



## **PART D – CONDITIONS OF CONTRACT FOR SERVICES**

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### Schedule 1: Staff Transfer

#### **D1. DEFINITIONS**

In the Contract the following words shall have the following meanings unless the context requires otherwise:

“Acceptance” means the written acceptance of DCLG’s Contract Manager given in accordance with any acceptance procedures set out in the Contract;

“Annex” means, unless otherwise provided, the relevant annex referred to in Schedule 1;

“Deliverables” means anything specified in the Contract to be delivered by the Contractor to DCLG under the Contract including reports, manuals and other documentation and outputs;

“Employee Liabilities” means all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:

- a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- b) unfair, wrongful or constructive dismissal compensation;



- c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- d) compensation for less favourable treatment of part-time workers or fixed term employees;
- e) outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions in relation to payments made by DCLG or the Replacement Contractor to a Transferring Contractor Employee which would have been payable by the Contractor or the Sub-Contractor if such payment should have been made prior to the Service Transfer Date;
- f) claims whether in tort, contract or statute or otherwise;
- g) any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

“Employment Regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Acquired Rights Directive;

“Former Contractor” means a contractor supplying the Services to DCLG before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such contractor (or any sub-contractor of any such sub-contractor);

“Key Personnel” means any of the Contractor’s Personnel named in the Contract as key personnel or any of the Contractor’s Personnel who DCLG notifies to the Contractor in writing are to be regarded as key personnel;

“Premises” means the location(s) where the Services are to be performed as specified in the Contract;

“Relevant Transfer” means a transfer of employment to which the Employment Regulations applies;

“Relevant Transfer Date” means, in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;

“Replacement Contractor” means any third party provider of Replacement Services appointed by or at the direction of DCLG from time to time or where DCLG is providing Replacement Services for its own account, shall also include DCLG;

“Replacement Sub-Contractor” means a sub-contractor of the Replacement Contractor to whom Transferring Contractor Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);

“Schedule 1” means, unless otherwise provided, schedule 1 of this Annex B Part D Conditions of Contract for Services, which relates to staff transfer;



“Service Transfer” means any transfer of the Services (or any part of the Services), for whatever reason, from the Contractor or any Sub-Contractor to a Replacement Contractor or a Replacement Sub-Contractor;

“Service Transfer Date” means the date of a Service Transfer;

“Services” means the services to be provided as specified in the Contract including the production of any Deliverables and any planning, preliminary and preparatory work;

“Transferring Contractor Employees” means those employees of the Contractor and/or the Contractor’s Sub-Contractors to whom the Employment Regulations will apply on the Service Transfer Date;

“Transferring DCLG Employees” means those employees of DCLG to whom the Employment Regulations will apply on the Relevant Transfer Date; and

“Transferring Former Contractor Employees” means in relation to a Former Contractor, those employees of the Former Contractor to whom the Employment Regulations will apply on the Relevant Transfer Date.

## **D2. THE SERVICES**

- D2.1 The Contractor’s Personnel shall undertake the Services with reasonable skill, care and diligence in accordance with the Contract and good industry practice and to the reasonable satisfaction of DCLG.
- D2.2 Timely provision of the Services shall be of the essence of the Contract and failure to commence or provide the Services within the time promised or specified shall enable DCLG (at DCLG’s option acting reasonably) to release itself from any obligation to accept and pay for the Services and/or to cancel all or part of the Contract, in either case without additional cost and without prejudice to DCLG’s other rights and remedies.

## **D3. VARIATION OF THE SERVICES**

- D3.1 DCLG reserves the right from time to time during the term of the Contract in accordance with any change control procedures set out in the Contract to add to, omit, or otherwise vary the Services including the order in which the Services are to be delivered or the locations where the Services are to be provided and any alteration to the prices or completion date arising by reason of such variation shall be agreed between the Parties and shall properly and fairly reflect the nature and extent of the variation in all the circumstances.



**D4. CONTRACTOR'S PERSONNEL**

- D4.1 The Contractor shall make the Key Personnel available for the purposes of the Services and shall not make any changes in the Key Personnel without the prior written approval of DCLG, such approval not to be unreasonably withheld. Whenever, for any reason, the Key Personnel are unavailable for the performance of the Services, the Contractor shall as soon as reasonably practicable substitute suitably qualified replacements acceptable to DCLG.
- D4.2 If and when requested by DCLG, the Contractor shall provide DCLG with a list of the names of all the Contractor's Personnel who may at any time be concerned with the provision of the Services or any part of it, specifying in each case the capacities in which they are so concerned and giving such other particulars and evidence of identity, qualifications, experience and other supporting evidence as DCLG may reasonably require.
- D4.3 Where DCLG reasonably requires by notice to the Contractor that any of the Contractor's Personnel is not to become involved in or is to be removed from involvement in the Services, the Contractor shall take all reasonable steps to comply with such notice. The Contractor shall replace any such person with someone with equivalent experience, qualifications, training and security clearance.
- D4.4 The decision of DCLG as to whether any person is not to become involved in or is to be removed from involvement in the Services, as to the designation or approval of Key Personnel and as to whether the Contractor has furnished the information or taken the steps required by this Condition D4 shall be final and conclusive.
- D4.5 The Contractor shall:
- D4.5.1 take instructions and all directions and, where appropriate, receive DCLG's decisions only through DCLG's Contract Manager;
  - D4.5.2 act in accordance with all reasonable instructions and directions in carrying out the Services;
  - D4.5.3 keep DCLG's Contract Manager advised on all matters materially related to its performance of the Services according to reporting formats specified by DCLG;
  - D4.5.4 answer all reasonable enquiries received from DCLG's Contract Manager;
  - D4.5.5 attend or be represented at regular meetings as requested by DCLG from time to time.
- D4.6 The Contractor shall ensure that leave is taken by the Key Personnel on dates which do not interfere with the proper delivery of the Services and shall consult with DCLG's Contract Manager before allowing leave to be taken.
- D4.7 The Contractor shall not vary the Contract prices at anytime during the term of the Contract including any extension due to the promotion of any of the Contractor Personnel.



- D4.8 The Contractor shall bear the cost of any notice, instruction or decision of DCLG under this Condition D4.

## **D5. MEETINGS AND REPORTING**

- D5.1 The Contractor and the Contractor's Personnel shall upon receipt of reasonable notice and during office hours attend all meetings arranged by DCLG's Contract Manager for the discussion of matters connected with the performance of the Services.
- D5.2 The Contractor and the Contractor's Personnel shall provide DCLG's Contract Manager with such reports of the Services and copies of the Deliverables at such intervals and in such form as DCLG may from time to time reasonably require.

## **D6. EQUIPMENT, PLANT AND MATERIALS**

- D6.1 The Contractor shall provide all equipment, plant and materials necessary for the provision of the Services except where otherwise agreed in the Contract.
- D6.2 In the event that the Contractor procures goods or services including equipment from third parties on behalf of DCLG, it shall at all times do so in accordance with the provisions of the Public Contracts Regulations 2015 as though the Contractor were a contracting authority within the meaning of those regulations and in accordance with all other applicable domestic and European law.
- D6.3 Where DCLG in accordance with the Contract issues equipment, plant or materials free of charge to the Contractor such equipment, plant or materials shall be and remain the property of DCLG. The Contractor shall not in any circumstances have a lien on the equipment, plant or materials and shall take all steps necessary to ensure that the title of DCLG and the exclusion of any lien are brought to the attention of any third party dealing with the equipment, plant and materials.
- D6.4 The Contractor shall maintain all equipment, plant and materials provided by DCLG in good order and condition and shall use such equipment, plant and materials solely in connection with the Contract. The Contractor shall notify DCLG of any surplus materials remaining after completion of the Services and shall dispose of them as DCLG may direct. Waste of such materials arising from bad workmanship or negligence of the Contractor or the Contractor's Personnel shall be made good at the Contractor's expense. Without prejudice to any other of the rights of DCLG, the Contractor shall deliver up such equipment, plant or materials whether processed or not to DCLG on demand.

## **D7. INSPECTION**

- D7.1 DCLG shall be entitled to inspect and examine the performance of the Services and the Contractor shall afford all reasonable access, facilities and assistance required by DCLG for any inspection and examination free of charge.



- D7.2 No failure to make complaint at the time of such inspection and no approval given during or after such inspections shall constitute a waiver by DCLG of any rights or remedies in respect of the Services.

## **D8. ACCEPTANCE PROCEDURE**

- D8.1 This Condition D8 shall apply in the absence of any specific acceptance procedures elsewhere in the Contract.
- D8.2 The Contractor shall make available any Deliverables to DCLG's Contract Manager for Acceptance.
- D8.3 The Acceptance of a Deliverable shall be carried out by DCLG with the co-operation of the Contractor, within 15 days (or such other period as the Parties may agree in writing) of the Contractor making the Deliverable available to DCLG during which time DCLG must determine whether the Deliverable meets the requirements defined and/or any acceptance criteria agreed in writing prior to the commencement of the acceptance procedure.
- D8.4 If it is determined that the Deliverable meets the requirements defined and/or any acceptance criteria agreed DCLG shall promptly notify the Contractor in writing of its Acceptance.
- D8.5 If it is determined that the Deliverable, or any part of it, does not meet the requirements defined and/or any acceptance criteria agreed, DCLG shall extend the acceptance period by 10 days (or such other period as the Parties may agree in writing) during which the Contractor shall correct the faults which caused the acceptance to be unsuccessful and the acceptance procedure shall be carried out again.
- D8.6 If, after DCLG has extended the acceptance period pursuant to Clause D8.5 above, the acceptance has not been recorded as successful by the end of that period, DCLG shall, have the right, without prejudice to its other rights and remedies:
- D8.6.1 to accept such part of the work as DCLG may decide and pay a charge calculated on a pro rata basis therefor or such other charge as may be agreed between the Parties; or
  - D8.6.2 to extend the acceptance period for a period or periods, specified by DCLG, during which the Contractor shall correct the fault that caused the acceptance to be unsuccessful and the acceptance procedure shall be carried out again.

## **D9. DCLG PREMISES**

- D9.1 This Condition D9 shall only apply where the Premises are provided by or on behalf of DCLG.



- D9.2 Access to the Premises shall be made available to the Contractor free of charge and shall be used solely for the purposes of performing the Contract. The Contractor shall have use of the Premises as licensee.
- D9.3 Access to the Premises shall not be exclusive to the Contractor but shall be such as to enable the Contractor to carry out the Services concurrently with the execution of work by others. The Contractor shall co-operate with such others as DCLG may reasonably require.
- D9.4 Where any of the Contractor's Personnel is replaced in accordance with D4 the Contractor shall take any steps reasonably required by DCLG to prevent such Contractor's Personnel being admitted to the Premises.
- D9.6 The Contractor shall make no delivery of its equipment, plant or materials nor commence the Services on the Premises without DCLG's Contract Manager's prior approval.
- D9.7 The Contractor shall maintain its items of equipment, plant and materials within the Premises in a safe, serviceable and clean condition.
- D9.8 All equipment, plant and materials brought onto the Premises by the Contractor shall be at the Contractor's own risk and DCLG shall have no liability for any loss of or damage to the same unless the Contractor can demonstrate that such loss or damage was caused by the wilful act of DCLG.
- D9.9 The Contractor shall provide for the haulage or carriage of its equipment, plant or materials to the Premises and the removal therefrom when no longer required at the Contractor's sole cost.
- D9.10 DCLG shall have the power at any time during the Contract to order in writing that the Contractor:
- D9.10.1 remove from the Premises any of its equipment, plant or materials which in the opinion of DCLG is either hazardous, noxious or not in accordance with the Contract; and
  - D9.10.2 substitute proper and suitable equipment, plant and materials.
- D9.11 On completion of the Services the Contractor shall remove its equipment, plant and unused materials and shall clear away from the Premises all rubbish arising out the Services and leave the Premises in a neat and tidy condition.
- D9.12 The Contractor shall pay the costs of making good any damage to the Premises (and any fixtures and fittings of the Premises) done by the Contractor's Personnel other than fair wear and tear.
- D9.13 Continuity of electricity, heating, telephone, water supplies, stationery and sewerage ("Supplies") at the Premises is not guaranteed and no liability will be accepted by DCLG for shut-down or restrictions due to any cause whatsoever.





D9.14 The Contractor's Personnel shall ensure that the Premises are used with due regard for the need for the efficient use and conservation of Supplies and DCLG shall not bear the costs of any use of such Supplies by the Contractor's Personnel which do not conform to the requirements of this Clause D9.14.

## **D10. HEALTH AND SAFETY AND SECURITY**

D10.1 The Contractor shall notify DCLG if the Services are hazardous to health or safety and of the precautions that should be taken in respect thereto.

D10.2 DCLG shall notify the Contractor of any special health and safety hazards which DCLG becomes aware of in relation to the Premises, where the Premises are provided by or on behalf of DCLG, which may affect the Contractor's performance of the Services. If DCLG notifies the Contractor of any special health and safety hazards the Contractor shall draw any such hazards to the attention of the Contractor's Personnel.

D10.3 The Contractor shall be responsible for the observance by itself and the Contractor's Personnel of all such rules, site regulations, policies, procedures, requirements (including those relating to security arrangements) and safety precautions necessary for the protection of itself and the Contractor's Personnel and any other persons including all precautions required to be taken by or under all applicable laws, enactments, orders, regulations, other similar instruments and codes of practice. The Contractor and the Contractor's Personnel shall co-operate fully with DCLG to ensure the proper discharge of these duties.

D10.4 Where the Premises are provided by or on behalf of the Contractor DCLG shall be entitled to inspect the Premises to ensure they are appropriate for the provision of the Services.

D10.5 Accidents to the Contractor's Personnel at the Premises which ordinarily are required to be reported in accordance with the Health and Safety at Work Act 1974 shall be reported immediately to DCLG's Contract Manager.

D10.6 DCLG may undertake security and/or identity checks on any of the Contractor's Personnel requiring unescorted access to DCLG's Premises or IT network. The Contractor and the Contractor's Personnel must comply with DCLG's arrangements for undertaking security and identity checks.

## **D11. PAYMENT**

D11.1 This Condition D11 shall apply in the absence of any specific provision for payment elsewhere in the Contract.

D11.2 The Contractor shall submit a single, fully itemised invoice at the end of each calendar month in respect of the Services undertaken during that month unless the Contract specifies payment is due upon Acceptance of the Services or Deliverables in which case the Contractor shall submit a single, fully itemised invoice after Acceptance of the Services or Deliverables.

D11.3 The invoice must clearly identify the Services and/or Deliverables to which the invoice relates.





**D12. NOT USED**

**D13. NOT USED**

**D14. STAFF TRANSFER**

D14.1 The Parties agree that:

D14.1.1 where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, Schedule 1 (Staff Transfer) shall apply as follows:

- (a) where the Relevant Transfer involves the transfer of Transferring DCLG Employees, Part A of Schedule 1 (Staff Transfer) shall apply;
- (b) where the Relevant Transfer involves the transfer of Transferring Former Contractor Employees, Part B of Schedule 1 (Staff Transfer) shall apply;
- (c) where the Relevant Transfer involves the transfer of Transferring DCLG Employees and Transferring Former Contractor Employees, Parts A and B of Schedule 1 (Staff Transfer) shall apply; and
- (d) Part C of Schedule 1 (Staff Transfer) shall not apply;

D14.1.2 where commencement of the provision of the Services or a part of the Services does not result in a Relevant Transfer, Part C of Schedule 1 (Staff Transfer) shall apply and Parts A and B of Schedule 1 (Staff Transfer) shall not apply; and

D14.1.3 Part D of Schedule 1 (Staff Transfer) shall apply on the expiry or termination of the Services or any part of the Services;

D14.2 The Contractor shall both during and after the term of the Contract indemnify DCLG against all Employee Liabilities that may arise as a result of any claims brought against DCLG by any person where such claim arises from any act or omission of the Contractor or any Contractor Personnel.

**D15. SOLICITING FOR EMPLOYMENT**

D15.1 Each Party to the Contract undertakes not to attempt to solicit nor procure the service or employment of employees of the other Party or persons engaged under a contract for services with the other Party during the term of the Contract and within six calendar months after the termination or expiry of the Contract without the prior written permission of the other Party.

D15.2 Clause D15.1 shall not restrict either Party from appointing any person, whether employee or consultant of the other or not, who has applied in response to an advertisement properly and publicly placed in the normal course of business. In such event, neither Party shall have any obligation or liability to the other by way of introductory or finder's fee.



## **D16. BUSINESS CONTINUITY PLANNING**

D16.1 DCLG may require the Contractor to develop and agree with DCLG a business continuity plan. Where so required the Contractor shall:

D16.1.1 in accordance with good industry practice, maintain detailed and comprehensive contingency plans against events which could affect the ability of the Contractor to perform the Services in accordance with this Contract, including loss of computer and business systems, loss or failure of equipment, loss of utilities or premises, industrial relations problems, failures in the supply chain, pandemic and loss of Key Personnel; and

D16.1.2 keep the plans under review and make such changes, from time to time, as shall be required in accordance with good industry practice.

D16.2 DCLG shall be entitled to review any business continuity plans developed under this Contract at any time and, at its sole discretion, make suggested changes or amendments to the plans which the Contractor, acting reasonably shall consider and, after consultation and agreement with DCLG, put in place.

## **D17. EXIT AND SKILLS TRANSFER**

D17.1 DCLG may require the Contractor to develop and agree with DCLG an exit and skills transfer plan describing how the Services shall be handed over and appropriate skills transferred. Any such exit and skills transfer plan will be developed in line with DCLG's requirements and updated through the term of the Contract.

## **D18. NON-EXCLUSIVITY**

D18.1 DCLG may at any time engage other persons to provide services of the same type as the Services.

## **D19. BREAK**

D19.1 In addition to DCLG's other rights to terminate the Contract DCLG shall be entitled to terminate the Contract or any part thereof by giving to the Contractor not less than:

D19.1.1 15 Days notice to that effect where the term of the Contract is less than 90 Days.

D19.1.2 30 Days notice to that effect where the term of the contract is 90 Days or more.



D19.2 Where DCLG terminates the Contract under Clause D19.1, DCLG shall indemnify the Contractor against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract, provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance, the Contractor shall reduce its unavoidable costs by any insurance sums available. The Contractor shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Contractor as a result of termination under D19.1.

D19.3 DCLG shall not be liable under Clause D19.2 to pay any sum which:

D19.3.1 was claimable under insurance held by the Contractor, and the Contractor has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or

D19.3.2 when added to any sums paid or due to the Contractor under the Contract, exceeds the total sum that would have been payable to the Contractor if the Contract had not been terminated in accordance with Clause D19.1.



## **SCHEDULE 1 STAFF TRANSFER**

### **1. DEFINITIONS**

In this Schedule 1, the following definitions shall apply:

“Admission Agreement”                      An admission agreement in the form available on the Civil Service Pensions website immediately prior to the Relevant Transfer Date to be entered into by the Contractor where it agrees to participate in the Schemes in respect of the Services;

“Contractor's Final Contractor Personnel List”

a list provided by the Contractor of all Contractor Personnel who will transfer under the Employment Regulations on the Service Transfer Date;

“Contractor's Provisional Contractor Personnel List”

a list prepared and updated by the Contractor of all Contractor Personnel who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Contractor;

“Eligible Employee”

any Fair Deal Employee who at the relevant time is an eligible employee as defined in the Admission Agreement;

“Fair Deal Employees”

those Transferring DCLG Employees who are on the Relevant Transfer Date entitled to the protection of New Fair Deal (and, in the event that Part B of this Schedule 1 applies, any Transferring Former Contractor Employees who originally transferred pursuant to a Relevant Transfer under the Employment Regulations (or the predecessor legislation to the Employment Regulations), from employment with a public sector employer and who were once eligible to participate in the Schemes and who at the Relevant Transfer Date become entitled to the protection of New Fair Deal);



"New Fair Deal"	the revised Fair Deal position set out in the HM Treasury guidance: "Fair Deal for staff pensions: staff transfer from central government" issued in October 2013 including any amendments to that document immediately prior to the Relevant Transfer Date;
"Notified Sub-Contractor"	a Sub-Contractor identified in the Annex to this Schedule 1 to whom Transferring DCLG Employees and/or Transferring Former Contractor Employees will transfer on a Relevant Transfer Date;
"Schemes"	the Principal Civil Service Pension Scheme available to Civil Servants and employees of bodies under Schedule 1 of the Superannuation Act 1972 (and eligible employees of other bodies admitted to participate under a determination under section 25 of the Public Service Pensions Act 2013), as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Scheme and (ii) Death Benefits Scheme; the Civil Service Additional Voluntary Contribution Scheme; and the Designated Stakeholder Pension Scheme and "alpha" introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014;
"Staffing Information"	<p>in relation to all persons identified on the Contractor's Provisional Contractor Personnel List or Contractor's Final Contractor Personnel List, as the case may be, such information as DCLG may reasonably request (subject to all applicable provisions of the DPA), but including in an anonymised format:</p> <ul style="list-style-type: none"><li>(a) their ages, dates of commencement of employment or engagement, gender and place of work;</li><li>(b) details of whether they are employed, self employed contractors or consultants, agency workers or otherwise;</li><li>(c) the identity of the employer or relevant contracting party;</li><li>(d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;</li></ul>



- (e) their wages, salaries, bonuses and profit sharing arrangements as applicable;
- (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- (j) any other “employee liability information” as such term is defined in regulation 11 of the Employment Regulations.

## **2. INTERPRETATION**

Where a provision in this Schedule 1 imposes an obligation on the Contractor to provide an indemnity, undertaking or warranty, the Contractor shall procure that each of its Sub-Contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to DCLG, Former Contractor, Replacement Contractor or Replacement Sub-Contractor, as the case may be.



## **PART A**

### **TRANSFERRING DCLG EMPLOYEES AT COMMENCEMENT OF SERVICES**

#### **1. RELEVANT TRANSFERS**

##### **1.1 DCLG and the Contractor agree that:**

1.1.1 the commencement of the provision of the Services or of each relevant part of the Services will be a Relevant Transfer in relation to the Transferring DCLG Employees; and

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

1.2 DCLG shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring DCLG Employees in respect of the period arising up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period up to (but not including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) DCLG; and (ii) the Contractor and/or any Notified Sub-Contractor (as appropriate).

#### **2. DCLG INDEMNITIES**

2.1 Subject to Paragraph 2.2, DCLG shall indemnify the Contractor and any Notified Sub-Contractor against any Employee Liabilities arising from or as a result of:

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



- 2.1.2 the breach or non-observance by DCLG before the Relevant Transfer Date of:
- (a) any collective agreement applicable to the Transferring DCLG Employees; and/or
  - (b) any custom or practice in respect of any Transferring DCLG Employees which DCLG is contractually bound to honour;
- 2.1.3 any claim by any trade union or other body or person representing the Transferring DCLG Employees arising from or connected with any failure by DCLG to comply with any legal obligation to such trade union, body or person arising before the Relevant Transfer Date;
- 2.1.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- (a) in relation to any Transferring DCLG Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
  - (b) in relation to any employee who is not a Transferring DCLG Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the DCLG to the Contractor and/or any Notified Sub-Contractor as appropriate, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date.
- 2.1.5 a failure of DCLG to discharge, or procure the discharge of, all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring DCLG Employees arising before the Relevant Transfer Date;
- 2.1.6 any claim made by or in respect of any person employed or formerly employed by DCLG other than a Transferring DCLG Employee for whom it is alleged the Contractor and/or any Notified Sub-Contractor as appropriate may be liable by virtue of the Employment Regulations and/or the Acquired Rights Directive; and



- 2.1.7 any claim made by or in respect of a Transferring DCLG Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring DCLG Employee relating to any act or omission of DCLG in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Contractor or any Sub-Contractor to comply with regulation 13(4) of the Employment Regulations.
- 2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Contractor or any Sub-Contractor (whether or not a Notified Sub-Contractor) whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities:
- 2.2.1 arising out of the resignation of any Transferring DCLG Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Contractor and/or any Sub-Contractor to occur in the period from (and including) the Relevant Transfer Date; or
- 2.2.2 arising from the failure by the Contractor or any Sub-Contractor to comply with its obligations under the Employment Regulations.
- 2.3 If any person who is not identified by DCLG as a Transferring DCLG Employee claims, or it is determined in relation to any person who is not identified by the DCLG as a Transferring DCLG Employee, that his/her contract of employment has been transferred from DCLG to the Contractor and/or any Notified Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- 2.3.1 the Contractor shall, or shall procure that the Notified Sub-Contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to DCLG; and
- 2.3.2 DCLG may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of receipt of the notification by the Contractor and/or any Notified Sub-Contractor, or take such other reasonable steps as DCLG considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
- 2.4 If an offer referred to in Paragraph 2.3.2 is accepted, or if the situation has otherwise been resolved by DCLG, the Contractor shall, or shall procure that the Notified Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.



2.5 If by the end of the 15 Working Day period specified in Paragraph 2.3.2:

- 2.5.1 no such offer of employment has been made;
- 2.5.2 such offer has been made but not accepted; or
- 2.5.3 the situation has not otherwise been resolved,

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

2.6 Subject to the Contractor and/or any Notified Sub-Contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in applicable Law, DCLG shall indemnify the Contractor and/or any Notified Sub-Contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.5 provided that the Contractor takes, or procures that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.7 The indemnity in Paragraph 2.6:

2.7.1 shall not apply to:

- (a) any claim for:
  - (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
  - (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

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

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

2.7.2 shall apply only where the notification referred to in Paragraph 2.3.1 is made by the Contractor and/or any Notified Sub-Contractor (as appropriate) to DCLG within 6 months of the Effective Date.



- 2.8 If any such person as is referred to in Paragraph 2.3 is neither re-employed by DCLG nor dismissed by the Contractor and/or any Notified Sub-Contractor within the time scales set out in Paragraph 2.5 such person shall be treated as having transferred to the Contractor and/or any Notified Sub-Contractor and the Contractor shall, or shall procure that the Notified Sub-Contractor shall, comply with such obligations as may be imposed upon it under applicable Law.

### **3. CONTRACTOR INDEMNITIES AND OBLIGATIONS**

- 3.1 Subject to Paragraph 3.2 the Contractor shall indemnify DCLG against any Employee Liabilities arising from or as a result of:

- 3.1.1 any act or omission by the Contractor or any Sub-Contractor in respect of any Transferring DCLG Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring DCLG Employee whether occurring before, on or after the Relevant Transfer Date;
- 3.1.2 the breach or non-observance by the Contractor or any Sub-Contractor on or after the Relevant Transfer Date of:
- (a) any collective agreement applicable to the Transferring DCLG Employees; and/or
  - (b) any custom or practice in respect of any Transferring DCLG Employees which the Contractor or any Sub-Contractor is contractually bound to honour;
- 3.1.3 any claim by any trade union or other body or person representing any Transferring DCLG Employees arising from or connected with any failure by the Contractor or any Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- 3.1.4 any proposal by the Contractor or a Sub-contractor made before the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring DCLG Employees to their material detriment on or after their transfer to the Contractor or the relevant Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring DCLG Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;



- 3.1.5 any statement communicated to or action undertaken by the Contractor or any Sub-Contractor to, or in respect of, any Transferring DCLG Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with DCLG in writing;
- 3.1.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (a) in relation to any Transferring DCLG Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
  - (b) in relation to any employee who is not a Transferring DCLG Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from DCLG to the Contractor or a Sub-Contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- 3.1.7 a failure of the Contractor or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring DCLG Employees in respect of the period from (and including) the Relevant Transfer Date;
- 3.1.8 any claim made by or in respect of a Transferring DCLG Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring DCLG Employee relating to any act or omission of the Contractor or any Sub-Contractor in relation to their obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from DCLG's failure to comply with its obligations under regulation 13 of the Employment Regulations; and
- 3.1.9 a failure by the Contractor or any Sub-Contractor to comply with its obligations under Paragraph 2.8 above.
- 3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of DCLG whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from DCLG's failure to comply with its obligations under the Employment Regulations.





- 3.3 The Contractor shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations (including its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of the Transferring DCLG Employees, from (and including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and any other sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from and including the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between DCLG and the Contractor.

#### **4. INFORMATION**

The Contractor shall, and shall procure that each Sub-Contractor shall, promptly provide to DCLG in writing such information as is necessary to enable DCLG to carry out its duties under regulation 13 of the Employment Regulations. DCLG shall promptly provide to the Contractor and each Notified Sub-Contractor in writing such information as is necessary to enable the Contractor and each Notified Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

#### **5. PRINCIPLES OF GOOD EMPLOYMENT PRACTICE**

- 5.1 The Parties agree that the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the Contractor of employees whose employment begins after the Relevant Transfer Date, and the Contractor undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.
- 5.2 The Contractor shall, and shall procure that each Sub-Contractor shall, comply with any requirement notified to it by DCLG relating to pensions in respect of any Transferring DCLG Employee as set down in:
- 5.2.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
  - 5.2.2 HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
  - 5.2.3 HM Treasury's guidance "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
  - 5.2.4 the New Fair Deal.



- 5.3 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraphs 5.1 or 5.2 shall be agreed in accordance with the Variation Procedure.

## **6. PENSIONS**

The Contractor shall, and/or shall procure that each of its Sub-Contractors shall, comply with the pensions provisions in the following Annex.

### **ANNEX TO PART A: PENSIONS**

#### **1. PARTICIPATION**

- 1.1 The Contractor undertakes to enter into the Admission Agreement.
- 1.2 The Contractor and DCLG:
- 1.2.1 undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Contractor to participate in the Schemes in respect of the Fair Deal Employees;
  - 1.2.2 agree that the arrangements under paragraph 1.1 of this Annex include the body responsible for the Schemes notifying DCLG if the Contractor breaches any obligations it has under the Admission Agreement;
  - 1.2.3 agree, notwithstanding Paragraph 1.2.2 of this Annex, the Contractor shall notify DCLG in the event that it breaches any obligations it has under the Admission Agreement and when it intends to remedy such breaches; and
  - 1.2.4 agree that DCLG may terminate this Contract in the event that the Contractor breaches the Admission Agreement:
    - (a) and that breach is not capable of being remedied; or
    - (b) where such breach is capable of being remedied, the Contractor fails to remedy such breach within a reasonable time and in any event within 28 days of a notice from DCLG giving particulars of the breach and requiring the Contractor to remedy it.
- 1.3 The Contractor shall bear its own costs and all costs that DCLG reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Contractor participating in the Schemes including without limitation current civil service pensions administrator on-boarding costs.



## **2. FUTURE SERVICE BENEFITS**

- 2.1 The Contractor shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Contractor shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of Schemes for service from (and including) the Relevant Transfer Date.
- 2.2 The Contractor undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to DCLG, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by DCLG in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes on the date the Eligible Employees ceased to participate in the Schemes.
- 2.3 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

## **3. FUNDING**

- 3.1 The Contractor undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.
- 3.2 The Contractor shall indemnify and keep indemnified DCLG on demand against any claim by, payment to, or loss incurred by, the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Contractor to or in respect of the Schemes.

## **4. PROVISION OF INFORMATION**

The Contractor and DCLG respectively undertake to each other:

- 4.1 to provide all information which the other Party may reasonably request concerning matters referred to in this Annex and set out in the Admission Agreement, and to supply the information as expeditiously as possible; and



- 4.2 not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

## **5. INDEMNITY**

The Contractor undertakes to DCLG to indemnify and keep indemnified DCLG on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under and/or participation in an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

## **6. EMPLOYER OBLIGATION**

The Contractor shall comply with the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff.

## **7. SUBSEQUENT TRANSFERS**

The Contractor shall:

- 7.1 not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the Service Transfer Date;
- 7.2 provide all such co-operation and assistance as the Schemes and the Replacement Contractor and/or DCLG may reasonably require to enable the Replacement Contractor to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal; and
- 7.3 for the applicable period either:
- 7.3.1 after notice (for whatever reason) is given, in accordance with the other provisions of this Contract, to terminate the Agreement or any part of the Services; or
  - 7.3.2 after the date which is two (2) years prior to the date of expiry of this Contract,

ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Contractor or DCLG, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of DCLG (such approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.



## **8. BULK TRANSFER**

8.1 Where the Contractor has set up a broadly comparable pension scheme in accordance with the provisions of paragraph 2.2 above of this Annex, the Contractor agrees to:

8.1.1 fully fund any such broadly comparable pension scheme in accordance with the funding requirements set by that broadly comparable pension scheme's actuary or by the Government Actuary's Department;

8.1.2 instruct any such broadly comparable pension scheme's actuary to, and to provide all such co-operation and assistance in respect of any such broadly comparable pension scheme as the Replacement Contractor and/or DCLG may reasonably require, to enable the Replacement Contractor to participate in the Schemes in respect of any Fair Deal Employee that remain eligible for New Fair Deal protection following a Service Transfer;

8.1.3 allow, in respect of any Fair Deal Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such broadly comparable pension scheme into the Schemes on a day for day service basis and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal, for the avoidance of doubt should the amount offered by the broadly comparable pension scheme be less than the amount required by the Schemes to fund day for day service ("the Shortfall"), the Contractor agrees to pay the Shortfall to the Schemes; and

8.1.4 indemnify DCLG on demand for any failure to pay the Shortfall as required under Paragraph 8.1.3 above.

## **PART B**

### **TRANSFERRING FORMER CONTRACTOR EMPLOYEES AT COMMENCEMENT OF SERVICES**

#### **1. RELEVANT TRANSFERS**

##### **1.1 DCLG and the Contractor agree that:**

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

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

1.2 Subject to Paragraph 6, DCLG shall procure that each Former Contractor shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Contractor Employees in respect of the period up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Contractor shall make, and DCLG shall procure that each Former Contractor makes, any necessary apportionments in respect of any periodic payments.

#### **2. FORMER CONTRACTOR INDEMNITIES**

2.1 Subject to Paragraphs 2.2 and 6, DCLG shall procure that each Former Contractor shall indemnify the Contractor and any Notified Sub-Contractor against any Employee Liabilities arising from or as a result of:

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



- 2.1.2 the breach or non-observance by the Former Contractor arising before the Relevant Transfer Date of:
- (a) any collective agreement applicable to the Transferring Former Contractor Employees; and/or
  - (b) any custom or practice in respect of any Transferring Former Contractor Employees which the Former Contractor is contractually bound to honour;
- 2.1.3 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- (a) in relation to any Transferring Former Contractor Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
  - (b) in relation to any employee who is not a Transferring Former Contractor Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Contractor to the Contractor and/or any Notified Sub-Contractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;
- 2.1.4 a failure of the Former Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Contractor Employees in respect of the period to (but excluding) the Relevant Transfer Date;
- 2.1.5 any claim made by or in respect of any person employed or formerly employed by the Former Contractor other than a Transferring Former Contractor Employee for whom it is alleged the Contractor and/or any Notified Sub-Contractor as appropriate may be liable by virtue of this Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and



- 2.1.6 any claim made by or in respect of a Transferring Former Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Contractor Employee relating to any act or omission of the Former Contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Contractor or any Sub-Contractor to comply with regulation 13(4) of the Employment Regulations.
- 2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Contractor or any Sub-Contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:
  - 2.2.1 arising out of the resignation of any Transferring Former Contractor Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Contractor or any Sub-Contractor to occur in the period from (and including) the Relevant Transfer Date; or
  - 2.2.2 arising from the failure by the Contractor and/or any Sub-Contractor to comply with its obligations under the Employment Regulations.
- 2.3 If any person who is not identified by DCLG as a Transferring Former Contractor Employee claims, or it is determined in relation to any person who is not identified by DCLG as a Transferring Former Contractor Employee, that his/her contract of employment has been transferred from a Former Contractor to the Contractor and/or any Notified Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
  - 2.3.1 the Contractor shall, or shall procure that the Notified Sub-Contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to DCLG and, where required by DCLG, to the Former Contractor; and
  - 2.3.2 the Former Contractor may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Contractor and/or the Notified Sub-Contractor or take such other reasonable steps as the Former Contractor considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.



- 2.4 If an offer referred to in Paragraph 2.3.2 is accepted, or if the situation has otherwise been resolved by the Former Contractor and/or DCLG, the Contractor shall, or shall procure that the Notified Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.
- 2.5 If by the end of the 15 Working Day period specified in Paragraph 2.3.2:
- 2.5.1 no such offer of employment has been made;
  - 2.5.2 such offer has been made but not accepted; or
  - 2.5.3 the situation has not otherwise been resolved,
- the Contractor and/or any Notified Sub-Contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
- 2.6 Subject to the Contractor and/or any Notified Sub-Contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in Law, DCLG shall procure that the Former Contractor indemnifies the Contractor and/or any Notified Sub-Contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.5 provided that the Contractor takes, or shall procure that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.7 The indemnity in Paragraph 2.6:
- 2.7.1 shall not apply to:
    - (a) any claim for:
      - (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
      - (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
- in any case in relation to any alleged act or omission of the Contractor and/or any Sub-Contractor; or
- (b) any claim that the termination of employment was unfair because the Contractor and/or Notified Sub-Contractor neglected to follow a fair dismissal procedure; and



2.7.2 shall apply only where the notification referred to in Paragraph 2.3.1 is made by the Contractor and/or any Notified Sub-Contractor (as appropriate) to DCLG and, if applicable, the Former Contractor, within 6 months of the Effective Date.

2.8 If any such person as is described in Paragraph 2.3 is neither re-employed by the Former Contractor nor dismissed by the Contractor and/or any Notified Sub-Contractor within the time scales set out in Paragraph 2.5, such person shall be treated as having transferred to the Contractor or Notified Sub-Contractor and the Contractor shall, or shall procure that the Notified Sub-Contractor shall, comply with such obligations as may be imposed upon it under the Law.

### **3. CONTRACTOR INDEMNITIES AND OBLIGATIONS**

3.1 Subject to Paragraph 3.2, the Contractor shall indemnify DCLG and/or the Former Contractor against any Employee Liabilities arising from or as a result of:

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

3.1.2 the breach or non-observance by the Contractor or any Sub-Contractor on or after the Relevant Transfer Date of:

- (a) any collective agreement applicable to the Transferring Former Contractor Employee; and/or
- (b) any custom or practice in respect of any Transferring Former Contractor Employees which the Contractor or any Sub-Contractor is contractually bound to honour;

3.1.3 any claim by any trade union or other body or person representing any Transferring Former Contractor Employees arising from or connected with any failure by the Contractor or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;



- 3.1.4 any proposal by the Contractor or a Sub-Contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Contractor Employees to their material detriment on or after their transfer to the Contractor or a Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Contractor Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- 3.1.5 any statement communicated to or action undertaken by the Contractor or a Sub-Contractor to, or in respect of, any Transferring Former Contractor Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with DCLG and/or the Former Contractor in writing;
- 3.1.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- (a) in relation to any Transferring Former Contractor Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
  - (b) in relation to any employee who is not a Transferring Former Contractor Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Contractor to the Contractor or a Sub-Contractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- 3.1.7 a failure of the Contractor or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Contractor Employees in respect of the period from (and including) the Relevant Transfer Date;



- 3.1.8 any claim made by or in respect of a Transferring Former Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Contractor Employee relating to any act or omission of the Contractor or any Sub-Contractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Contractor's failure to comply with its obligations under regulation 13 of the Employment Regulations; and
- 3.1.9 a failure by the Contractor or any Sub-Contractor to comply with its obligations under Paragraph 2.8 above.
- 3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Contractor's failure to comply with its obligations under the Employment Regulations.
- 3.3 The Contractor shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Former Contractor Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and any other sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Contractor and the Former Contractor.

#### **4. INFORMATION**

The Contractor shall, and shall procure that each Sub-Contractor shall, promptly provide to DCLG and/or at DCLG's direction, the Former Contractor, in writing such information as is necessary to enable DCLG and/or the Former Contractor to carry out their respective duties under regulation 13 of the Employment Regulations. Subject to Paragraph 6, DCLG shall procure that the Former Contractor shall promptly provide to the Contractor and each Notified Sub-Contractor in writing such information as is necessary to enable the Contractor and each Notified Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.





## **5. PRINCIPLES OF GOOD EMPLOYMENT PRACTICE**

- 5.1 The Contractor shall, and shall procure that each Sub-Contractor shall, comply with any requirement notified to it by DCLG relating to pensions in respect of any Transferring Former Contractor Employee as set down in:
- 5.1.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
  - 5.1.2 HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
  - 5.1.3 HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
  - 5.1.4 the New Fair Deal.
- 5.2 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 5.1 shall be agreed in accordance with the Variation Procedure.

## **6. PROCUREMENT OBLIGATIONS**

Notwithstanding any other provisions of this Part B, where in this Part B DCLG accepts an obligation to procure that a Former Contractor does or does not do something, such obligation shall be limited so that it extends only to the extent that DCLG's contract with the Former Contractor contains a contractual right in that regard which DCLG may enforce, or otherwise so that it requires only that DCLG must use reasonable endeavours to procure that the Former Contractor does or does not act accordingly.

## **7. PENSIONS**

The Contractor shall, and shall procure that each Sub-Contractor shall, comply with the pensions provisions in the following Annex.

## **ANNEX TO PART B: PENSIONS**

### **1. PARTICIPATION**

- 1.1 The Contractor undertakes to enter into the Admission Agreement.
- 1.2 The Contractor and DCLG:
  - 1.2.1 undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Contractor to participate in the Schemes in respect of the Fair Deal Employees;
  - 1.2.2 agree that the arrangements under paragraph 1.1 of this Annex include the body responsible for the Schemes notifying DCLG if the Contractor breaches any obligations it has under the Admission Agreement;
  - 1.2.3 agree, notwithstanding Paragraph 1.2.2 of this Annex, the Contractor shall notify DCLG in the event that it breaches any obligations it has under the Admission Agreement and when it intends to remedy such breaches; and
  - 1.2.4 agree that DCLG may terminate this Contract for material default in the event that the Contractor breaches the Admission Agreement:
    - (a) and that breach is not capable of being remedied; or
    - (b) where such breach is capable of being remedied, the Contractor fails to remedy such breach within a reasonable time and in any event within 28 days of a notice from DCLG giving particulars of the breach and requiring the Contractor to remedy it.
- 1.3 The Contractor shall bear its own costs and all costs that DCLG reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Contractor participating in the Schemes including without limitation current civil service pensions administrator on-boarding costs.



## **2. FUTURE SERVICE BENEFITS**

- 2.1 If the Contractor is rejoining the Schemes for the first time, the Contractor shall procure that the Fair Deal Employees shall be either admitted to or offered continued membership of the relevant section of the Schemes that they became eligible to join on the Relevant Transfer Date and shall continue to accrue or accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.
- 2.2 If staff have already been readmitted to the Schemes, the Contractor shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Contractor shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.
- 2.3 The Contractor undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to DCLG, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by DCLG in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes on the date the Eligible Employees ceased to participate in the Schemes.
- 2.4 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

## **3. FUNDING**

- 3.1 The Contractor undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.
- 3.2 The Contractor shall indemnify and keep indemnified DCLG on demand against any claim by, payment to, or loss incurred by the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Contractor to or in respect of the Schemes.



#### **4. PROVISION OF INFORMATION**

The Contractor and DCLG respectively undertake to each other:

- 4.1 to provide all information which the other Party may reasonably request concerning matters (i) referred to in this Annex and (ii) set out in the Admission Agreement, and to supply the information as expeditiously as possible; and
- 4.2 not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

#### **5. INDEMNITY**

The Contractor undertakes to DCLG to indemnify and keep indemnified DCLG on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under and/or participation in an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

#### **6. EMPLOYER OBLIGATION**

The Contractor shall comply with the requirements of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff.

#### **7. SUBSEQUENT TRANSFERS**

The Contractor shall:

- 7.1 not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the Service Transfer Date;
- 7.2 provide all such co-operation and assistance as the Schemes and the Replacement Contractor and/or DCLG may reasonably require to enable the Replacement Contractor to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under the New Fair Deal; and
- 7.3 for the applicable period either
  - 7.3.1 after notice (for whatever reason) is given, in accordance with the other provisions of this Contract, to terminate the Agreement or any part of the Services; or



7.3.2 after the date which is two (2) years prior to the date of expiry of this Contract,

ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Contractor or DCLG, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of DCLG (such approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

## **8. BULK TRANSFER**

8.1 Where the Contractor has set up a broadly comparable pension scheme in accordance with the provisions of paragraph 2.2 above of this Annex, the Contractor agrees to:

8.1.1 fully fund any such broadly comparable pension scheme in accordance with the funding requirements set by that broadly comparable pension scheme's actuary or by the Government Actuary's Department;

8.1.2 instruct any such broadly comparable pension scheme's actuary to, and to provide all such co-operation and assistance in respect of any such broadly comparable pension scheme as the Replacement Contractor and/or DCLG may reasonably require, to enable the Replacement Contractor to participate in the Schemes in respect of any Fair Deal Employee that remain eligible for New Fair Deal protection following a Service Transfer;

8.1.3 allow, in respect of any Fair Deal Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such broadly comparable pension scheme into the Schemes on a day for day service basis and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal, for the avoidance of doubt should the amount offered by the broadly comparable pension scheme be less than the amount required by the Schemes to fund day for day service ("the Shortfall"), the Contractor agrees to pay the Shortfall to the Schemes; and

8.1.4 indemnify DCLG on demand for any failure to pay the Shortfall as required under Paragraph 8.1.3 above.



**PART C**  
**NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES**

**1. PROCEDURE IN THE EVENT OF TRANSFER**

- 1.1 DCLG and the Contractor agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of DCLG and/or any Former Contractor.
- 1.2 If any employee of DCLG and/or a Former Contractor claims, or it is determined in relation to any employee of DCLG and/or a Former Contractor, that his/her contract of employment has been transferred from DCLG and/or the Former Contractor to the Contractor and/or any Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- 1.2.1 the Contractor shall, and shall procure that the relevant Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to DCLG and, where required by DCLG, give notice to the Former Contractor; and
- 1.2.2 DCLG and/or the Former Contractor may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of the notification by the Contractor or the Sub-Contractor (as appropriate) or take such other reasonable steps as DCLG or Former Contractor (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 1.3 If an offer referred to in Paragraph 1.2.2 is accepted (or if the situation has otherwise been resolved by DCLG and/or the Former Contractor), the Contractor shall, or shall procure that the Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.
- 1.4 If by the end of the fifteen (15) Working Day period specified in Paragraph 1.2.2:
- 1.4.1 no such offer of employment has been made;
- 1.4.2 such offer has been made but not accepted; or
- 1.4.3 the situation has not otherwise been resolved,
- the Contractor and/or the Sub-Contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.



## **2. INDEMNITIES**

- 2.1 Subject to the Contractor and/or the relevant Sub-Contractor acting in accordance with the provisions of Paragraphs 1.2 to 1.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 2.4, DCLG shall:
- 2.1.1 indemnify the Contractor and/or the relevant Sub-Contractor against all Employee Liabilities arising out of the termination of the employment of any employees of DCLG referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Contractor takes, or shall procure that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities; and
  - 2.1.2 subject to paragraph 3, procure that the Former Contractor indemnifies the Contractor and/or any Notified Sub-Contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Contractor referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Contractor takes, or shall procure that the relevant Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.2 If any such person as is described in Paragraph 1.2 is neither re-employed by DCLG and/or the Former Contractor as appropriate nor dismissed by the Contractor and/or any Sub-Contractor within the fifteen (15) Working Day period referred to in Paragraph 1.4 such person shall be treated as having transferred to the Contractor and/or the Sub-Contractor (as appropriate) and the Contractor shall, or shall procure that the Sub-Contractor shall, comply with such obligations as may be imposed upon it under Law.
- 2.3 Where any person remains employed by the Contractor and/or any Sub-Contractor pursuant to Paragraph 2.2, all Employee Liabilities in relation to such employee shall remain with the Contractor and/or the Sub-Contractor and the Contractor shall indemnify DCLG and any Former Contractor, and shall procure that the Sub-Contractor shall indemnify DCLG and any Former Contractor, against any Employee Liabilities that either of them may incur in respect of any such employees of the Contractor and/or employees of the Sub-Contractor.





2.4 The indemnities in Paragraph 2.1:

2.4.1 shall not apply to:

- (a) any claim for:
  - (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
  - (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

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

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

2.4.2 shall apply only where the notification referred to in Paragraph 1.2.1 is made by the Contractor and/or any Sub-Contractor to DCLG and, if applicable, Former Contractor within 6 months of the Effective Date.

**3. PROCUREMENT OBLIGATIONS**

Where in this Part C DCLG accepts an obligation to procure that a Former Contractor does or does not do something, such obligation shall be limited so that it extends only to the extent that DCLG's contract with the Former Contractor contains a contractual right in that regard which DCLG may enforce, or otherwise so that it requires only that DCLG must use reasonable endeavours to procure that the Former Contractor does or does not act accordingly.

## PART D

### EMPLOYMENT EXIT PROVISIONS

#### 1. PRE-SERVICE TRANSFER OBLIGATIONS

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

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

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

- 1.2 At least thirty (30) Working Days prior to the Service Transfer Date, the Contractor shall provide to DCLG or at the direction of DCLG to any Replacement Contractor and/or any Replacement Sub-Contractor:

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

- 1.3 DCLG shall be permitted to use and disclose information provided by the Contractor under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Contractor and/or Replacement Sub-Contractor.

- 1.4 The Contractor warrants, for the benefit of DCLG, any Replacement Contractor, and any Replacement Sub-Contractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.



1.5 From the date of the earliest event referred to in Paragraph 1.1, the Contractor agrees, that it shall not, and agrees to procure that each Sub Contractor shall not, assign any person to the provision of the Services who is not listed on the Contractor's Provisional Contractor Personnel List and shall not without the approval of DCLG (not to be unreasonably withheld or delayed):

1.5.1 replace or re-deploy any Contractor Personnel listed on the Contractor Provisional Contractor Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;

1.5.2 make, promise, propose, permit or implement any material changes to the terms and conditions of employment of the Contractor Personnel (including any payments connected with the termination of employment);

1.5.3 increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Contractor Personnel save for fulfilling assignments and projects previously scheduled and agreed;

1.5.4 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Contractor's Provisional Contractor Personnel List;

1.5.5 increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or

1.5.6 terminate or give notice to terminate the employment or contracts of any persons on the Contractor's Provisional Contractor Personnel List save by due disciplinary process,

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



- 1.6 During the Term, the Contractor shall provide, and shall procure that each Sub Contractor shall provide, to DCLG any information DCLG may reasonably require relating to the manner in which Services are organised, which shall include:
- 1.6.1 the numbers of employees engaged in providing the Services;
  - 1.6.2 the percentage of time spent by each employee engaged in providing the Services;
  - 1.6.3 the extent to which each employee qualifies for membership of any of the Schemes or any broadly comparable scheme set up pursuant to the provisions of paragraph 2.2 of the Annex (Pensions) to Part A of this Schedule 1 or paragraph 2.3 of the Annex (Pensions) to Part B of this Schedule 1 (as appropriate); and
  - 1.6.4 a description of the nature of the work undertaken by each employee by location.
- 1.7 The Contractor shall provide, and shall procure that each Sub Contractor shall provide, all reasonable cooperation and assistance to DCLG, any Replacement Contractor and/or any Replacement Sub-Contractor to ensure the smooth transfer of the Transferring Contractor Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Contractor Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within five (5) Working Days following the Service Transfer Date, the Contractor shall provide, and shall procure that each Sub-Contractor shall provide, to DCLG or, at the direction of DCLG, to any Replacement Contractor and/or any Replacement Sub-Contractor (as appropriate), in respect of each person on the Contractor's Final Contractor Personnel List who is a Transferring Contractor Employee:
- 1.7.1 the most recent month's copy pay slip data;
  - 1.7.2 details of cumulative pay for tax and pension purposes;
  - 1.7.3 details of cumulative tax paid;
  - 1.7.4 tax code;
  - 1.7.5 details of any voluntary deductions from pay; and
  - 1.7.6 bank/building society account details for payroll purposes.



## **2. EMPLOYMENT REGULATIONS EXIT PROVISIONS**

- 2.1 DCLG and the Contractor acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or partial termination of this Contract or otherwise) resulting in the Services being undertaken by a Replacement Contractor and/or a Replacement Sub-Contractor. Such change in the identity of the Contractor of such Services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. DCLG and the Contractor further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Contractor and the Transferring Contractor Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Contractor and/or a Replacement Sub-Contractor (as the case may be) and each such Transferring Contractor Employee.
- 2.2 The Contractor shall, and shall procure that each Sub-Contractor shall, comply with all its obligations in respect of the Transferring Contractor Employees arising under the Employment Regulations in respect of the period up to (but not including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Contractor Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Schemes which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Contractor and/or the Sub-Contractor (as appropriate); and (ii) the Replacement Contractor and/or Replacement Sub-Contractor.
- 2.3 Subject to Paragraph 2.4, where a Relevant Transfer occurs the Contractor shall indemnify the DCLG and/or the Replacement Contractor and/or any Replacement Sub-Contractor against any Employee Liabilities arising from or as a result of:
- 2.3.1 any act or omission of the Contractor or any Sub-Contractor in respect of any Transferring Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Contractor Employee whether occurring before, on or after the Service Transfer Date;



- 2.3.2 the breach or non-observance by the Contractor or any Sub-Contractor occurring on or before the Service Transfer Date of:
- (a) any collective agreement applicable to the Transferring Contractor Employees; and/or
  - (b) any other custom or practice with a trade union or staff association in respect of any Transferring Contractor Employees which the Contractor or any Sub-Contractor is contractually bound to honour;
- 2.3.3 any claim by any trade union or other body or person representing any Transferring Contractor Employees arising from or connected with any failure by the Contractor or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
- 2.3.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- (a) in relation to any Transferring Contractor Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
  - (b) in relation to any employee who is not identified in the Contractor's Final Contractor Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Contractor to DCLG and/or Replacement Contractor and/or any Replacement Sub-Contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
- 2.3.5 a failure of the Contractor or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Contractor Employees in respect of the period up to (and including) the Service Transfer Date);



- 2.3.6 any claim made by or in respect of any person employed or formerly employed by the Contractor or any Sub-Contractor other than a Transferring Contractor Employee identified in the Contractor's Final Contractor Personnel List for whom it is alleged DCLG and/or the Replacement Contractor and/or any Replacement Sub-Contractor may be liable by virtue of this Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
  - 2.3.7 any claim made by or in respect of a Transferring Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Contractor Employee relating to any act or omission of the Contractor or any Sub-Contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by DCLG and/or Replacement Contractor to comply with regulation 13(4) of the Employment Regulations.
- 2.4 The indemnities in Paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Contractor and/or any Replacement Sub-Contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:
  - 2.4.1 arising out of the resignation of any Transferring Contractor Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Contractor and/or any Replacement Sub-Contractor to occur in the period on or after the Service Transfer Date; or
  - 2.4.2 arising from the Replacement Contractor's failure, and/or Replacement Sub-Contractor's failure, to comply with its obligations under the Employment Regulations.
- 2.5 If any person who is not identified in the Contractor's Final Contractor Personnel List claims, or it is determined in relation to any person who is not identified in the Contractor's Final Contractor Personnel List that his/her contract of employment has been transferred from the Contractor or any Sub-Contractor to the Replacement Contractor and/or Replacement Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:
  - 2.5.1 DCLG shall procure that the Replacement Contractor shall, or any Replacement Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Contractor; and





- 2.5.2 the Contractor may offer (or may procure that a Sub-Contractor may offer) employment to such person within fifteen (15) Working Days of the notification by the Replacement Contractor and/or any and/or Replacement Sub-Contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
- 2.6 If such offer is accepted, or if the situation has otherwise been resolved by the Contractor or a Sub-Contractor, DCLG shall procure that the Replacement Contractor shall, or procure that the Replacement Sub-Contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.
- 2.7 If after the fifteen (15) Working Day period specified in Paragraph 2.5.2 has elapsed:
- 2.7.1 no such offer of employment has been made;
- 2.7.2 such offer has been made but not accepted; or
- 2.7.3 the situation has not otherwise been resolved
- the Replacement Contractor and/or Replacement Sub-Contractor, as appropriate may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.
- 2.8 Subject to the Replacement Contractor and/or Replacement Sub-Contractor acting in accordance with the provisions of Paragraphs 2.5 to 2.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Contractor shall indemnify the Replacement Contractor and/or Replacement Sub-Contractor against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.7 provided that the Replacement Contractor takes, or shall procure that the Replacement Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.9 The indemnity in Paragraph 2.8:
- 2.9.1 shall not apply to:
- (a) any claim for:
- (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
- (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,



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

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

2.9.2 shall apply only where the notification referred to in Paragraph 2.5.1 is made by the Replacement Contractor and/or Replacement Sub-Contractor to the Contractor within six (6) months of the Service Transfer Date.

2.10 If any such person as is described in Paragraph 2.5 is neither re-employed by the Contractor or any Sub-Contractor nor dismissed by the Replacement Contractor and/or Replacement Sub-Contractor within the time scales set out in Paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Contractor Employee.

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

2.11.1 the Contractor and/or any Sub-Contractor; and

2.11.2 the Replacement Contractor and/or the Replacement Sub-Contractor.



- 2.12 The Contractor shall, and shall procure that each Sub-Contractor shall, promptly provide to DCLG and any Replacement Contractor and/or Replacement Sub-Contractor, in writing such information as is necessary to enable DCLG, the Replacement Contractor and/or Replacement Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations. DCLG shall procure that the Replacement Contractor and/or Replacement Sub-Contractor, shall promptly provide to the Contractor and each Sub-Contractor in writing such information as is necessary to enable the Contractor and each Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.
- 2.13 Subject to Paragraph 2.14, where a Relevant Transfer occurs DCLG shall procure that the Replacement Contractor indemnifies the Contractor on its own behalf and on behalf of any Replacement Sub-Contractor and its sub-contractors against any Employee Liabilities arising from or as a result of:
- 2.13.1 any act or omission of the Replacement Contractor and/or Replacement Sub-Contractor in respect of any Transferring Contractor Employee identified in the Contractor's Final Contractor Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Contractor Employee;
  - 2.13.2 the breach or non-observance by the Replacement Contractor and/or Replacement Sub-Contractor on or after the Service Transfer Date of:
    - (a) any collective agreement applicable to the Transferring Contractor Employees identified in the Contractor's Final Contractor Personnel List; and/or
    - (b) any custom or practice in respect of any Transferring Contractor Employees identified in the Contractor's Final Contractor Personnel List which the Replacement Contractor and/or Replacement Sub-Contractor is contractually bound to honour;
  - 2.13.3 any claim by any trade union or other body or person representing any Transferring Contractor Employees identified in the Contractor's Final Contractor Personnel List arising from or connected with any failure by the Replacement Contractor and/or Replacement Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;



- 2.13.4 any proposal by the Replacement Contractor and/or Replacement Sub-Contractor to change the terms and conditions of employment or working conditions of any Transferring Contractor Employees identified in the Contractor's Final Contractor Personnel List on or after their transfer to the Replacement Contractor or Replacement Sub-Contractor (as the case may be) on the Service Transfer Date, or to change the terms and conditions of employment or working conditions of any person identified in the Contractor's Final Contractor Personnel List who would have been a Transferring Contractor Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Service Transfer Date as a result of or for a reason connected to such proposed changes;
- 2.13.5 any statement communicated to or action undertaken by the Replacement Contractor or Replacement Sub-Contractor to, or in respect of, any Transferring Contractor Employee identified in the Contractor's Final Contractor Personnel List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Contractor in writing;
- 2.13.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- (a) in relation to any Transferring Contractor Employee identified in the Contractor's Final Contractor Personnel List, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
  - (c) in relation to any employee who is not a Transferring Contractor Employee identified in the Contractor's Final Contractor Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Contractor or Sub-Contractor, to the Replacement Contractor or Replacement Sub-Contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;



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