible) calculates the Transfer Amount Two within three (3) months after the Transfer Option Deadline.
- 11.2 The Customer shall use all reasonable endeavours to procure that the Contractor's Actuary is notified of the Transfer Amount Two, and any appropriate underlying methodology, within three (3) months after the Transfer Option Deadline.

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- 11.3 The Contractor shall procure that, within one (1) month after having been notified of the Transfer Amount Two, the Contractor's Actuary verifies such calculation or sets out in writing to the Outgoing Service Provider's Actuary his reasons for not verifying such calculation.
- 11.4 This Paragraph 11.4 applies where the Contractor's Actuary sets out in writing his reasons for not verifying the calculation of the Transfer Amount Two in accordance with Paragraph 11.3 of this Appendix 1. Where this Paragraph 11.4 applies, the Contractor shall use all reasonable endeavours to procure that the Contractor's Actuary works with the Outgoing Service Provider's Actuary, the Customer having used all reasonable endeavours to procure that the Outgoing Service Provider's Actuary works with the Contractor's Actuary for the purposes of this Paragraph 11.4, to agree the Transfer Amount Two within a period agreed to be reasonable by the Contractor's Actuary and the Outgoing Service Provider's Actuary.
- 11.5 The Customer and the Contractor, as appropriate, shall use all reasonable endeavours to procure that the Outgoing Service Provider's Actuary and the Contractor's Actuary act reasonably and cooperate with each other for the purposes of this Paragraph 11.
- 11.6 If the Contractor's Actuary and the Outgoing Service Provider's Actuary fail to agree the Transfer Amount Two in accordance with Paragraph 11.4 of this Appendix 1, Paragraph 15 of this Appendix 1 shall apply.

12. PAYMENT OF TRANSFER AMOUNT TWO

- 12.1 Paragraph 12 of this Appendix 1 is subject always to the Paragraph 12 Provisos.
- 12.2 The Customer shall use all reasonable endeavours to procure that the Transfer Amount Two is transferred in cash to the trustees of the Contractor's Scheme on the Payment Date.
- 12.3 The Contractor agrees, following resolution of all material queries in a time period agreed to be reasonable by both the Contractor and the Customer, to fully accept the outcome of the exercise of Transfer Option Two. The Contractor agrees to use all reasonable endeavours to procure that the trustees of the Contractor's Scheme shall accept Transfer Amount Two and, where relevant, Top Up Two, if any.

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12.4 The Paragraph 12 Provisos are:

- 12.4.1 the Transfer Option Deadline has passed;
- 12.4.2 the Customer has provided to the trustees of the Contractor's Scheme completed and signed forms of consent in respect of the transfer of rights under Outgoing Service Provider's Scheme (including, for the avoidance of doubt rights accrued under [*** PCSPS ***] in respect of employment with the Customer prior to transfer to the Outgoing Service Provider and transferred into the Outgoing Service Provider's Scheme) from each Second Generation Fair Deal Employee who takes up Transfer Option Two;
- 12.4.3 a contracting-out certificate in respect of the Contractor's Scheme has been issued which covers the employment of the Second Generation Fair Deal Employees;
- 12.4.4 the Transfer Amount Two has been agreed under Paragraph 11 of this Appendix 1; and
- 12.4.5 the trustees of the Contractor's Scheme have confirmed in writing (and have not revoked that confirmation) to the trustees of the Outgoing Service Provider's Scheme that they are ready, willing and able to receive the Transfer Amount Two and, where relevant, Top Up Two, if any.

13. CONTRACTOR'S FURTHER OBLIGATIONS

13.1 The Contractor covenants with the Customer that the Contractor shall:

- 13.1.1 use all reasonable endeavours to secure the status of the Contractor's Scheme as a registered pension scheme under the Finance Act 2004 or any statutory modification or re-enactment of that Act;
- 13.1.2 procure that the Contractor's Scheme is contracted-out on a salary-related basis using the reference scheme test;
- 13.1.3 procure that the Contractor's Scheme is able to and shall accept a bulk past service transfer;

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- 13.1.4 procure that no amendments are made to the provisions of the Contractor's Scheme as certified by the Government Actuary's Department, and in respect of such certification, a certificate was supplied in accordance with Paragraph 8.2 of this Appendix 1, prior to the date on which payment of the Transfer Amount Two and, where relevant, Top Up Two, if any, are made to the Contractor's Scheme under Paragraphs 12 and 14 respectively of this Appendix 1; and
- 13.1.5 procure that the benefits offered under the Contractor's Scheme for each Second Generation Fair Deal Employee in respect of service after the Transfer Date are Broadly Comparable.
- 13.2 The Contractor shall comply with any applicable obligations under section 258 of the Pensions Act 2004.
- 14. REQUIRED TRANSFER AMOUNT TWO AND TOP UP TWO**
- 14.1 Paragraph 14 of this Appendix 1 applies where the Customer has notified the Contractor that it will pay any shortfall between Transfer Amount Two and the amount required by the trustees of the Contractor's Scheme to fund the Pension Service Credit in the Contractor's Scheme in respect of each Second Generation Fair Deal Employee who takes up Transfer Option Two.
- 14.2 The Contractor shall use all reasonable endeavours to procure that the Contractor's Actuary calculates the Required Transfer Amount Two within three (3) months of the Transfer Option Deadline.
- 14.3 The Contractor shall use all reasonable endeavours to procure that the Customer's Actuary is notified of the Required Transfer Amount Two, and any appropriate underlying methodology, within three (3) months of the Transfer Option Deadline.
- 14.4 The Customer shall procure that, within ~~four~~ one (1) month of having been notified of the Required Transfer Amount Two, the Customer's Actuary verifies such calculation or sets out in writing to the Contractor's Actuary his reasons for not verifying such calculation.
- 14.5 This Paragraph 14.5 applies where the Customer's Actuary sets out in writing his

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reasons for not verifying the calculation of the Required Transfer Amount Two in accordance with Paragraph 14.4 of this Appendix 1. Where this Paragraph 14.5 applies, the Customer and the Contractor shall, as appropriate, procure that the Customer's Actuary and the Contractor's Actuary work together to agree the Required Transfer Amount Two within a period agreed to be reasonable by the Customer's Actuary and the Contractor's Actuary.

14.6 The Customer and the Contractor, as appropriate, shall use all reasonable endeavours to procure that the Customer's Actuary and the Contractor's Actuary act reasonably and cooperate with each other for the purposes of this Paragraph 14.

14.7 If the Customer's Actuary and the Contractor's Actuary fail to agree the Required Transfer Amount Two in accordance with Paragraph 14.5 of this Appendix 1, Paragraph 15 of this Appendix 1 shall apply.

14.8 Where relevant, as soon as reasonably possible after the calculation and verification or determination of the Required Transfer Amount Two, as appropriate, Top Up Two (ignoring, for the purposes of this calculation, any timing adjustment relating to the period after the Payment Date) shall be calculated by the Contractor's Actuary and verified by the Customer's Actuary, in accordance with the following formula:

B minus A as varied in accordance with C but subject to D, where:

A means the Transfer Amount Two;

B means the Required Transfer Amount Two;

(ignoring, for the purposes of this calculation, any timing adjustment relating to the period after the Transfer Date);

C means the timing adjustment contained in the Contractor's Actuary's Letter for the period on and from the Transfer Date up to and including the Payment Date; and

D means that Top Up Two shall be deemed to be zero where such calculation produces a negative result.

14.9 Where relevant, the Customer shall pay Top Up Two (as adjusted by the timing adjustment set out in the Contractor's Actuary's Letter for the period from the Payment

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Date through to the date on which payment is made), if any, to the Contractor no later than five (5) Working Days from the date of the calculation and verification or, as appropriate, determination of Top Up Two.

- 14.10 Where relevant, the Contractor shall, immediately on receipt of Top Up Two, pay Top Up Two to the trustees of the Contractor's Scheme.

SECTION D – DISPUTE RESOLUTION OF PENSIONS MATTERS

15. DISPUTE RESOLUTION

- 15.1 In the event of dispute between, as appropriate, the [*** PCSPS Actuary ***], the Customer's Actuary and/or the Contractor's Actuary which cannot be resolved within fourteen (14) days of such dispute arising, either the Customer or the Contractor may request that the matter is referred to an independent Actuary.
- 15.2 If the Parties fail to agree on the identity of the independent Actuary within a reasonable period of time, he shall be appointed by the President for the time being of the Institute of Actuaries, or such equivalent officer of any successor organisation, for definitive determination of the disputed matter.
- 15.3 The independent Actuary shall determine the dispute by acting as an expert and not an arbitrator and his decision and directions shall be binding upon the Customer and the Contractor.
- 15.4 The charges and expenses incurred pursuant to this provision shall be paid one-half by the Customer and one-half by the Contractor unless the independent Actuary determines otherwise.

SECTION E – PENSIONS ON TERMINATION OF THE CONTRACT

16. THE CONTRACTOR'S OBLIGATIONS ON ANY FUTURE TRANSFER

- 16.1 The Contractor shall, and shall use all reasonable efforts to procure that the trustees of the Contractor's Scheme, do and/or provide all such acts and things as may, in the reasonable opinion of the Customer, be necessary or desirable to enable the Customer, and/or a Transferee Employer, to achieve the following objectives:

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- 16.1.1 to maintain ongoing pension accrual for any Employee whose employment is compulsorily transferred at the termination of the Services or any part of them in a pension arrangement where the benefits are Broadly Comparable (for the avoidance of doubt, in respect of a Transferring Pensionable Customer Employee, the measure is against the benefits that he was accruing in [*** PCSPS ***] immediately before the Transfer Date and, in respect of a Second Generation Fair Deal Employee, the measure is against the benefits that he was accruing in [*** PCSPS ***] immediately before the transfer of his employment to the Outgoing Service Provider);
- 16.1.2 not to adversely affect pension rights accrued by any such Employee in the period ending on the date of the relevant future transfer;
- 16.1.3 to comply with all applicable legislation, binding codes of practice and non-binding codes of practice issued by any statutory Customer which may be admissible as evidence of legislative compliance; and
- 16.1.4 to ensure that each Employee whose employment is so compulsorily transferred is given the Pension Transfer Rights.

The “**Pension Transfer Rights**” are each of

- (a) the option to transfer fully funded rights from the Contractor’s Scheme in respect of his pensionable service under the Contractor’s Scheme (excluding any rights transferred to the Contractor’s Scheme from [*** PCSPS ***]) such rights being funded on a reasonable past service reserve basis;
- (b) the option to transfer any rights transferred to the Contractor’s Scheme from [*** PCSPS ***] and the Outgoing Service Provider’s Scheme under the provisions of this Appendix 1 to an occupational pension scheme sponsored by the Transferee Employer on an actuarial basis which is, as at the time of the future compulsory transfer of employment, an actuarial basis which is no less favourable than that applied in the calculation of, as appropriate, Transfer Amount One or, if greater, the Required Transfer Amount One or Transfer Amount Two or, if greater, the Required Transfer Amount Two as at the Transfer Date, according to, and

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calculated using the method and assumptions set out in, the [*** PCSPS Actuary's Letter ***] or the Contractor's Actuary's Letter, as appropriate; and

- (c) the right to retain the rights referred to in Paragraphs (a) and/or (b) in the Contractor's Scheme is on the fully funded basis set out in Paragraph (b) above.

16.2 Where any Employee's employment is terminated by the Contractor for reasons of redundancy the Contractor shall at its own expense:

16.2.1 procure that the trustees of the Contractor's Scheme pay out from the Contractor's Scheme an amount equivalent to any additional pension benefits (both in value and manner of payment) which would have been paid to the Employee from [*** PCSPS ***] had the Employee remained in service with the Customer and remained a member of [*** PCSPS ***], had [*** PCSPS ***] not changed and had the Employee been made redundant by the Customer at the date on which the Contractor terminates his employment;

16.2.2 provide compensation to the Employee which is equivalent in terms of value and manner of payment to that payable under Paragraph 16.2.1 of this Appendix 1 where the Contractor is unable to procure the additional pension benefits from the Contractor's Scheme in accordance with Paragraph 16.2.1 of this Appendix 1; and

16.2.3 procure the payment of any other benefit other than those referred to at Paragraphs 16.2.1 and 16.2.1 of this Appendix 1 that are not old age, invalidity or survivors' benefits either through the Contractor's Scheme or, if that is not possible, by providing compensation, where the obligation to do so has transferred to the Contractor under the Acquired Rights Directive and/or the Employment Regulations and/or in accordance with applicable statements of practice and/or guidance of the Government Actuary's Department.

16.2.4 ~~16.3~~ Paragraph 16 of this Appendix 1 shall only apply to the extent that the relevant benefit shall not be provided under [*** PCSPS ***] or, as the case may, the Outgoing Service Provider's Scheme-

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