

ANNEX V TO CONTRACT NUMBER 701554382

TUPE

Part 1

TUPE¹ (Core Clauses)

1 DEFINITIONS

1.1 In these Clauses 1 and 2 unless the context otherwise requires and without prejudice to the provisions of Annex W (Definitions), the following expressions shall have the following meanings:

“**Authority Employees**” means those employees of the Authority who are listed in the Final List;

“**Authority Site**” means one of the Authorities SF facilities at the following RAF establishments:

- ~~3.2.~~ [REDACTED]
- ~~6.3.~~ [REDACTED]
- ~~7.4.~~ [REDACTED]
- ~~8.5.~~ [REDACTED]
- ~~11.6.~~ [REDACTED]
- ~~12.7.~~ [REDACTED]
- ~~13.8.~~ [REDACTED]
- ~~14.9.~~ [REDACTED]
- ~~15.10.~~ [REDACTED]
- ~~16.11.~~ [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

“**Authority Site Service Commencement Date**” means the date on which the services are commenced at an Authority Site as set out in Annex H - Phase In Plan

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“Business Day” means any day excluding:

- a) Saturdays and Sundays;
- b) any public and statutory holidays in the UK; and
- c) privilege days;

“CSCS” means Civil Service Compensation Scheme;

“Contract Award Date” means the date of this Contract;

“Contractor's Scheme” means the one or more Retirement Benefits Schemes established by the Contractor or in which it participates for the purposes of Clause 3 (Pension Matters). A reference to the Contractor's Scheme shall, where appropriate, include a reference to the trustees or administrators thereof;

“Costs” means recruitment costs in respect of the provision of the services, those costs of employing the employees of the Authority and/or any reasonable termination costs, including, without limitation, redundancy payments (but excluding costs arising from acts or omissions of the Contractor and/or Employing Sub-Contractor, and/or any payment which the Contractor and/or any Employing Sub-Contractor is not obliged to make by contract or statute and/or in connection with claims of unfair dismissal, discrimination and claims in respect of a protective award under the Trade Union Labour Relations (Consolidation) Act 1992, (save where such claims are as a result of an act or omission of the Authority))

“Employee Liability Information” has the same meaning as in regulation 11(2) of the Transfer Regulations;

“Employing Sub-Contractor” means any sub-contractor of the Contractor who is [to be] the employer of a Relevant Employee [or Unexpected Employee];

“Employing Sub-Contractor's Scheme” means the one or more Retirement Benefits Schemes established by the Employing Sub-Contractor or in which it participates for the purposes of Clause 3 (Pension Matters). A reference to the Employing Sub-Contractor's Scheme shall, where appropriate, include a reference to the trustees or administrators thereof;

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“Expected Authority Transferee” means an employee of the Authority whom the Authority considers is assigned or whose principal purpose is to provide the services to be provided by the Contractor and/or an Employing Sub-Contractor prior to the Authority Site Service Commencement Date and who is expected to transfer to the Contractor or an Employing Sub-Contractor on the Authority Site Service Commencement Date;

“Final List” means the list of employees of the Authority who the Authority believes will transfer to the Contractor and/or any Employing Sub Contractor at the Authority Site Service Commencement Date, plus the information listed in Appendix 4 to Annex V in respect of those Authority Employees (as amended by the Authority up to and including the Authority Site Service Commencement Date);

“New Provider” means any replacement service provider nominated by the Authority to provide the Services or substantially similar services or the Authority itself where the Services or substantially similar services continue to be provided by the Authority after partial termination, termination or expiry of this Contract;

“Parties” means the Authority or the Contractor;

“Provisional List” means the list of Expected Authority Transferees plus the information listed in Appendix 4 to Annex V for those Expected Authority Transferees;

“Relevant Transfer” means a transfer to the Contractor or Employing Sub-Contractor of the Authority Employees pursuant to this Contract and the Transfer Regulations;

“Relevant Transfer Date” means the date on which the Relevant Transfer is affected for the Authority Employees;

“Sub-Contractor” means a sub-contractor of the Contractor providing all or any part of the Services;

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“**Subsequent Relevant Transfer**” means a transfer of employees assigned, or whose principal purpose is to provide the Services, from the Contractor or any Sub-Contractor to a New Provider under the Transfer Regulations;

“**Subsequent Transfer Date**” means the date on which the transfer of a Subsequent Transferring Employee takes place under the Transfer Regulations;

“**Subsequent Transferring Employee**” means an employee assigned, or whose principal purpose is to provide the Services, who is transferred under the Transfer Regulations from the Contractor or any Sub-Contractor to a New Provider;

“**Services**” means the work described by System Requirement Document (SRD) detailed at Annex A of the Contract and carried out in accordance with the Terms and Conditions of this Contract;

“**Transfer Regulations**” means the Transfer of Undertakings (Protection of Employment) Regulations 2006;

“**Unexpected Employee**” shall have the meaning given to it clause 2.10.

2 AUTHORITY EMPLOYEES

2.1 No later than 8 weeks prior to each Authority Site Service Commencement Date, the Authority shall provide the Contractor with:

- (a) the Provisional List; and
- (b) the Employee Liability Information in respect of Expected Authority Transferees.

2.2 The Contractor shall provide any information provided to it by the Authority under clause 2.1 above to an Employing Sub-Contractor within 7 Business Days of receipt to the extent that such Expected Authority Transferees are to transfer to an Employing Sub-Contractor under a Relevant Transfer on the Authority Site Service Commencement Date.

2.3 No later than 14 days prior to each Authority Site Service Commencement Date the Authority shall provide to the Contractor the Final List. The Authority may

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inform the Contractor of any changes to the Final List up to each Authority Site Service Commencement Date.

2.4 Following the provision of the Final List, the Authority shall provide to the Contractor Employee Liability Information in respect of any Authority Employees who did not appear on the Provisional List as soon as reasonably practicable.

2.5 Where any differences between the employee lists at Appendix 2 to Annex V (which shows the employee information on which the Contractor based its final prices as set out in Annex B) and the Final List for each Authority Site result in reasonable additional Costs to the Contractor and/or any Employing Sub-Contractor the Contractor may make a reasonable adjustment to the prices to meet such reasonable additional Costs that the Contractor and/or any Employing Sub-Contractor incurs as a result of such a change provided that such a change is not as a result of an act or omission of the Contractor and/or any Employing Sub-Contractor. The Contractor shall produce such reasonable evidence of the additional Costs incurred and supporting calculations to show the appropriate adjustment to some or all of the prices in Annex B which are affected as the Authority may reasonably require as soon as is reasonably practicable and in any event no later than 28 days following the receipt of such a request prior to any adjustment being made and failure to produce such evidence within this timescale or where the Authority considers such information insufficient no adjustment to the prices shall be made.

2.6 Where the Authority considers that any differences between the employee lists at Appendix 2 to Annex V (which shows the employee information on which the Contractor based its final prices as set out in Annex B)) and the Final List for each Authority Site result in a reduction of Costs to the Contractor and/or any Employing Sub-Contractor, the Authority may make a reasonable adjustment to the prices to reflect any reasonable reduction in Costs to the Contractor and/or any Employing Sub-Contractor. The Authority and the Contractor shall produce such reasonable evidence as the other party shall reasonably require as soon as is reasonably practicable and in any event no later than 28 days after a request is made in writing in order to establish such a reduction in Costs. Failure by the Contractor to produce such evidence shall preclude the Contractor from objecting to an adjustment to the prices.

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Failure by the Authority to produce reasonable evidence to demonstrate a reduction in Costs, save where such a failure is as a result of the act or omission of the Contractor, shall result in no adjustment to the prices.

2.7 The Authority shall notify the Contractor of any changes to the terms and conditions of any Expected Authority Transferee and/or Authority Employee in respect of whom information has been provided to the Contractor under clauses 2.1 and/or 2.3 as soon as reasonably practicable. The Contractor shall provide any such information to an Employing Sub-Contractor within seven Business Days of receipt to the extent that such employees are to transfer to an Employing Sub-Contractor under a Relevant Transfer on the Authority Site Service Commencement Date.

2.8 Where, following an Authority Site Service Commencement Date, the Contractor and/or the Authority provides reasonable evidence to the other party that any of the details in the Final List in respect of that Authority Site were inaccurate (other than details in respect of the number or identity of the Authority Employees) the prices shall be adjusted to reflect the adjustment which would have been made under clauses 2.5 and/or 2.7 above (if any) had the Final List been accurate on the relevant Authority Site Service Commencement Date. The Authority and the Contractor shall produce such reasonable evidence of the inaccuracies and/or the additional costs and/or reduction in costs incurred as the other party may reasonably require as soon as is reasonably practicable and in any event, no later than 28 days following the receipt of such a request prior to any adjustments being made. Failure to by the Contractor to produce such evidence within this timescale or where, following a further request to the Contractor for information, the Authority reasonably considers such information insufficient no adjustment to the prices shall be made. Failure by the Authority to produce reasonable evidence to demonstrate inaccuracies and/or the reduction in costs, save where such a failure is as a result of the act or omission of the Contractor, shall result in no adjustment to the prices. No changes shall be made to the prices in respect of such inaccuracies more than six months following the relevant Authority Site Service Commencement Date

2.9 The Parties agree that any adjustments to the prices under clauses 2.5, 2.6 or 2.8 to take account of additional or reduced Costs to the Contractor and/or any

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Employing Sub-Contractor for each Relevant Transfer shall not be made until after the relevant Authority Site Service Commencement Date.

2.10 In the event that a claim or allegation is made by an employee of the Authority who is not an Authority Employee (an "Unexpected Employee") that he has transferred to the Contractor and/or any Sub-Contractor by virtue of the Transfer Regulations (or any similar legislation enacting the Acquired Rights Directive outside the UK) and this Contract, the party receiving the claim or allegation shall notify the other party within ten Business Days of receiving written notification of the Unexpected Employee's claim or allegation, whereupon:

- (a) the Authority shall be given thirty Business Days either to offer employment to the Unexpected Employee or take such other steps so as to effect a written withdrawal of the claim or allegation; and
- (b) in the event that the Unexpected Employee's claim or allegation is not withdrawn or resolved within thirty Business Days of the Authority being so notified by the Contractor, the Contractor or Sub-Contractor may decide to employ the Unexpected Employee or within a further 10 Business Days serve notice to terminate the Unexpected Employee's employment in accordance with his contract of employment; and
- (c) the Authority shall effect an adjustment to the prices which has the effect of reimbursing the Contractor for any of the following liabilities incurred by the Contractor or Sub-Contractor in dealing with or disposing of the Unexpected Employee's claim or allegation:
 - (i) any costs of employing the Unexpected Employee to provide the Services under this Contract up to the date of dismissal;
 - (ii) any liabilities acquired by virtue of the Transfer Regulations in relation to the Unexpected Employee;

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- (iii) any liabilities relating to the termination of the Unexpected Employee's employment provided the Contractor or Sub-Contractor has used reasonable endeavours to carry out the termination fairly and in accordance with all statutory obligations imposed on an employer;
 - (iv) any liabilities incurred under a settlement of the Unexpected Employee's claim which was reached with the express permission of the Authority;
 - (v) reasonable administrative costs incurred by the Contractor or Sub-Contractor in dealing with the Unexpected Employee's claim or allegation, subject to a cap per Unexpected Employee of £5,000; and
 - (vi) legal and other professional costs reasonably incurred;
- (d) the Contractor shall be deemed to have waived its right to an adjustment as per 2.10(c) above if it fails without reasonable cause to take, or fails to procure any Sub-Contractor takes, any action in accordance with any of the timescales referred to in this Clause 2.10.

2.11 For the avoidance of doubt, the Contractor shall not recover any costs under clauses 2.5, 2.6, 2.8, 2.10 and 2.31 where such costs are otherwise recoverable by the Contractor elsewhere in this Contract and/or have been recovered under the Transfer Regulations or otherwise.

2.12 The Contractor and the Authority acknowledge, and the Contractor procures that the Employing Sub-Contractors acknowledge, that the provision of the Services under this Contract will constitute Relevant Transfers for the purposes of the Transfer Regulations.

2.13 The Contractor agrees and shall procure that the Employing Sub-Contractors agree that from each Authority Site Service Commencement Date the contracts of employment of any Authority Employees together with any collective agreements

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(save insofar as such contracts and such agreements relate to benefits for old age, invalidity or survivors under any occupational pension scheme) will take effect as if originally made between the Contractor or an Employing Sub-Contractor and the Authority Employees (or the relevant trade union, as the case may be).

2.14 The Authority and the Contractor shall (and the Contractor shall procure that any Employing Sub-Contractors shall):

- (a) before and in relation to the Relevant Transfer Date liaise with each other and shall co-operate with each other in order to implement effectively the smooth transfer of the Authority Employees to the Contractor or Employing Sub-Contractor; and
- (b) comply with their respective obligations under the Transfer Regulations including their obligations to inform and consult under Regulation 13.

2.15 The Authority shall be responsible for all emoluments and outgoings in respect of an Authority Employee (including without limitation all wages, bonuses, commissions, holiday entitlement taken up to the relevant Authority Site Service Commencement Date on which that Authority Employee transfers to the Contractor or Employing Sub-Contractor, PAYE, national insurance contributions and contributions to retirement benefit schemes) in respect of the period prior to the relevant Authority Site Service Commencement Date on which that Authority Employee transfers to the Contractor or Employing Sub-Contractor.

2.16 The Contractor or Employing Sub-Contractor (as the case may be) shall:

- (a) have responsibility for all emoluments and outgoings (including without limitation all wages, bonuses, commissions, holiday entitlement taken after the relevant Authority Site Service Commencement Date, PAYE, national insurance contributions and contributions to retirement benefit schemes) in relation to an Authority Employee with effect from and including the relevant Authority Site Service Commencement Date on which that

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Authority Employee transfers until the date that Authority Employee leaves the employment of the Contractor and/or Employing Sub-Contractor or any Subsequent Transfer Date on which that Authority Employee transfers to another employer whichever is the earlier.

- (b) — (b) It is agreed that the Contractor shall increase the salary of the Authority Employees as soon as is reasonably practicable following the announcement of the 2007/2008 pay award by the Authority in accordance with that pay award and the Contractor shall be responsible for payment of any increase in wages in respect of the period from and including the relevant Authority Site Service Commencement Date on which an Authority Employee transfers. The Authority shall make one additional payment to the Contractor in respect of the additional costs of complying with this obligation as set out in paragraph 10 (a) of Annex B to this Contract.

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2.17 No later than three months after each Authority Site Service Commencement Date the Contractor shall pay to the Authority a sum equal to the outstanding balance on the relevant Authority Site Service Commencement Date of any loan, salary, advance or other indebtedness of any Authority Employee due to the Authority immediately prior to the Relevant Transfer of that Authority Employee to the Contractor or Employing Sub-Contractor.

2.18 If the Contractor and/or any Employing Sub-Contractor terminates the contract of employment of any Authority Employee on or after an Authority Site Service Commencement Date by reason of redundancy (as defined by section 139 of the Employment Rights Act 1996), the Contractor shall pay or procure that any Employing Sub-Contractor shall pay that Authority Employee compensation which is certified by GAD as being broadly equivalent in terms of value and manner of payment to that which would have been paid to that Authority Employee under the CSCS if that Authority Employee had still been serving the Crown as a Civil Servant

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and been entitled to compensation under the CSCS at the date of termination of his/her contract or employment (the terms of the CSCS being those at the Authority Site Service Commencement Date).

2.19 The Authority shall indemnify the Contractor against any all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any claim or claims by any Authority Employee brought against the Contractor and/or any Employing Sub-Contractor at any time arising out of or in connection with any acts or omissions of the Authority which occurred prior to the Authority Site Service Commencement Date for that Authority Employee provided that any losses, costs, expenses, compensation, fines and liabilities arising out of such claims are not payable as a result of any act or omission of the Contractor and/or Employing Sub-Contractor.

2.20 The Authority shall indemnify the Contractor against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of any claim or claims by any Authority Employee or trade union representative or Authority Employee representative brought against the Contractor, whether before or after the Authority Site Service Commencement Date, arising out of any failure by the Authority to comply with its obligations under Regulation 13 of the Transfer Regulations in respect of any Authority Employee or any other employee of the Authority who transfers to the Contractor or any Employing Sub-Contractor except to the extent that that any losses, costs, expenses, compensation, fines and liabilities arising out of such claims are not payable as a result of any act or omission of the Contractor and/or Employing Sub-Contractor.

2.21 The Contractor shall indemnify the Authority against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out:

- (a) any claim or claims brought by any Authority Employee against the Authority at any time on or after the Authority Site Service Commencement Date on which that Authority Employee transferred and before any Subsequent Transfer Date on which

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that Authority Employee transfers from the employment of the Contractor or Employing Sub-Contractor which arise as a result of an act or omission of the Contractor or any Sub-Contractor during the period from and including the Authority Site Service Commencement Date;

- (b) any claim or claims brought by any employees (other than any Relevant Employee) engaged in connection with the Services by the Contractor or any Sub-Contractor against the Authority at any time on or after the first Authority Site Service Commencement Date including for the avoidance of doubt any health and safety and personal injury claims) which arise as a result of an act or omission of the Contractor or any Sub-Contractor from and including the first Authority Site Service Commencement Date

save to the extent that any losses, costs, expenses, compensation, fines and liabilities arising out of such claims are not payable as a result of the act or omission of the Authority.

2.22 The Contractor shall indemnify the Authority against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out any claim or claims by any employee or trade union representative or employee representative against the Authority arising whether before or after an Authority Site Service Commencement Date out of any failure by the Contractor or any Sub-Contractor to comply with their obligations under Regulation 13 of the Transfer Regulations in relation to any Authority Employee or any other employee engaged wholly or mainly in connection with the Services by the Contractor or any Sub-Contractor save to the extent that any losses, costs, expenses, compensation, fines and liabilities arising out of such claims are payable as a result of the act or omission of the Authority.

2.23 The Contractor shall indemnify the Authority in respect of all reasonable costs (including reasonable legal costs), losses and expenses and all damages,

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compensation, fines and other liabilities arising out of or in connection with or as a result of a substantial change by the Contractor or any Employing Sub-Contractor on or after an Authority Site Service Commencement Date to the working conditions of all or any Authority Employees to the material detriment of such Authority Employees. For the purposes of this Clause the expressions "substantial change" and "material detriment" shall have the same meaning as for the purposes of Regulation 4(9) of the Transfer Regulations.

Post Transfer Reporting

2.24 The Contractor shall provide (or shall procure an Employing Sub-Contractor shall provide) the Authority with the following information as part of the normal reporting regime of this Contract on an annual basis:

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

such reports shall also include information relating to Authority Employees transferred under the Transfer Regulations to Sub-Contractors as a result of this Contract; and

the Contractor acknowledges that information referred to in this Clause 2.24 may also be used in considering the Contractor's bid to re-let, or in considering the Contractor's bid(s) for other contracts let by the Authority.

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Application of Clauses to employed Unexpected Employees

2.25 Clause 2.13, and Clauses 2.15 to 2.19 and Clause 2.21 and Clauses 2.24 to 2.34 shall apply to any Unexpected Employee and whom the Contractor and/or any Sub-Contractor has decided to employ in accordance with clause 2.10(b) save that references to the “Authority Site Service Commencement Date” in Clauses 2.15 to 2.19 and Clause 2.21, and Clauses 2.24 to 2.24 shall be construed as being references to the date on which such an Unexpected Employee took up employment with the Contractor or Sub-Contractor.

Information on Re-tender, Expiry or Termination

2.26 No earlier than two years preceding the expiry date or a potential Subsequent Transfer Date or at any time after the service of a notice to terminate this Contract or the provision of any of the Services and on receipt of a written request by the Authority, the Contractor shall (and shall procure that any Sub-contractor shall):

- (a) supply to the Authority such full and accurate and up-to-date information as may be requested by the Authority including the information listed in Appendix 3 to Annex V to this Contract relating to the employees who are wholly or mainly employed, assigned or engaged in providing the Services or part of the Services under this Contract which are subject to the Subsequent Relevant Transfer, separately identifying former employees of the Authority who transferred to the Contractor and/or Employing Sub-Contractor and indicating which are members of the Contractor's Scheme and/or Employing Sub-Contractor's Scheme;
- (b) provide the information promptly and in any event not later than three months from the date when a request for such information is made and at no cost to the Authority;
- (c) permit the Authority to use the information for informing any prospective New Provider for any services which are

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substantially the same as the Services or part of the Services provided pursuant to this Contract;

- (d) enable and assist the Authority and a New Provider to communicate with and meet those employees and their trade union or other employee representatives;

2.27 On notification to the Contractor by the Authority of a New Provider or any time within the 6 months prior to the Subsequent Relevant Transfer Date or after service of a notice to terminate this Contract, whichever is earlier, and on receipt of a written request by the Authority, the Contractor shall:

- (a) fully and accurately disclose to the Authority such information listed in Appendix 4 to Annex V (Personnel Information) including any Employee Liability Information relating to his employees and relating to all employees of any Sub-Contractor who are employed, assigned or engaged in providing the Services under this Contract, separately identifying former employees of the Authority who transferred to the Contractor and/or Employing Sub-Contractor and indicating which are members of the Contractor's Scheme and/or Employing Sub-Contractor's Scheme;
- (b) provide the information promptly and in any event not later than three months from the date when a request for such information is made (save where the written request is received less than 3 months prior to the Expiry Date, in which case no later than 28 days from the date of that request) and at no cost to the Authority;
- (c) permit the Authority to use the information for informing any prospective New Provider for any services which are substantially the same as the Services provided pursuant to this Contract;

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2.28 Nothing in Clauses 2.26 or 2.27 shall affect the Contractor's obligations in respect of the Data Protection Act 1998 ("the Act") and the Contractor shall use its best endeavours to obtain the consent of its employees (or use its best endeavours to procure that its Sub-Contractors obtain the consent of their employees) to the extent necessary under the Act or provide the data in anonymised form in order to enable disclosure of the information required under Clauses 2.26 or 2.27.

2.29 On notification to the Contractor by the Authority of a New Provider or within 6 months of the Expiry Date or after service of a notice to terminate this Contract, whichever is earlier, and on receipt of a written request by the Authority, the Contractor shall not:

- (a) materially amend or promise to amend the rates of remuneration or other terms and conditions of employment of any person wholly or mainly employed or engaged in providing the Services under this Contract; or
- (b) replace or re-deploy from the Services any person wholly or mainly employed or engaged in providing the Services, or materially increase the number of persons performing the Services under this Contract; or
- (c) reorganise any working methods or assign to any person wholly or mainly employed or engaged in providing the Services any duties unconnected with the Services under this Contract; or
- (d) terminate or give notice to terminate the employment of any person wholly or mainly employed or engaged in providing the Services under this Contract,

save for genuine business reasons and with the prior written consent of the Authority (not to be unreasonably withheld or delayed) and the Contractor shall indemnify and keep indemnified the Authority in respect of any reasonable costs (including reasonable legal costs), losses and expenses and all

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damages, compensation, fines and liabilities arising out of or in connection with any breach of Clause 2.26, 2.27 or 2.28.

2.30 The Authority may at any time prior to the period set out in Clause 2.26 request from the Contractor any of the information in paragraphs 1(a) to (d) of Appendix 3 to Annex V and the Contractor shall provide the information requested within three months of receipt of that request.

Redundancy Liability on Termination or Expiry

2.31 The Authority shall indemnify the Contractor against any liability of the Contractor and/or any Employing Sub-Contractor to make redundancy payments under Clause 2.18 to Authority Employees as a consequence of dismissal by reason of redundancy provided that the dismissal by reason of redundancy (as defined by section 139 of the Employment Rights Act 1996) arises from the expiry, termination or partial termination of this Contract otherwise than by reason of Contractor Default and that such a dismissal takes place within twelve months of such expiry or Termination.

2.32 For the avoidance of doubt, the indemnity set out in Clause 2.31 shall not include:

- (a) any claims for and costs arising out of the unfair dismissal of Authority Employees;
- (b) any payments for monies paid to Authority Employees in lieu of notice; and
- (c) any payment for monies paid to Authority Employees in lieu of untaken annual leave.

2.33 The Contractor warrants (and shall procure that any Employing Sub-Contractor warrants) that it will:

- (a) seek to effect dismissal on grounds of redundancy of any of the Authority Employees in accordance with the terms and conditions of employment of the Authority Employee and in accordance with any applicable collective agreements;

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- (b) comply with all relevant statutory obligations which are imposed on an employer; and
- (c) effect any dismissal on grounds of redundancy fairly

and it will be for the Contractor if so requested to demonstrate to the reasonable satisfaction of the Authority that in any particular case redundancy is or was the genuine reason for the dismissal.

2.34 In the event that the Contractor or an Employing Sub-Contractor by its acts or omissions is in breach of the warranties under Clause 2.33 in respect of an Authority Employee, the Authority will not be liable to indemnify under Clause 2.31 in respect of that Authority Employee.

2.35 not used.

Indemnities on Subsequent TUPE transfer on Expiry or Termination of the Contract

2.36 In the event that on the expiry, termination or partial termination of the Contract there is a Subsequent Relevant Transfer, the Contractor shall indemnify the Authority against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with:

- (a) any claim or claims by Subsequent Transferring Employees or by the New Provider or any sub-contractor of the New Provider at any time on or after the Subsequent Transfer Date which arise as a result of an act or omission of the Contractor or any Sub-contractor during the period from and including the Authority Commencement Date and prior to the Subsequent Transfer Date;
- (b) any claim by any employee or trade union representative or employee representative arising whether before or after the Subsequent Transfer Date out of any failure by the Contractor or

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any Sub-contractor to comply with their obligations under Regulation 13 of the Transfer Regulations in relation to any Subsequent Transferring Employee or any other employee engaged wholly or mainly in connection with the Services by the Contractor or any Sub-contractor

save to the extent that any such losses and expenses and all damages, compensation, fines and liabilities are a result of the act or omission of the Authority, the New Provider or any sub-contractor of a New Provider.

2.37 In the event that there is a Subsequent Relevant Transfer, the Authority shall indemnify the Contractor against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of, or in connection with,:

- (a) any claim or claims by a Subsequent Transferring Employee at any time on or after the Subsequent Transfer Date which arise as a result of an act or omission of the New Provider or a sub-contractor of a New Provider during the period from and including the Subsequent Transfer Date;
- (b) any claim by any employee or trade union representative or employee representative arising whether before or after the Subsequent Transfer Date out of any failure by the New Provider or a sub-contractor of a New Provider to comply with their obligations under Regulation 13 of the Transfer Regulations in relation to any Subsequent Transferring Employee or any other employee engaged wholly or mainly in connection with the Services by the New Provider

save to the extent that any such losses and expenses and all damages, compensation, fines and liabilities are a result of the act or omission of the Contractor or any Sub-Contractor.

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2.38 In the event of a Subsequent Relevant Transfer, the Authority shall indemnify the Contractor in respect of all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and other liabilities arising out of or in connection with or as a result of a substantial change by the New Provider or any sub-Contractor of a New Provider on or after the Relevant Transfer Date to the working conditions of any Subsequent Transferring Employee to the material detriment of any such Subsequent Transferring Employee. For the purposes of this clause, the expressions "substantial change" and "material detriment" shall have the meanings as are ascribed to them for the purposes of Regulation 4(9) of the Transfer Regulations.

Contracts (Rights of Third Parties) Act 1999

2.39 A New Provider may enforce the terms of Clause 2.36 against the Contractor or an Employing Sub-Contractor in accordance with the Contracts (Rights of Third Parties) Act 1999.

2.40 The consent of a New Provider (save where the New Provider is the Authority) is not required to rescind, vary or terminate this Contract.

2.41 Nothing in Clause 2.39 shall affect the accrued rights of the New Provider prior to the rescission, variation or termination of this Contract.

Employee Liability Information

2.42 The Parties consider that the provisions of this Contract (and in particular Clause 2.5) provide sufficient protection and opportunity for compensation to the Contractor or Employing Sub-Contractors in the event of any breach by the Authority of its obligations under regulation 11 of the Transfer Regulations.

2.43 The Parties agree that the Authority is not a "third party" for the purpose of Regulation 11(7)(b) of the Transfer Regulation and nothing in this Contract shall have the effect of making the Authority such a third party.

3 PENSION MATTERS

3.1 In this Clause 3, unless the context otherwise requires, the following expressions have the following meanings:

"Actuary": a Fellow of the Institute of Actuaries or a Fellow of the Faculty of Actuaries;

"Actuary's Letter": the bulk transfer terms issued by the PCSPS Actuary (as set out in the Note dated 31st October 2007 respectively issued by the PCSPS Actuary in respect of the Contractor's Scheme, copies of each of which are included at Annex W) which specify the actuarial methods and assumptions for calculating the Transfer Value;

"Assigned Employee" means an employee wholly or mainly employed, assigned or engaged in providing the Services under this Contract;

"Authority Employee": an employee of the Authority named in the Final List (as defined in clause 2.1 above) and/or an Unexpected Employee (as defined in clause 2.10 above) who on the day before the Relevant Transfer Date is either:

- (a) in Reckonable Service (or eligible to be in Reckonable Service);
or
- (b) would be in Reckonable Service, but for the fact that he is long term absent from work; and
- (c) an Opted-out Employee;

"AVC Transfer Value" means the amount available as a transfer payment under the PCSPS AVC Scheme in respect of the invested contributions made by Consenting Employees to the PCSPS AVC Scheme towards securing Money Purchase Benefits thereunder;

"Consenting Employees" means those of the Authority Employees who join the Contractor's Scheme on the Relevant Transfer Date and who consent in writing to payment of the Transfer Value to the Contractor's Scheme and who do not withdraw

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that request before the Transfer Value Payment Date. For the avoidance of doubt an Authority Employee shall cease to be a Consenting Employee if he dies or withdraws his consent before the Transfer Value Payment Date;

"Contractor's Actuary" means the Actuary appointed by the Contractor for the purposes of this Schedule;

"Contractor's Actuary's Letter" the letter and attached documentation prepared by the Contractor's Actuary dated 2nd November 2007 (a copy of which is included at Annex W) which specifies the actuarial methods and assumptions to be used to calculate the Contractor's Transfer Requirement;

"Contractor's Scheme Actuary" means the Actuary appointed as scheme actuary by the trustees of the Contractor's Scheme for the purposes of Section 47 of the Pensions Act 1995;

"Contractor's Transfer Requirement" means the value of the retirement and death benefits under the PCSPS based on added years of Reckonable Service deemed to have accrued or to have been secured by any additional voluntary contributions made by Consenting Employees up to the day immediately prior to the Relevant Transfer Date which are prospectively and contingently payable to and in respect of the Consenting Employees (but excluding any benefits which may be payable wholly as a result of injury under section 11 of the PCSPS and any Money Purchase Benefits), agreed or determined as described in this Clause 3 in accordance with the actuarial methods and assumptions set out in the Contractor's Actuary's Letter;

"Designated Stakeholder Schemes" means the one or more Stakeholder Pension Schemes designated from time to time by the Contractor for the purposes of s.3 of the Welfare Reform and Pensions Act 1999;

"GAD" means the Government Actuary's Department;

"Money Purchase Benefits" means money purchase benefits as defined in Section 181 of the Pension Schemes Act 1993;

"Opted-out Employee" means an Authority Employee who on the day before the Relevant Transfer Date:

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has opted-out of membership of the PCSPS; and

- (d) has retained the right under the rules of the PCSPS to opt back into membership of the PCSPS;

"Partnership Pension Account" means the Stakeholder Pension Schemes designated by or on behalf of the Authority and known collectively by the title of "Partnership Pensions Account";

"PCSPS" means the scheme established under s.2 of the Superannuation Act 1972 and known as the Principal Civil Service Pension Scheme. A reference to the PCSPS in relation to an Authority Employee shall include a reference to the Section or Sections of the PCSPS of which he is a member and shall, where appropriate, also include a reference to the administrators thereof;

"PCSPS Actuary" means the Actuary (or firm of Actuaries) appointed for the time being as scheme actuary to the PCSPS;

"PCSPS AVC Scheme" means the scheme known as The Civil Service Additional Voluntary Contribution Scheme operated through the PCSPS. A reference to the PCSPS AVC Scheme shall, where appropriate, include a reference to the administrators thereof;

"Partnership Pension Account Death Benefits Scheme" means the scheme established on 30 April 2003 (but with effect from 1 October 2002) by the Minister for the Civil Service under s.1 of the Superannuation Act 1972 and known as the Partnership Pension Account Death Benefits Scheme;

"Partnership Pension Account Employees" means Authority Employees who on the day before the Relevant Transfer Date are entitled to a contribution from the Authority to the Partnership Pension Account;

"Partnership Pension Account Ill Health Benefits Scheme" means the scheme established on 30 April 2003 (but with effect from 1 October 2002) by the Minister for the Civil Service under s.1 of the Superannuation Act 1972 and known as the Partnership Pension Account Ill Health Benefits Scheme;

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"PCSPS Premium" means Section I of the PCSPS (and popularly known as the Civil Service premium pension scheme);

"Reckonable Service" means reckonable service under the PCSPS within the meaning of the Rules of the PCSPS;

"Relevant Transfer" means a transfer to the Contractor or Sub-Contractor of the Relevant Employees pursuant to this Contract and the Transfer Regulations;

"Relevant Transfer Date" means the date on which the Relevant Transfer is affected for an Authority Employee;

"Shortfall" means the amount if any by which the Contractor's Transfer Requirement exceeds the amount of the Transfer Value. The Shortfall for the purposes of this Clause 3 is subject to a maximum cap of £270,000 (sterling). The Shortfall is to be calculated by the PCSPS Actuary and confirmed by the Contractor's Actuary;

"Shortfall Payment Date" means by 30th June 2009.

"Stakeholder Pension Scheme" means a stakeholder pension scheme within the meaning of s.1 of the Welfare Reform and Pensions Act 1999;

"Transfer Payment" means the value of the retirement and death benefits under the Contractor's Scheme prospectively and contingently payable to and in respect of the Authority Employees calculated by the Contractor's Scheme Actuary in accordance with the agreed bulk transfer terms and Clause 3.23;

"Transfer Value Payment Date" means the date on which the Transfer Value is determined by the PCSPS Actuary and verified by the Contractor's Actuary, as the PCSPS Actuary and Contractor's Actuary agree;

"Transfer Regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 2006;

"Transfer Value" means the value of the retirement and death benefits under the PCSPS, including the benefits under the PCSPS AVC Scheme based on added years of Reckonable Service deemed to have accrued and to have been secured by the

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additional voluntary contributions made by Consenting Employees up to the day immediately prior to the Relevant Transfer Date, which are prospectively and contingently payable to and in respect of the Consenting Employees (but excluding any benefits which may be payable wholly as a result of injury under Section 11 of the PCSPS and any Money Purchase Benefits) as calculated by the PCSPS Actuary and verified by the Contractor's Actuary in accordance with the actuarial methods and assumptions set out in the Actuary's Letter;

Contractor's Scheme

3.2 The Contractor shall notify the details of the Contractor's Scheme to the Authority no later than the Relevant Transfer Date.

Requirements of Contractor's Scheme for Authority Employees

3.3 The Contractor shall procure that, by no later than the Relevant Transfer Date the Contractor's Scheme:

- (a) is registered by HMRC for the purposes of the Finance Act 2004; and
- (b) is certified in writing by GAD as providing for and in respect of Authority Employees, benefits for their service from the Relevant Transfer Date which are broadly comparable to the benefits which would have been provided for and in respect of them for that service under the terms of the PCSPS as at the day before the Relevant Transfer Date, had they remained active members in Reckonable Service under the PCSPS; and
- (c) is certified in writing by GAD as containing provisions allowing Authority Employees who formerly were contributing members of the PCSPS AVC Scheme, to make additional voluntary contributions on a basis which, in his reasonable opinion, is broadly comparable to that obtaining under the PCSPS AVC Scheme as at the day before the Relevant Transfer Date, but for this purpose ignoring any provision of the PCSPS AVC Scheme

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entitling members thereof to acquire added years of Reckonable Service; and

- (d) contains a provision enabling it to accept transfer payments from the PCSPS and the PCSPS AVC Scheme; and
- (e) for the purpose of determining whether an Authority Employee is entitled to benefits (including any enhancement of service on ill-health retirement or death benefits) under the Contractor's Scheme, takes periods of employment with the Authority and its successor into account as a single unbroken period; and
- (f) satisfies such other requirements, either in addition to or in substitution for all or any of the foregoing requirements in this paragraph, as GAD may at any time prior to the Relevant Transfer Date impose in respect of Authority Employees.

3.4 The Contractor shall further procure that:

- (a) where an Authority Employee or group of Authority Employees leaves or leave the employment of the Contractor as a result of the transfer of any undertaking which is the whole or a part of the Services, the transfer value payable in respect of them shall be a past service reserve calculated on such reasonable terms and assumptions (including, for the avoidance of doubt, a reasonable assumption as to their future increases in pensionable earnings) as are determined by the trustees of the Contractor's Scheme, acting on the advice of the Contractor's Scheme Actuary; and
- (b) no amendment shall be made to the Contractor's Scheme which could reduce the value of the benefits of any Authority Employee accrued to the date upon which the power to amend is exercised, such value to be calculated as a past service reserve on the basis of such reasonable terms and assumptions

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(including, for the avoidance of doubt, a reasonable assumption as to their future increases in pensionable earnings) as are determined by the trustees of the Contractor's Scheme, acting on the advice of the Contractor's Scheme Actuary; and

- (c) the Contractor's Scheme Actuary shall, in calculating a transfer value under this Clause, apply the same terms and assumptions as were applied in the Actuary's Letter, subject to a reasonable adjustment in respect of market fluctuations since the date of the Actuary's Letter;
- (d) The Contractor undertakes that in the event that GAD has certified the Contractor's Scheme in this Clause 3 on an interim basis, the Contractor shall secure renewal of the GAD certification and that there is a valid interim certificate issued by GAD or a GAD passport for the Contractor's Scheme in place no later than 6 months prior to Relevant Transfer Date; and
- (e) The Contractor undertakes to submit to the Authority such documents, information and other evidence as the Authority may reasonably require from time to time and at any time to enable it to be satisfied that the Contractor and the Contractor's Scheme comply and continue to comply with the requirements of this Clause 3 (Pension Matters) relating to Authority Employees.

Membership of Contractor's Scheme

3.5 The Contractor shall procure that:

- (a) all Authority Employees shall be admitted automatically to membership of the Contractor's Scheme on the Relevant Transfer Date (other than any Authority Employee who opts out of membership of the Contractor's Scheme); and

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- (b) all Authority Employees who become members of the Contractor's Scheme shall be eligible to remain members of it throughout the period of their employment with the Contractor in connection with the Services; and
- (c) membership of the Contractor's Scheme for Authority Employees shall not be conditional on their agreeing to payment of the Transfer Value in respect of them; and
- (d) each Partnership Pension Account Employee, who had the option to join PCSPS Premium and who by the day immediately prior to the Relevant Transfer Date has failed to exercise that option:
 - (i) shall be given the option, exercisable only once [and within 6 months of the Relevant Transfer Date], to become a member of the Contractor's Scheme at any time after the Relevant Transfer Date on the same terms as to contributions and benefits from the date of joining as apply to Authority Employees who were previously in Reckonable Service under PCSPS Premium; and
 - (ii) shall be given the option, exercisable only once and within 6 months of the Relevant Transfer Date, to opt out of membership of the Contractor's Scheme and to join the Designated Stakeholder Schemes on the same terms as to contributions from the Contractor as applied to contributions from the Authority or, if more favourable, as apply to other Partnership Pension Account Employees at the date of joining the Designated Stakeholder Schemes; and on exercising the option specified in this Clause shall be included automatically as a member of the scheme or schemes specified in Clause 3.20 (Partnership Pension Account Employees); and
- (e) each Authority Employee who had the option to join the Partnership Pension Account and who by the day immediately

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prior to the Relevant Transfer Date has failed to exercise that option:

- (i) shall be given the option, exercisable only once and within 6 months of the Relevant Transfer Date, to opt out of membership of the Contractor's Scheme and to join a Designated Stakeholder Scheme on the same terms as to contributions from the Contractor as applied to contributions from the Authority or, if more favourable, as apply to other Partnership Pension Account Employees at the date of joining a Designated Stakeholder Scheme; and
- (ii) on exercising the option specified in Clause 3.5 (Membership of Contractor's Scheme) shall be included automatically as a member of the scheme or schemes specified in Clause 3.20 (Partnership Pension Account Employees); and
- (iii) shall be given the option, exercisable only once and within 6 months of the Relevant Transfer Date, to rejoin the Contractor's Scheme with effect from the date he exercises the option on the same basis as to contributions and benefits as previously applied to him or, if more favourable, as apply in respect of Authority Employees who were in Reckonable Service under PCSPS Premium at the date of his rejoining.

Calculation of Transfer Value

3.6 The Authority agrees:

- (a) on or after the date of the Relevant Transfer Date to invite the Authority Employees who join the Contractor's Scheme to request in writing payment of the Transfer Value in respect of them by the PCSPS to the Contractor's Scheme; and
- (b) that Authority Employees shall be given three months from the Relevant Transfer Date or the date on which the said invitations

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are issued (whichever is later), in which to return their written requests to the Authority.

3.7 Following the receipt of requests made by Authority Employees pursuant to Clause 3.6 (Calculation of Transfer Value), the Authority shall use its reasonable endeavours to procure that the PCSPS instructs the PCSPS Actuary to determine, within 7 days of the end of the three month period mentioned in paragraph 3.6 (b) or as soon as reasonably possible thereafter, the Transfer Value in accordance with the Actuary's Letter and to notify the Contractor's Actuary of their findings for verification.

3.8 The Contractor shall instruct the Contractor's Actuary to review the calculation of the Transfer Value by the PCSPS Actuary within 7 days of receiving it (or as soon as reasonably possible thereafter) and, if having done so, he agrees it is correct, to notify his agreement in writing to the PCSPS Actuary within those 7 days (or as soon as reasonably possible thereafter).

3.9 The Contractor shall instruct the Contractor's Actuary:

- (a) to calculate, within 7 days of the end of the three month period mentioned in paragraph 3.6 (b), or as soon as reasonably possible thereafter, the Contractor's Transfer Requirement; and
- (b) (within those 7 days) to notify the PCSPS Actuary in writing of his calculation for verification.
- (c) calculate the Shortfall, being the value if any by which the Contractor's Transfer Requirement exceeds the Transfer Value, and agree the calculation with the Contractor's Actuary.

3.10 The Authority shall instruct the PCSPS Actuary to:

- (a) review the calculation of the Contractor's Transfer Requirement by the Contractor's Actuary within 7 days of receiving it or as soon as reasonably possible thereafter and if having done so he agrees it is correct, to notify his agreement in writing to the Contractor's Actuary within those 7 days (or as soon as reasonably possible thereafter.); and

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- (b) check the Shortfall Value, and agree the calculation with the Contractor's Actuary.

3.11 If the PCSPS Actuary and the Contractor's Actuary cannot agree the calculation of the Transfer Value or Contractor's Transfer Requirement, either party may require the calculation to be determined by an independent actuary to be nominated by the Authority and the Contractor jointly or, if they cannot agree on a nomination, to be nominated by the President of the Institute of Actuaries on application by either party. The independent actuary will act as an expert and not as an arbitrator, and his decision will be final and binding on the parties. His costs will be payable equally by the Authority and the Contractor.

3.12 The Authority and the Contractor respectively undertake to procure that:

- (a) all such information within their respective possession or under their respective control as the PCSPS Actuary and/or the Contractor's Actuary may reasonably request for the purposes of calculating or verifying the Transfer Value or for any other purpose of this paragraph shall be made available promptly to them; and
- (b) with the exception of the request forms referred to in Clause 3.6 (Calculation of Transfer Value), no notice or communication pertaining to a transfer payment from the PCSPS will be issued or given to the Authority Employees by the Authority or by the Contractor before the Relevant Transfer Date without the written approval of the other party (such approval not to be unreasonably withheld or delayed).

3.13 Each of the Authority and the Contractor undertake to procure that no notice or communication pertaining to a transfer from the PCSPS will be issued or given to the Authority Employees before the Relevant Transfer Date without the approval of the other party (such approval not to be unreasonably withheld or delayed).

Payment of Transfer Value

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3.14 The Authority shall use its reasonable endeavours to procure that on the Transfer Value Payment Date the PCSPS shall pay to the Contractor's Scheme an amount in cash equal to the Transfer Value.

3.15 The Contractor shall use its reasonable endeavours to procure that the trustees of the Contractor's Scheme promptly accept the Transfer Value.

3.16 The Contractor shall procure that, subject to receipt of the Transfer Value by the Contractor's Scheme:

- (a) each of the Consenting Employees is awarded a credit of such period of pensionable service in the Contractor's Scheme as the PCSPS Actuary has determined in the Actuary's Letter; and
- (b) that, for the purpose of calculating benefits for and in respect of the Consenting Employees under the Contractor's Scheme, the pensionable service so credited and the pensionable service which each of the Consenting Employees accrues in the Contractor's Scheme from the date of the Relevant Transfer are treated in the Contractor's Scheme as a single unbroken period.

3.17 The Authority shall use its reasonable endeavours to procure that on or before the Transfer Value Payment Date the PCSPS AVC Scheme shall pay or transfer to the Contractor's Scheme an amount in cash equal to the AVC Transfer Value.

3.18 The Contractor shall use its reasonable endeavours to procure that:

- (a) the trustees of the Contractor's Scheme promptly accept the AVC Transfer Value; and
- (b) subject to receipt of the AVC Transfer Value by the Contractor's Scheme, each Consenting Employee is awarded benefits (additional to those to be provided in respect of the Transfer Value) of such amount as, in the reasonable opinion of the Contractor's Scheme Actuary, is equal in value to the amount of

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the AVC Transfer Value attributable to the Consenting Employee in question.

3.19 The Authority shall on or before the Shortfall Payment Date pay to the Contractor or within 10 Business Days of an earlier termination of the Contract, pay the Contractor in cleared funds without any withholding, set-off or deduction an amount equal to the Shortfall (if any).

Partnership Pension Account Employees

3.20 The Contractor undertakes :

- (a) to establish or participate in and to notify to the Authority no later than the Relevant Transfer Date a Retirement Benefits Scheme which provides for and in respect of Partnership Pension Account Employees:
- (i) benefits which (as evidenced by current GAD certificate) are broadly comparable to the benefits to which they would have been entitled under the Partnership Pension Account Ill Health Benefits Scheme, had they continued in "eligible service" under the Partnership Pension Account Ill Health Benefits Scheme (within the meaning of rule A2 of its Rules) after the Relevant Transfer Date, for this purpose treating their respective periods of eligible service and employment with the Contractor as a single unbroken period; and
- (ii) benefits which (as evidenced by a current GAD certificate) are broadly comparable to the benefits to which they would have been entitled under the Partnership Pension Account Death Benefits Scheme, had they continued in "eligible employment" under the Partnership Pension Account Death Benefits Scheme (within the meaning of rule A1(1) of its Rules) after the Relevant Transfer Date, for this purpose treating their respective periods of eligible service and employment with the Contractor as a single unbroken period.

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- (b) to procure that all Partnership Pension Account Employees shall be admitted automatically to membership of that scheme on the Relevant Transfer Date (other than any Partnership Pension Account Employee who opts out of membership of the scheme in writing on or before that day in a form approved by the Authority).

3.21 The Contractor shall:

- (a) comply with all applicable requirements of Part I of the Welfare Reform and Pensions Act 1999 and in particular shall designate one or more stakeholder pension schemes for the purposes of section 3 of that Act; and
- (b) notify the Designated Stakeholder Schemes to the Authority promptly following their designation (including any Stakeholder Pension Schemes designated from time to time by the Contractor either in substitution for or in addition to any other Designated Stakeholder Scheme); and
- (c) contribute with effect from the Relevant Transfer Date to such of those Designated Stakeholder Schemes in respect of Partnership Pension Account Employees as each of them may join, at the same annual rates and on the same terms as were in force for employer contributions from the Authority to the Partnership Pension Account on the day prior to the Relevant Transfer Date; and
- (d) obtain and submit to the Authority the written certificate of GAD (including all replacement certificates) that the Designated Stakeholder Schemes and the rate of and terms relating to the contributions paid to them by the Contractor are broadly comparable to the Partnership Pension Account.

Sub-contracting

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3.22 Where as the result of the transfer of an undertaking which is the whole or part of the Services the employment of any Authority Employee is transferred to a Sub-Contractor, the Contractor shall notify the Authority as soon as is reasonably practicable and shall require the Sub-Contractor:

- (a) to have in place a Retirement Benefits Scheme which is certified in writing by GAD as providing for and in respect of Authority Employees, benefits for their service from the date transfer which are broadly comparable to the benefits which would have been provided for and in respect of them for that service under the terms of the PCSPS as at the day before their employment transferred from the Authority, had they remained in Reckonable Service under the PCSPS; and
- (b) to procure that the Authority Employees shall be admitted automatically to membership of the scheme on the date of they transfer to the employment of the Sub-Contractor (other than any Authority Employee who opts out of membership of the scheme in writing on or before that date in a form approved by the Authority); and
- (c) to procure that the Authority Employees shall be eligible to remain active members of the relevant sub-contractor's scheme or schemes throughout the period of their employment with the Sub-Contractor in connection with the Services; and
- (d) to contribute with effect from the date of transfer to a Stakeholder Pension Scheme in respect of Partnership Pension Account Employees as each such employee may join, at annual rates no less than and on the terms no less favourable than those in force for employer contributions from the Contractor to the Designated Stakeholder Schemes on the day prior to the date of transfer; and

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- (e) to have in place one or more Retirement Benefits Schemes which provide for and in respect of Partnership Pension Account Employees benefits which are certified by GAD as broadly comparable to the benefits to which they would have been entitled under the Partnership Pension Account Ill Health Benefits Scheme and the Partnership Pension Account Death Benefits Scheme on the day prior to the Relevant Transfer Date; and
- (f) to procure that all Partnership Pension Account Employees shall be admitted automatically to membership of the scheme or schemes specified in sub-Clauses (c) and (d) (Sub-contracting) on the Relevant Transfer Date (other than any Partnership Pension Account Employee who opts out of membership in writing on or before that day in a form approved by the Authority); and
- (g) to comply with the obligations contained in this Clause 3 in relation to any Authority Employee who immediately before such transfer was a member of the Contractor's Scheme and/or any Partnership Pension Account Employee, in the same manner as they applied to the Contractor; and
- (h) to procure that similar obligations to those under this Clause 3 (Pension Matters), including those in this sub-Clause 3.22 (Sub-contracting), are imposed on any subsequent transferee of the Authority Employees, and/or Partnership Pension Account Employees.
- (i) The Authority may from time to time and at any time require the Contractor to obtain and to produce to the Authority such information and evidence concerning the Sub-Contractor and the Contractor's pension schemes as the Authority may reasonably require in order to be satisfied that the provisions of

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this Clause 3 (Pension Matters) have been and continue to be satisfied and the Contractor shall promptly use all reasonable endeavours to obtain the same following the receipt of such a request.

Expiry or termination of this Contract – bulk transfer terms

3.23 Where the Authority has served a notice to terminate all or any of the Services or part of the Contract and the Authority has notified the Contractor of the identity of the New Provider, the Contractor shall procure that the trustees of the Contractor's Scheme or relevant sub-contractor's pension schemes, offer to the trustees of each of the New Provider's schemes bulk transfer terms in respect of the Authority Employees prospectively transferring to the employment of the New Provider and provide for a transfer value calculated by applying the same terms and assumptions as were applied in the Actuary's Letter and taking into account any Shortfall payment made to the Contractor subject to a reasonable adjustment (as defined in the Actuary's letter) in respect of market fluctuations since the date of the Actuary's Letter.

3.24 The Contractor shall further procure that:

- (a) the Authority Employees who are members of the Contractor's Scheme (or relevant sub-contractor's pension schemes) and who are to transfer to the employment of the New Provider:
 - (i) are invited, on or before the date on which this Contract terminates, to request payment of the Transfer Payment from the Contractor's Scheme (or relevant sub-contractor's pension schemes) to the New Provider's scheme; and
 - (ii) shall be given three months from the date on which this Agreement terminates or the date on which the said invitations are issued, whichever is later, in which to return the requests to the trustees of the Contractor's Scheme (or relevant sub-contractor's pension schemes); and

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- (b) the trustees of the Contractor's Scheme (or relevant sub-contractor's pension schemes) promptly calculate and pay to the trustees of the New Provider's scheme an amount in cash equal to the Transfer Payment.

3.25 Where the Contractor has failed to procure that trustees of the Contractor's Scheme (or failed to procure that the trustees of any relevant sub-contractors' schemes) offer bulk transfer terms in accordance with clauses 3.23 and 3.24, the Contractor shall so advise the Authority and the Authority may issue such reasonable requests to each Party, if any, as it thinks fit. The Contractor shall comply with and shall use its reasonable endeavours that all sub-contractors shall comply with, all such reasonable requests.

3.26 Notwithstanding any provision of this Clause 3 (Pension Matters) the Authority shall have no liability as a result of or arising out of the failure of any party to agree bulk transfer terms or to implement bulk transfer terms which have been agreed, nor shall it be liable for the costs or expenses incurred by any party, including the Contractor and/or any sub-contractor, in negotiating or endeavouring to negotiate bulk transfer terms or in carrying out or endeavouring to carry out any direction or request of the Authority issued under this Clause 3 (Pension Matters).

Authority to be indemnified

3.27 The Contractor shall indemnify the Authority on demand and shall keep it indemnified in full from and against all direct or indirect liability, loss, damages, injury, claims, costs and expenses incurred by the Authority, including the costs and expenses (whether legal, actuarial or other) incurred by the Authority in preparing for, defending and implementing any court, Employment Tribunal or Pensions Ombudsman proceedings, order, judgment, award or direction, awarded against or incurred or paid by the Authority to and/or in favour of any Authority Employee, Partnership Pension Account Employee or any other person:

- (a) as a result of the failure of the Contractor to comply with the provisions of this Clause 3 (Pension Matters) and/or of the

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failure of any sub-contractor to comply with the terms of its contract with the Contractor; and

- (b) arising out of or attributable to or in any way connected with the provision or transmission by the Authority (whether to Employees or any other party) of information supplied to it by the Contractor or a sub-contractor in connection with a re-tendering or proposed re-tendering of all or any of the Services.

The indemnity in Clause 3.27 shall not apply if the direct or indirect liability, loss, damage, injury, claim, costs or expenses are wholly attributable to an act or omission of the Authority.

4 CODE OF PRACTICE ON WORKFORCE MATTERS

4.1 In this Clause, unless the context otherwise, the following expressions have the following meanings:

“**ACAS**” means the advisory, conciliation, and arbitration service;

“**Authority Employee**” means those employees of the Authority who are listed in the Final List;

“**Code of Practice on Workforce Matters**” means the Code of Practice on Workforce Matters in Public Sector Service Contracts issued by the Cabinet Office in March 2005;

“**Code of Practice on Workforce Matters Compliant Pension Scheme**”: in accordance with the Code of Practice on Workforce Matters in Public Sector Service Contracts issued by Cabinet Office in March 2005 this means either:

- (a) membership of a good quality employer pension scheme being either:
 - (i) a contracted-out, a final salary defined benefit pension scheme;
 - (ii) a defined contribution pension scheme where, as a minimum, the employer matches employee contributions up to 6%; or

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(b) membership of a stakeholder pension scheme under which, as a minimum, the employer will match the employee contributions up to 6%.

“Contractor” means the company that has been awarded this contract.;

“Independent Person” means a person listed as an independent person for the purpose of alternative dispute resolution on an approved list provided by ACAS;

“New Joiner” means any person, other than an Authority Employee, not already an employee of the Contractor or any Sub-contractor at the Relevant Transfer Date who is recruited wholly or mainly to provide the Services;

“Services” is the outputs defined within the contract that the Contractor is to provide;

“Sub-Contractor” means all companies employed by either Serco or the Authority in ensuring the "service" is provided.

4.2 The Contractor shall comply, and procure that any Sub-contractor shall comply, with the Code of Practice on Workforce Matters.

4.3 In the event that a New Joiner shall be employed by the Contractor (or any sub-contractor) to provide the Services, the Contractor shall offer (or shall procure that the Sub-Contractor shall) offer those persons terms and conditions of employment which (excluding pensions provided in accordance with Clause 4.5 below) are no less favourable as an overall package of terms and conditions than the terms and conditions of the Authority Employees.

4.4 The Contractor shall consult with their recognised trade unions or their employee representatives within a reasonable time prior to the determination of the terms and conditions of employment of New Joiners.

4.5 The Contractor shall procure (or shall procure that any Sub-Contractor shall procure) that a New Joiner employed by the Contractor or any Sub-Contractor in providing the Services shall be offered membership of a Code of Practice on Workforce Matters Compliant Pension Scheme prior to the commencement of such employment.

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4.6 All New Joiners who become members of the Code of Practice on Workforce Matters Compliant Pension Scheme shall:

- (a) be deemed to have joined the Code of Practice on Workforce Matters Compliant Pension Scheme from the date of commencement of employment with the Contractor or any Sub-Contractor; and
- (b) shall remain eligible to become a member of such a scheme throughout the period of their employment with the Contractor or any Sub-Contractor in connection with the Services.

4.7 The Contractor shall notify the Authority within seven (7) days of any dispute arising in connection with the application of the Code of Practice on Workforce Matters under this contract and the Contractor and the Authority shall seek to resolve the dispute.

4.8 In the event that the Authority considers that a resolution of the dispute in respect of the Code of Practice on Workforce Matters is not resolved under Clause 4.7, it shall be resolved by the alternative dispute resolution procedure set out at Appendix 1 to Annex V

4.9 Any costs arising out of the appointment of the Independent Person shall be shared between the Authority and the Contractor.

4.10 The Contractor shall comply with any reasonable requests by the Authority in connection with the Authority's requirement to monitor compliance with the Code of Practice on Workforce Matters.

4.11 Subject to Clause 4.9, the Authority and the Contractor shall bear their own costs arising out of the use of the dispute resolution procedure in Appendix 1 to Annex V.

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APPENDIX 1 TO ANNEX V

Code of Practice on Workforce Matters – Alternative Dispute Resolution Procedure

- 1.1 In the event that a dispute arises under Clause 4.8, the Contractor and the Authority shall agree the appointment of an Independent Person and, upon agreement of both parties, two other persons, one with an employer background and one with a trade union background to assist the Independent Person, within twenty (20) working days of such notification.
- 1.2 Where the Contractor and the Authority fail to agree the appointment of an Independent Person within the time period specified in paragraph 1.1, the Authority's choice shall prevail.
- 1.3 The Contractor and the Authority shall supply any Independent Person with such information as he may request within the timescale set by the Independent Person or, where no such timescale is given, within fourteen (14) working days of such a request.
- 1.4 Where an Independent Person decides that the package of terms and conditions offered by the Contractor is not compliant with the Code of Practice on Workforce Matters, the Contractor shall, within fourteen (14) working days of such a decision, arrange a meeting with the parties concerned including any recognised trade unions and/or elected representatives of the New Joiners concerned, and the Authority and the Independent Person will be notified of the date and be given the opportunity to attend the meeting.
- 1.5 The Contractor will use its best endeavours to reach agreement on terms and conditions for New Joiners which are compliant with the Code of Practice on Workforce Matters and the view of the Independent Person as to whether or

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not any revised terms are compliant with the Code of Practice on Workforce Matters shall be binding on the Contractor.

- 1.6 Where no agreement is reached as to terms and conditions for New Joiners which are compliant with the Code of Practice on Workforce Matters, the Contractor shall then make final submissions to the Independent Person within the timescale requested by the Independent Person or, where no timescale is given, within seven (7) working days of his request to do so in order that the Independent Person can determine the terms and conditions to be offered to New Joiners.
- 1.7 The determination of the Independent Person as to the terms and conditions to be offered to New Joiners shall be binding on the Contractor and shall apply to all New Joiners.

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APPENDIX 2 TO ANNEX V

List of employment information per Authority Site on which the Contractor based its final prices for employment costs

See Annex U

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APPENDIX 3 TO ANNEX V

**CONTRACTOR PERSONNEL-RELATED INFORMATION TO BE
RELEASED UPON RE-TENDERING WHERE TUPE APPLIES**

1. Pursuant to Clause 2.26, the following information will be provided:
 - a) The total number of individual employees (including any employees of sub-contractors) that are currently engaged, assigned or employed in providing the Services and who may therefore be transferred. Alternatively the contractor should provide information why any of their employees or those of their sub-contractors will not transfer;
 - b) The total number of posts or proportion of posts expressed as a full-time equivalent value that currently undertakes the work that is to transfer;
 - c) The preceding 12 months total pay costs - pay, employee/employer ERNIC and overtime);
 - d) Total redundancy liability;
2. In respect of those employees included in the total at 1(a) above:
 - a) Age (not date of birth);
 - b) Employment status (i.e. fixed term, casual, permanent);
 - c) Length of current period of continuous employment (in years, months);
 - d) Weekly conditioned hours of attendance (gross);
 - e) Standard annual holiday entitlement (not "in year" holiday entitlement that may contain carry over or deficit from previous leave years);
 - f) Pension Scheme Membership (including for ex-Authority Employees or other former civil servants who are current members of the Contractor's Scheme or other contractor pension scheme certified by GAD which was set up following a transfer to the Contractor of former civil servants);
 - g) Pension and redundancy liability information;

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- h) Annual salary;
 - i) Details of any regular overtime commitments (these may be weekly, monthly or annual commitments for which staff may receive an overtime payment);
 - j) Details of attendance patterns that attract enhanced rates of pay or allowances;
 - k) Regular/recurring allowances;
 - l) Outstanding financial claims arising from employment (i.e. season ticket loans, transfer grants);
4. Additional information about factors that may influence staffing levels and costs.
5. The information to be provided under this Part should not identify an individual employee by name or other unique personal identifier.
6. Access by the Authority/tenderers to the contractor's general employment terms and conditions applicable to those employees identified at paragraph 1(a).

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APPENDIX 4 TO ANNEX V

**PERSONNEL INFORMATION TO BE RELEASED ON AWARD OF
CONTRACT TO A NEW PROVIDER WHERE TUPE APPLIES**

Pursuant to Clauses 2.1 and 2.27, the written statement of employment particulars as required by section 1 of the Employment Rights Act 1996 together with the following information (save where that information is included within that statement) will be provided to the extent it is not included within the written statement of employment particulars:

1. Personal, Employment and Career
 - a) Employee's full name;
 - b) Date of birth and age;
 - c) Home address;
 - d) Security vetting clearance;
 - e) Job title;
 - f) Work location;
 - g) Conditioned hours of work;
 - h) Employment status;
 - i) Details of training and operating licensing required for statutory and health and safety reasons;
 - j) Details of training or sponsorship commitments;
 - k) Standard annual leave entitlement and current leave year entitlement and record;
 - l) Annual leave reckonable service date;
 - m) Details of disciplinary or grievance proceedings taken by transferring employees in the last two years, in circumstances where the Employment Act 2002 (Dispute Resolution) Regulations 2004 apply;

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- n) Information of any legal proceedings between employees and their employer within the previous two years that the transferor has reasonable grounds to believe that an employee may bring against the transferee arising out of their employment with the transferor;
- o) Issue of uniform/protective clothing;
- p) Working Time Directive opt-out forms; and
- q) Date from which the latest period of continuous employment began.

2. Performance Appraisal

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

3. Superannuation and Pay

- a) Maternity leave or other long-term leave of absence;
- b) Annual salary and rates of pay band/grade;
- c) Shifts, unsociable hours or other premium rates of pay;
- d) Overtime history for the preceding 12-month period;
- e) Allowances and bonuses for the preceding 12-month period;
- f) Details of outstanding loan, advances on salary or debts;
- g) Bank/building society account details for payroll purposes tax code;
- h) Cumulative pay for tax and pension purposes;
- i) Cumulative tax paid;
- j) National Insurance number;
- k) National Insurance contribution rate;
- l) Other payments or deductions being made for statutory reasons;
- m) Any other voluntary deductions from pay;

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- n) Civil Service Pension Scheme Membership (Opt-out of Civil Service Pension Scheme, Classic, Classic Plus, Premium, Defined Contribution) or, where relevant Contractor Scheme or other contractor/sub-contractor pension scheme membership;
- o) For pension purposes, the notional reckonable service date;
- p) Pensionable pay history for 3 years to date of transfer;
- q) Percentage of any pay currently contributed under additional voluntary contribution arrangements; and
- r) Percentage of pay currently contributed under any added years arrangements.

4. Medical

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

5. Disciplinary

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

6. Further information

Additional information which is of relevance to a transferring employee's employment such as:

- a) Information about specific adjustments that have been made for an individual under the Disability Discrimination Act 1995;
- b) Short term variations to attendance hours to accommodated a domestic situation; and
- c) Individuals that are TA members, or staff may have been granted special leave as a school governor.

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