

SCHEDULE 19

TERMINATION SERVICES AND TRANSITION AGREEMENT

1. INTRODUCTION

1.1 On either:

1.1.1 the expiry of this Agreement; or

1.1.2 following receipt of the notice by the Contractor that the Authority intends to terminate this Agreement,

the parties shall comply with their respective obligations as outlined in Appendix 1 of this Schedule 19.

1.2 The Contractor shall enter into the Transition Agreement substantially in the form set out in Appendix 1 of this Schedule 19 at the request of the Authority and shall not unreasonably delay entering into such agreement. In the event the Authority does not require the Contractor to enter into a Transition Agreement substantially in the form set out in Appendix 1 to this Schedule 19, the Contractor shall provide transition services to the Authority and any Replacement Contractor substantially in the form set out in Appendix 1 to this Schedule 19.

1.3 In the event the Authority chooses not to retender the provision of the Services and elects to provide the Services in-house, the parties shall, at the request of the Authority, enter into the Transition Agreement substantially in the form set out in Appendix 1 of this Schedule 19 (and the Contractor shall not unreasonably delay entering into such agreement) and the Authority shall be deemed to be the "Replacement Contractor" for the purposes of such agreement.

Appendix 1

Dated

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(1) The Secretary of State for Work and Pensions

and

(2) Incumbent Contractor

and

(3) Replacement Contractor

TRANSITION AGREEMENT

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THIS AGREEMENT IS MADE ON

2006

BETWEEN:

- (1) **[Incumbent Contractor]** a company incorporated in [] under registration number [], whose registered office is at [] (the **"Incumbent Contractor"**); and
- (2) **The Secretary of State for Work and Pensions (the "Authority")**; and
- (3) **[Replacement Contractor]** a company incorporated in [] under registration number [], whose registered office is at [] (the **"Replacement Contractor"**),
- together (the **"Parties"**).

WHEREAS:

- A) on [] the Authority and the Incumbent Contractor previously entered into an agreement (the **"Original Agreement"**) for the provision of the Services (as defined herein);
- B) on the date hereof the Authority and the Replacement Contractor have entered into the Replacement Agreement (the **"Replacement Agreement"**) to perform the Replacement Services (as defined herein);
- C) the Parties now wish to provide for transition from the provision of the Services by the Incumbent Contractor to the provision of the Replacement Services by the Replacement Contractor;
- D) in providing for the transition of the Services the Parties shall use their reasonable endeavours to meet the following objectives:
- maintain delivery of the Services in accordance with the Original Agreement throughout the Transition Period;
 - transfer work-in-progress with as little disruption as is reasonably practicable to business planning;
 - set up and maintain open, honest and collaborative relationships with all Parties; and
 - seek to avoid incurring unnecessary costs.

IT IS HEREBY AGREED AS FOLLOWS:**2. DEFINITIONS AND INTERPRETATION**

- 2.1 As used in this Agreement, the capitalised expressions shall have the following meanings, unless the context otherwise requires:

"Acceptance Criteria" means the criteria for the acceptance of the Replacement Services as specified in the Detailed Transition Plan;

"Affected Party" means the party seeking to claim relief in respect of a Force Majeure Event as defined in Clause 16.1;

"Agreement" means this Transition Agreement, comprised of the Clauses and Schedules hereto;

“Asset List” means the list of assets provided to the Replacement Contractor on [] which specifies those assets which are available to transfer from the Authority and Incumbent Contractor to the Replacement Contractor;

“Assets” means those assets which are specified in the Asset List as being owned by the Incumbent Contractor and which the Replacement Contractor has indicated it wishes to purchase from the Incumbent Contractor;

“Asset Value” means the fair market value of the Assets as agreed between the Authority, the Incumbent Contractor and the Replacement Contractor during the Transition Period, or if agreement cannot be reached by the Parties, the asset value as determined by an independent valuation undertaken during the Transition Period;

“Authority Data” means all data, information, text, drawings, diagrams, images or sounds which are embodied in any electronic or tangible medium, and which are supplied or in respect of which access has been granted to the Incumbent Contractor by the Authority pursuant to the Original Agreement, or which the Incumbent Contractor has been required to generate under the Original Agreement other than for the Incumbent Contractor’s internal business information;

“Authority Properties” means those properties of the Authority to which the Incumbent Contractor provides the Services;

“Authority Software” means software owned by the Authority and required by the Replacement Contractor and which is set out in the Asset List;

“Broadly Comparable” means in accordance with paragraph 14 of Annex A to the Cabinet Office document ‘Staff Transfers in the Public Sector’ Statement of Practice dated January 2000;

“Bulk Transfer Liability” means the value of providing Broadly Comparable or Substantially Similar benefits to the Incumbent Pension Schemes based on the Replacement Contractor’s actuarial assumptions and methodologies (as set out in Appendix 2 of Schedule C) as at the Payment Date;

“Confidential Information” means all information designated as such by any Party in writing together with all other information which relates to the business, affairs, products, developments, trade secrets, know-how, personnel, customers and suppliers of any Party, personal data of any claimant, or information which may reasonably be regarded as the confidential information of the disclosing Party;

“Cutover Date” means the date on which the provision of the Replacement Services is commenced by the Replacement Contractor, such date to be decided in accordance with the provisions of Clause 5.4.1. The Cutover Date shall be the same as the Planned Cutover Date unless the Transition Period is extended in accordance with Clause 4.4.6.2;

“Default” means any breach of the obligations of any Party or any default, act, omission, negligence or statement of any Party, its employees, servants, agents or sub-contractors in connection with or in relation to the subject matter of this Agreement and in respect of which such Party is liable (by way of indemnity or otherwise) to the other Parties;

“Detailed Transition Plan” means the plan for the transition of the Services to the Replacement Contractor to be prepared by the Replacement Contractor pursuant to Clause 4;

“Dispute Resolution Procedure” means the procedure described in Clause 14;

“Effective Date” means the date of award of the Replacement Agreement to the Replacement Contractor;

“Employment Claim” means any claim or demand whether in contract or in tort or under statute (including the Treaty of Rome and any Directives made under the authority of that Treaty) for any remedy including, without limitation, pursuant to the Employment Rights Act 1996 for equal pay or compensation for less favourable treatment for part-time workers or for age, sex, race or disability discrimination or discrimination on the basis of sexual orientation, religion or belief or pursuant to the Working Time or National Minimum Wage Regulations, statutory redundancy, unfair dismissal and/or wrongful dismissal;

“Incumbent Actuary” means the Incumbent Contractor’s actuary;

“Incumbent Contractor Personnel” means employees, independent contractors, agency workers, consultants and agents of the Incumbent Contractor or any of its Subcontractors or agents engaged in any way in whole or in part in the performance of the Services;

“Incumbent Pension Schemes” means the Incumbent Contractor’s pension schemes of which the Transferring Employees are members, or are eligible to become members;

“Intellectual Property Rights” means patents, trade marks, service marks, rights in data bases, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, trade or business names and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom);

“Key Transition Staff” means the individuals nominated as key staff by the Incumbent Contractor and Replacement Contractor as listed in Schedule E;

“List of Transferring Employees” means a list of employees of the Incumbent Contractor (or its Subcontractors) who are engaged in or wholly or substantially assigned to the provision of the Services as agreed pursuant to clause 7.2.1 (or determined pursuant to clause 7.2.2 as amended (if at all) pursuant to clause 7.2.4);

“Original Agreement” means the agreement between the Authority and the Incumbent Contractor for the provision of the Services;

“Outline Transition Plan” means the transition plan provided by the Replacement Contractor which has been approved by the Authority and the Incumbent Contractor as contained in Schedule A;

“Party” means a party to this Agreement;

“Payment Date” means the date ten (10) days after the date on which the Transfer Amount has been determined, calculated and verified in accordance with Clause 9.3

or such other date as may be agreed by the Incumbent Contractor and Replacement Contractor;

“Planned Cutover Date” means the date specified for the cutover of the Services from the Incumbent Contractor to the Replacement Contractor as stated in the Detailed Transition Plan;

“Planned Transition Period” means the period from the Effective Date until the Planned Retender Cutover Date;

“Potential Transferring Member” means any Transferring Employee of the Incumbent Contractor who is a member of a defined benefit pension scheme immediately prior to the Cutover Date;

“Preliminary Prescribed Particulars” means the prescribed particulars relating to potential Transferring Employees provided by the Authority to the Replacement Contractor on [];

“Prescribed Particulars” means the information contained in Schedule B to this Agreement;

“Replacement Agreement” means the agreement dated the date hereof between the Authority and the Replacement Contractor for the provision of the Replacement Services;

“Replacement Contractor Actuary” means the Replacement Contractor’s actuary;

“Replacement Contractor Personnel” means employees, independent contractors, agency workers, consultants and agents of the Replacement Contractor or any of its Subcontractors or agents engaged in any way in whole or in part in the performance of the Services;

“Replacement Pension Schemes” means the Replacement Contractor’s pension schemes to which the Transferring Employees can become members;

“Replacement Services” means the services to be provided by the Replacement Contractor pursuant to the Replacement Agreement;

“Revised Detailed Transition Plan” means the revised plan produced in accordance with Clause 3.6;

“Services” means the services currently provided by the Incumbent Contractor under the Original Agreement which will, after the Cutover Date be replaced by the Replacement Services;

“Shortfall” means the amount that the Transfer Payment is less than the Bulk Transfer Liability;

“Subcontractor” means (i) the subcontractors of the Incumbent Contractor as specified in the Original Agreement and (ii) the subcontractors of the Replacement Contractor as specified in the Replacement Agreement. The term "Subcontract" shall be similarly construed;

“Substantially Similar” means as defined in Schedule D of this Agreement;

“Third Party Agreements” means all maintenance agreements, support agreements, equipment leases and all other supply or service agreements from the Asset List which the Replacement Contractor has elected to novate from the Incumbent Contractor;

“Third Party Software” means software used by the Incumbent Contractor in the provision of the Services and owned by third parties which is required by the Replacement Contractor and which is set out in the Asset List;

“Timing Adjustment” means the roll forward from the Cutover Date to the Payment Date as further described in the Incumbent Contractor’s actuarial assumptions and methodologies as set out in Appendix 1 of Schedule C;

“Transfer Amount” means the value of benefits in the Incumbent Pension Schemes based on the Incumbent Contractor’s actuarial assumptions and methodologies as set out in Appendix 1 of Schedule C as at the Cutover Date;

“Transfer Payment” means the Transfer Amount for the Transferring Members adjusted by the Timing Adjustment from the Cutover Date to the Payment Date;

“Transfer Regulations” means the **Transfer of Undertakings (Protection of Employment) Regulations 2006** as amended or replaced from time to time;

“Transferring Employees” means those employees of the Incumbent Contractor (or its Subcontractors) named on the List of Transferring Employees and whose employment or engagement transfers to the Replacement Contractor pursuant to the Transfer Regulations at the Cutover Date, save for those who notify the Incumbent Contractor (or the appropriate Subcontractor) prior to the Cutover Date that they object to such transfer and therefore are deemed to have resigned as at the Cutover Date pursuant to Regulation 4(7) and 4(8) of the Transfer Regulations;

“Transferring Member” means a Transferring Employee who is:

- (a) a member of a defined benefit Incumbent Pension Scheme immediately before the Cutover Date; and
- (b) commences membership of the Replacement Contractor Pension Schemes with effect on and from the Cutover Date; and
- (c) accepts the offer contained in the Transfer Letter to transfer his or her rights to the Replacement Contractor Pension Schemes in respect of pensionable service accrued up to the Cutover Date;

“Transfer Deficit” means the amount equal to the Transfer Payment less the amount or value of assets actually received by the Replacement Contractor Pension Scheme at the date of the written demand;

“Transition Period” means the period from the Effective Date to the Cutover Date;

“Transition Review Process” means the formal reviews undertaken by the Authority in conjunction with the Replacement Contractor in accordance with the provisions of the Replacement Agreement and as further set out in the Detailed Transition Plan;

“Transition Services” means the services provided by the Incumbent Contractor and Replacement Contractor in accordance with the Detailed Transition Plan and all other provisions of this Agreement; and

“Working Day” means Monday to Friday (inclusive) but excludes statutory bank holidays in the locality the Transition Services are being provided to.

2.2 **General**

2.2.1 As used in this Agreement:

2.2.1.1 the masculine includes the feminine and the neuter; and

2.2.1.2 the singular includes the plural and vice versa.

2.2.2 A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof.

2.2.3 The Parties shall comply with any express obligation in this Agreement to comply with any document, statute, enactment, order, regulation or other similar instrument that is referenced in this Agreement.

2.2.4 Headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement.

2.2.5 References to Clauses and Schedules are, unless otherwise provided, references to clauses of and schedules to this Agreement.

2.2.6 Except as otherwise expressly provided in this Agreement, all remedies available to any Party under this Agreement are cumulative and may be exercised concurrently or separately and the exercise of any one remedy shall not exclude the exercise of any other remedy.

2.2.7 The Party receiving the benefit of an indemnity under this Agreement shall use its reasonable endeavours to mitigate its loss covered by the indemnity.

3. **TERM OF THE AGREEMENT**

This Agreement shall come into force on the Effective Date and, unless earlier terminated in accordance with Clause 14, shall expire twelve (12) months after the Cutover Date.

4. **DETAILED TRANSITION PLAN**

4.1 The Replacement Contractor shall prepare the Detailed Transition Plan in accordance with Paragraph 2 of Schedule 4 of the Replacement Agreement.

4.2 Upon request by the Replacement Contractor, the Incumbent Contractor shall promptly provide all information and assistance as the Replacement Contractor reasonably requests in the preparation of the Detailed Transition Plan.

4.3 The Detailed Transition Plan shall be submitted to the Incumbent Contractor for approval within ten (10) Working Days of the Effective Date.

4.4 The Incumbent Contractor shall, acting reasonably and within ten (10) Working Days of receipt of the Detailed Transition Plan either:

- 4.4.1 approve the Detailed Transition Plan; or
 - 4.4.2 subject to Clause 4.5, reject the Detailed Transition Plan, giving reasons for such rejection,
- and shall notify the Authority and Replacement Contractor in writing of its decision.
- 4.5 The Incumbent Contractor may only reject the Detailed Transition Plan pursuant to Clause 4.4, if in the reasonable opinion of the Incumbent Contractor, it is not consistent with the Outline Transition Plan and either imposes additional obligation on the Incumbent Contractor or would adversely impact on the provision of the Services.
 - 4.6 If the Detailed Transition Plan is rejected by the Incumbent Contractor pursuant to Clause 3.4.2, the Replacement Contractor shall within ten (10) Working Days of receipt of the notice of rejection given pursuant to Clause 3.4 re-submit to the Authority (and its other incumbent suppliers) and the Incumbent Contractor a revised Detailed Transition Plan ("**Revised Detailed Transition Plan**") taking into account the reasons for the rejection specified in such notice so far as the Replacement Contractor reasonably considers the same to be correct. Upon re-submission of the Revised Detailed Transition Plan, the procedure set out in Clause 3.4 shall apply to the Revised Detailed Transition Plan.
 - 4.7 If the Parties fail to agree the Revised Detailed Transition Plan in accordance with this Clause 3, the Parties shall agree changes to either the Revised Detailed Transition Plan or the Services in accordance with the Change Control Procedures. In the absence of such agreement, the matter shall be resolved in accordance with the Dispute Resolution Procedure.

5. **TRANSITION SERVICES**

5.1 **General**

- 5.1.1 The Parties shall each perform the Transition Services in accordance with this Agreement and the Detailed Transition Plan.
- 5.1.2 The Incumbent Contractor shall, subject to the provisions of Clause 4.1.3, be entitled to claim any reasonable additional costs and expenses from the Authority which are directly incurred as a result of providing the Transition Services and complying with the provisions of the Detailed Transition Plan.
- 5.1.3 The Incumbent Contractor shall use all reasonable endeavours to mitigate any additional costs and expenses incurred in providing the Transition Services and complying with the provisions of the Detailed Transition Plan. The Incumbent Contractor shall use all reasonable endeavours to seek the prior written consent of the Authority before incurring such costs and expenses.
- 5.1.4 Subject to the provisions of Clause 4.1.6, any Subcontractors of the Incumbent Contractor are permitted to perform those elements of the Transition Services which relate to those aspects of the Services performed by such Subcontractor pursuant to the Original Agreement and identified in the Detailed Transition Plan to be performed by such Subcontractors.

- 5.1.5 Subject to the provisions of Clause 4.1.6, any Subcontractors of the Replacement Contractor are permitted to perform those elements of the Transition Services which relate to those aspects of the Replacement Services performed by such Subcontractor pursuant to the Replacement Agreement and identified in the Detailed Transition Plan to be performed by such Subcontractors.
- 5.1.6 Both the Replacement Contractor and Incumbent Contractor shall remain primarily responsible for the acts and omissions of their respective Subcontractors as though they were its own and shall procure that their Subcontractors comply with all applicable provisions of this Agreement.

5.2 Provision of the Services by the Incumbent Contractor

- 5.2.1 The Parties acknowledge and agree that the Incumbent Contractor will be required by the Authority to continue to provide the Services to the Authority until the Cutover Date. The Incumbent Contractor acknowledges that the charges for the provision of such services shall be those applicable for the final year of the Original Agreement subject to any provisions to amend such charges set out in the Original Agreement.
- 5.2.2 Where the extension of the Transition Period in accordance with Clause 4.4.6.2 results in a phased or partial transfer of Services from the Incumbent Contractor to the Replacement Contractor, the consequences of such partial or phased transfer shall be subject to agreement by the Incumbent Contractor and the Authority pursuant to the change control procedure in the Original Agreement.
- 5.2.3 For the avoidance of doubt, the Incumbent Contractor shall not be obliged to provide the Services (in whole or in part) after the Cutover Date unless otherwise agreed by the Incumbent Contractor pursuant to the change control procedure in the Original Agreement.

5.3 Failure to Comply with the Detailed Transition Plan

- 5.3.1 If, due to the Default of the Replacement Contractor, the Parties fail to meet any of their obligations under this Agreement the Replacement Contractor shall, without prejudice to the Parties' other rights and remedies pay any reasonable additional costs of the Authority and/or the Incumbent Contractor (including any costs incurred by any Subcontractors) incurred as a direct result of the delay. The Authority and Incumbent Contractor shall further be entitled to a reasonable extension of time which they can show was directly incurred as a result of the Default.
- 5.3.2 If, due to the Default of the Incumbent Contractor, the Parties fail to meet any of their obligations under this Agreement the Incumbent Contractor shall, without prejudice to the Parties' other rights and remedies pay any reasonable additional costs of the Authority (including any additional costs incurred by any other incumbent suppliers of the Authority) and/or the Replacement Contractor (including any costs incurred by any Subcontractors) incurred as a direct result of the delay. The Authority and Replacement Contractor shall further be entitled to a reasonable extension of time which they can show was directly incurred as a result of the Default.

- 5.3.3 If, due to the Default of the Authority, the Parties fail to meet any of their obligations under this Agreement the Authority shall, without prejudice to the Parties' other rights and remedies pay any reasonable additional costs of the Replacement Contractor and/or the Incumbent Contractor (including any costs incurred by any Subcontractors) incurred as a direct result of the delay. The Replacement Contractor and Incumbent Contractor shall further be entitled to a reasonable extension of time which they can show was directly incurred as a result of the Default.
- 5.3.4 The Parties shall use their reasonable endeavours to mitigate the impact of any such delays pursuant to this Clause 4.3 and the defaulting Party shall notify the other Parties in writing of the Default as soon as it becomes aware of such Default.
- 5.3.5 For the avoidance of doubt, any reasonable additional costs payable to the Authority pursuant to Clauses 4.3.1 and 4.3.2 shall include any costs which are payable by the Authority to the Incumbent Contractor for the extended provision of the Services by the Incumbent Contractor which are greater than the Charges that would have been payable to the Replacement Contractor for the provision of the Replacement Services during the same period.

5.4 Transition Review Process

- 5.4.1 Subject to Clause 4.2.2, the obligations and responsibilities of the Incumbent Contractor to provide the Services under the Original Agreement shall cease in all respects at one (1) minute past midnight on the Cutover Date and the obligations and responsibilities of the Replacement Contractor to provide the Replacement Services under the Replacement Agreement shall commence as provided in Clause 4.4.2. The Cutover Date shall be the date that the Replacement Contractor has either:
- 5.4.1.1 complied fully with the Transition Review Process pursuant to this Clause 4.4 and met all of the Acceptance Criteria; or
 - 5.4.1.2 otherwise demonstrated to the satisfaction of the Authority (whose determination in such matter shall be final) its capacity to deliver the Replacement Services in accordance with the provisions of the Replacement Agreement.
- 5.4.2 The Replacement Contractor shall commence provision of the Replacement Services at one (1) minute past midnight on the Cutover Date.
- 5.4.3 The Authority shall undertake the Transition Review Process in order to determine whether the Acceptance Criteria have been met or satisfy itself in accordance with Clause 4.4.1.2 of the Replacement Contractor's capacity to deliver the Replacement Services after the Cutover Date in accordance with the provisions of the Replacement Agreement.
- 5.4.4 The Transition Review Process shall be recorded as successful in respect of any of the Replacement Services and the Replacement Contractor notified by the Authority accordingly where all of the Acceptance Criteria are met in respect of such Replacement Services in accordance with the Transition

Review Process or, where the Acceptance Criteria have not been met, the Authority is otherwise satisfied that the Replacement Contractor is able to deliver the Replacement Services in accordance with the provisions of the Replacement Agreement.

5.4.5 The Transition Review Process shall be recorded as unsuccessful in respect of any of the Replacement Services and the Replacement Contractor notified by the Authority accordingly where any of the Acceptance Criteria are not met in respect of such Replacement Services and the Replacement Contractor has failed to satisfy the Authority that it is able to deliver the Replacement Services in accordance with the provisions of the Replacement Agreement.

5.4.6 If the Transition Review Process has not been recorded as successful in respect of any Replacement Services pursuant to Clause 4.4.4 by the Planned Cutover Date, the Authority shall have the right without prejudice to its other rights and remedies:

5.4.6.1 to transfer responsibility to the Replacement Contractor pursuant to Clause 4.4.1 for the provision of any Replacement Services in respect of which the Transition Review Process has been recorded as successful; and/or

5.4.6.2 to extend the Transition Period for up to three (3) consecutive additional periods (such consecutive additional periods shall not together exceed twelve (12) months in aggregate) as the Authority shall notify to the Replacement Contractor and the Incumbent Contractor upon not less than thirty (30) days' written notice, during which the Replacement Contractor shall use all reasonable endeavours to correct the deficiency which caused the Transition Review Process to be recorded as unsuccessful in respect of any Replacement Services.

5.4.7 In the event that the Authority extends the Planned Transition Period for a period pursuant to Clause 4.4.6.2 and the Transition Review Process has not been recorded as successful in respect of any Replacement Services by the end of that period, the Authority shall have the rights as set out in Clause 7.3 of the Replacement Agreement.

5.5 Cooperation with other Incumbent Suppliers of the Authority

5.5.1 The Incumbent Contractor acknowledges that the Replacement Contractor has entered into separate transition agreements with the Authority's other incumbent suppliers and that the Detailed Transition Plan also provides for the transition of office services from these other incumbent suppliers to the Replacement Contractor. The Incumbent Contractor shall therefore, subject to the provisions of Clauses 4.1.2 and 4.1.3, provide all additional cooperation and assistance as is reasonably required by the Authority and Replacement Contractor to ensure the effective transition of services from the Authority's other incumbent suppliers.

5.6 Key Transition Staff

- 5.6.1 The Parties acknowledge that the Key Transition Staff are essential to the proper transition of the Services, and as such the Parties have agreed to the appointment of the Key Transition Staff listed in Schedule E. The Incumbent Contractor and the Replacement Contractor shall not remove any Key Transition Staff from the provision of the Transition Services without the Authority's prior written consent, such consent not to be unreasonably withheld or delayed.
- 5.6.2 Each Party shall ensure that if any of its Key Transition Staff are replaced, such replacement Key Transition Staff shall be fully competent to carry out the tasks assigned to the Key Transition Staff.
- 5.6.3 The Incumbent Contractor shall use all reasonable endeavours to allow the Authority and/or Replacement Contractor access to the Key Transition Staff and any former Key Transition Staff who have been replaced in accordance with Clause 4.6.2.
- 5.6.4 If, in the Authority's reasonable opinion, an employee of the Incumbent Contractor or Replacement Contractor (whether Key Transition Staff or otherwise) is unsuitable to perform the Transition Services under this Agreement for reasons of incompatibility with other staff, incompetence, unprofessional behaviour or similar circumstances, the Authority may request that such an employee be removed from the performance of the Transition Services. In this event, the Incumbent Contractor or Replacement Contractor (as appropriate) shall remove the employee and replace him or her with a suitable replacement (in accordance with Clause 4.6.2), such replacement to be approved by the Authority (whose approval shall not be unreasonably withheld or delayed).

6. TRANSFER OF ASSETS, THIRD PARTY AGREEMENTS AND SOFTWARE

6.1 Assets

- 6.1.1 The Incumbent Contractor shall make the Assets available to the Replacement Contractor at the time or times set out in the Detailed Transition Plan (or as otherwise agreed by the Parties).
- 6.1.2 Where, following the Cutover Date, the Replacement Contractor elects to move any of the Assets it shall be responsible for the collection and shipping of such Assets and all associated costs.
- 6.1.3 The Incumbent Contractor shall, at its own cost, arrange for the removal from the Authority Properties (by the dates specified in the Detailed Transition Plan for such removal) of all assets which are not required by the Replacement Contractor.
- 6.1.4 The Incumbent Contractor shall provide to the Replacement Contractor all instructions in its possession which are necessary for the proper installation of any computer hardware that has been used in relation to the provision of the Services and which form part of the Assets.

- 6.1.5 The Replacement Contractor shall pay the Incumbent Contractor the Asset Value in consideration for the Assets transferred hereunder. The Asset Value shall be paid in accordance with the provisions of Clause 9.
- 6.1.6 Risk in the Assets shall pass immediately on transfer to the Replacement Contractor.
- 6.1.7 Title in the Assets shall pass to the Replacement Contractor upon payment of the consideration in accordance with the provisions of Clause 5.1.5.
- 6.1.8 The Incumbent Contractor shall use its reasonable endeavours to ensure that the Asset List is updated during the Transition Period to reflect any changes to the Assets listed therein resulting from the replacement of such Assets as soon as reasonably practicable after such change occurs.

6.2 Third Party Agreements

- 6.2.1 For any Assets which are subject to Third Party Agreements, the Incumbent Contractor shall novate all rights and obligations in such Third Party Agreements to the Replacement Contractor at the time or times set out in the Detailed Transition Plan (or as otherwise agreed by the Parties) and, for the avoidance of doubt, the Incumbent Contractor shall be responsible for all costs and/or expenses incurred by the Incumbent Contractor in procuring such novations (including but not limited to any payments required to be made to the relevant third parties).
- 6.2.2 The Incumbent Contractor shall continue to be liable for its obligations and liabilities incurred or due to be performed, incurred or satisfied up to the Cutover Date as if the novation had not occurred and the Replacement Contractor shall have no liability or obligation in respect of such Third Party Agreements during this period.
- 6.2.3 The Replacement Contractor shall release and discharge the Incumbent Contractor from all obligations and liabilities of the Incumbent Contractor in respect of the Third Party Agreements that are due to be performed, incurred or satisfied on or after the Cutover Date and all claims and demands whatsoever in respect of those obligations and liabilities. For the avoidance of doubt, the Incumbent Contractor shall remain liable for all payments due in the period prior to the Cutover Date notwithstanding that such payments are invoiced to the Replacement Contractor on or after the Cutover Date. The Parties shall agree detailed procedures for dealing with such invoices in the Detailed Transition Plan.

6.3 Software

Authority Software

- 6.3.1 The Incumbent Contractor shall make available to the Replacement Contractor at the time or times set out in the Detailed Transition Plan (or as otherwise agreed by the Parties) the source code and object code held by the Incumbent Contractor in respect of the Authority Software and all supporting documentation relating thereto (as identified in the Detailed Transition Plan).

- 6.3.2 Risk and title in any media on which the Authority Software is supplied shall pass on delivery to the Replacement Contractor.

Third Party Software

- 6.3.3 The Incumbent Contractor shall use all reasonable endeavours to novate all rights and obligations in the Third Party Software to the Replacement Contractor at the Cutover Date (or as otherwise agreed by the Parties) and, for the avoidance of doubt, the Incumbent Contractor shall be responsible for all costs and/or expenses incurred by the Incumbent Contractor in procuring such novations (including but not limited to any payments required to be made to the relevant third parties).
- 6.3.4 The Incumbent Contractor shall continue to be liable for its obligations and liabilities incurred or due to be performed or satisfied up to the Cutover Date as if the novation had not occurred and the Replacement Contractor shall have no liability or obligations in respect of such Third Party Software during this period.
- 6.3.5 The Replacement Contractor shall release and discharge the Incumbent Contractor from all obligations and liabilities of the Incumbent Contractor in respect of the Third Party Software that are due to be performed or satisfied on or after the Cutover Date and all claims and demands whatsoever in respect of those obligations and liabilities. For the avoidance of doubt, the Incumbent Contractor shall remain liable for all payments due in the period prior to the Cutover Date in respect of such Third Party Software.
- 6.3.6 Risk and title in any media on which the Third Party Software is supplied shall pass on delivery to the Replacement Contractor.

6.4 Indemnities

- 6.4.1 The Incumbent Contractor shall indemnify the Authority and the Replacement Contractor from and against all claims, actions, costs, expenses (including reasonable legal fees) and demands arising out of or in connection with any liabilities of the Replacement Contractor or the Authority with respect to the Assets, Third Party Agreements and Third Party Software which accrued or arose from events, or acts or omissions of the Incumbent Contractor during the period prior to the Cutover Date except to the extent that any claim, action, cost or expense arising out of, or in connection with any liability arises as a result of the Incumbent Contractor acting on the instruction of the Authority or the Replacement Contractor or arises from the Default of the Authority and/or the Replacement Contractor.
- 6.4.2 The Replacement Contractor shall indemnify the Authority and the Incumbent Contractor from and against all claims, actions, costs, expenses (including reasonable legal fees) and demands arising out of or in connection with any liabilities of the Incumbent Contractor or the Authority with respect to the Assets, Third Party Agreements and Third Party Software which accrued or arose from events, or acts or omissions of the Replacement Contractor on or after the Cutover Date except to the extent that any claim, action, cost or expense arising out of, or in connection with any liability arises as a result of the Replacement Contractor acting on the

instruction of the Authority or the Incumbent Contractor or arises from the Default of the Authority and/or the Incumbent Contractor.

6.5 Incident Log

- 6.5.1 On the date(s) specified in the Detailed Transition Plan, the Incumbent Contractor shall provide the Replacement Contractor with a full and complete copy of the incident log book in relation to the Services and all associated documentation recorded by the Incumbent Contractor in respect of any incidents in relation to the provision of the Services that have arisen during the three (3) months prior to that date which shall include information relating to the status of such incidents, the steps taken to resolve such incidents and the proposed date for resolution of such incidents..
- 6.5.2 The Incumbent Contractor undertakes that during the Transition Period it shall continue to comply with its obligations under the Original Agreement with regards to the resolution of incidents specified in the Incident Log.

6.6 Work in Progress

- 6.6.1 The Parties shall agree in good faith how the work-in-progress of the Incumbent Contractor under the Original Agreement is to be actioned, and the required activities shall be addressed in the Detailed Transition Plan.
- 6.6.2 The Replacement Contractor shall assume all of the obligations of the Incumbent Contractor on the Cutover Date in respect of any work-in-progress provided that the Incumbent Contractor has complied with all of its obligations pursuant to the Original Agreement.
- 6.6.3 Where the Incumbent Contractor has failed to comply with its obligations pursuant to the Original Agreement (or as otherwise agreed in writing with the Authority) in respect of any work-in-progress it shall reimburse the Replacement Contractor any reasonable additional costs in completing the work-in-progress.

6.7 Data

- 6.7.1 The Incumbent Contractor shall, on the date(s) specified in the Detailed Transition Plan, deliver to the Authority and to the Replacement Contractor an inventory of the Authority Data held by the Incumbent Contractor. The Authority and Replacement Contractor will provide such information and assistance as is reasonably required to produce the inventory. The Authority hereby consents to the delivery by the Incumbent Contractor to the Replacement Contractor of such an inventory of the Authority Data.
- 6.7.2 The Incumbent Contractor shall deliver to the Replacement Contractor all Authority Data in its possession and in the form that it is then held by the Incumbent Contractor by the date specified in the Detailed Transition Plan. In the event that either the Authority or Replacement Contractor requires the Incumbent Contractor to provide the Authority Data in a different format or require the Incumbent Contractor to verify the integrity of the Authority Data, the Parties shall agree any additional charges for these activities in accordance with the Change Control Procedure.

6.8 Warranties in relation to the Assets and Software

- 6.8.1 The Incumbent Contractor hereby warrants and represents to the Authority and the Replacement Contractor:
- 6.8.1.1 except as noted in the Asset List, no consents or agreements of third parties are required for the transfer of any Asset to the Replacement Contractor;
 - 6.8.1.2 each of the Assets to be transferred hereunder are either owned legally and beneficially by the Incumbent Contractor and shall be transferred to the Replacement Contractor with full title guarantee or where they are owned by a third party, the Incumbent Contractor will be able to procure its sale to the Replacement Contractor with full title guarantee;
 - 6.8.1.3 each of the Assets capable of possession is in the possession of the Incumbent Contractor or subject to its control; and
 - 6.8.1.4 with respect to any Software owned by the Incumbent Contractor, use of the Software for the Replacement Services shall not infringe any third party's Intellectual Property Rights provided that no warranty is given with respect to any use outside the provision of such services.
- 6.8.2 Except as expressly stated in this Agreement, all warranties and conditions, whether express or implied by statute, common law or otherwise (including but not limited to fitness for purpose) are hereby excluded to the maximum extent permitted by law.

7. PROVISION OF ACCOMMODATION

- 7.1 The Parties shall comply with the provisions of the Detailed Transition Plan which shall outline the timetable for the vacation of the Authority Properties by the Incumbent Contractor and the possible occupation of such Authority Properties by the Replacement Contractor.
- 7.2 The Authority and the Incumbent Contractor shall provide all reasonable assistance to the Replacement Contractor in order that the Replacement Contractor may occupy the Authority Properties to provide the Replacement Services from the Cutover Date (or such earlier date specified in the Detailed Transition Plan or as the Authority may require).
- 7.3 The Incumbent Contractor shall be responsible for all costs associated with the Incumbent Contractor's vacation of the Authority Properties including the removal of the Incumbent Contractor's equipment and furnishings, termination of arrangements with Subcontractors and service suppliers and restoration of such properties to the condition as required pursuant to the Original Agreement.

8. TRANSFER OF EMPLOYEES**8.1 General**

- 8.1.1 The Parties acknowledge and agree that specific provisions are required in the Transition Agreements and the Replacement Agreement for the following categories of employees:

Group A	Employees of the Authority who will transfer to the Replacement Contractor on the Cutover Date in accordance with the provisions of the Replacement Agreement.
Group B	Employees of the Incumbent Contractor (and its Subcontractors) who were previously employees of the Authority and who will transfer to the Replacement Contractor on the Cutover Date.
Group C	Employees of the Incumbent Contractor (and its Subcontractors) who were employed by the Incumbent Contractor (or its Subcontractors) and who are not Group B employees who will transfer to the Replacement Contractor on the Cutover Date.
Group D	Individuals who become employees of the Replacement Contractor after the Cutover Date (who do not transfer from the Authority, Incumbent Contractor or its Subcontractors).

- 8.1.2 This Agreement shall govern the transfer of Group B and Group C Transferring Employees who shall be transferring from the Incumbent Contractor (or its Subcontractors) to the Replacement Contractor (or its Subcontractors).

- 8.1.3 The Incumbent Contractor and Replacement Contractor shall:

- 8.1.3.1 comply (and procure that their Subcontractors comply) with their obligations under the Transfer Regulations; and
- 8.1.3.2 provide reasonable assistance to the Authority in complying with its obligations pursuant to any then current applicable Government guidance (including but not limited to the Cabinet Office Guidance on Staff Transfers in the Public Sector – Statement of Practice (January 2000) as amended from time to time),

in relation to any of the Transferring Employees.

- 8.1.4 Without limitation to the foregoing, the Incumbent Contractor shall comply with any then current applicable public policy guidance and all other applicable provisions of this Agreement, and the Incumbent Contractor shall further co-operate at no additional charge in the orderly transfer of employment of the Transferring Employees if and to the extent reasonably requested by the Authority or the Replacement Contractor.

- 8.1.5 The Incumbent Contractor shall comply with its obligations under Regulation 11 of the Transfer Regulations
- 8.1.6 The Transferring Employees shall become employed by the Replacement Contractor (or its Subcontractors) at one (1) minute after midnight on the Cutover Date pursuant to the Transfer Regulations and the terms of this Agreement.
- 8.1.7 The Incumbent Contractor shall not solicit, offer employment to, nor use the services of, any of the Transferring Employees (otherwise than by general advertising) for a period of six (6) months from the Cutover Date.
- 8.1.8 The Incumbent Contractor shall not and shall procure that its Subcontractors shall not during the term of this Agreement without the prior written consent of the Authority (which shall not be unreasonably withheld or delayed);
 - 8.1.8.1 vary, purport or promise to vary the terms and conditions of employment or engagement of any Incumbent Contractor Personnel (including a promise to make any additional payment or provide any additional benefit); or
 - 8.1.8.2 reduce or vary the involvement of any Incumbent Contractor Personnel in the provision of the Services;
 - 8.1.8.3 terminate or give notice to terminate the employment or engagement of any Incumbent Contractor Personnel (save in the case of gross misconduct); or
 - 8.1.8.4 recruit or engage any additional Incumbent Contractor Personnel; or
 - 8.1.8.5 assign any Incumbent Contractor Personnel to a role which is wholly or mainly performing work other than the Services; or
 - 8.1.8.6 transfer any Incumbent Contractor Personnel to another site.

8.2 Provisions of Particulars

- 8.2.1 The Parties shall meet in good faith in order to agree the List of Transferring Employees by the date specified in the Detailed Transition Plan; such list shall be based on the Preliminary Prescribed Particulars.
- 8.2.2 If the parties fail to agree the List of Transferring Employees by the date specified in the Detailed Transition Plan, such matter shall be resolved in accordance with the Dispute Resolution Procedure.
- 8.2.3 The Incumbent Contractor shall:
 - 8.2.3.1 by the date specified in the Detailed Transition Plan (or as determined in accordance with Clause 7.2.2), provide all of the Prescribed Particulars in respect each of the employees named on the List of Transferring Employees to the Authority and Replacement Contractor;

- 8.2.3.2 no later than four (4) weeks prior to the Cutover Date, provide a final list of all of the Prescribed Particulars of the employees named on the List of Transferring Employees to the Authority and Replacement Contractor;
 - 8.2.3.3 use its reasonable endeavours to clarify (at no extra cost) any matter concerning the Prescribed Particulars and/or any matter or query concerning any employee named on the List of Transferring Employees on which clarification is reasonably requested by the Authority or Replacement Contractor as soon as reasonably practicable after having received such request and in any event within fourteen (14) days of such request; and
 - 8.2.3.4 co-operate (at no extra cost) with any other reasonable requests made by the Authority or Replacement Contractor concerning the Prescribed Particulars as soon as reasonably practicable after having received such request and in any event within fourteen (14) days of such request.
- 8.2.4 The Incumbent Contractor shall not make any changes to the names or number of employees included on the List of Transferring Employees without the prior written consent of the Authority, such consent not to be unreasonably withheld.

8.3 Duty of Consultation

- 8.3.1 Before the Cutover Date the Incumbent Contractor shall comply with its obligations pursuant to Regulation 13 of the Transfer Regulations and shall fully indemnify the Authority and any Replacement Contractor from and against each and every claim, proceeding, liability, action, fine, penalty, cost, loss, award, expenses (including reasonable legal expenses) and demands arising out of its or its Subcontractors failure to comply with any of their obligations under Regulation 13 of the Transfer Regulations.
- 8.3.2 In accordance with its obligations under the Transfer Regulations, the Replacement Contractor shall provide the Incumbent Contractor in writing with such information and at such time as will enable the Incumbent Contractor to carry out its duties under Regulation 13 of the Transfer Regulations concerning measures envisaged by the Replacement Contractor (as applicable), in relation to the employees named on the List of Transferring Employees.

8.4 Indemnities in relation to Transferring Employees

- 8.4.1 The Incumbent Contractor shall fully indemnify the Authority and the Replacement Contractor (and its Subcontractors) from and against each and every claim, proceeding, liability, action, fine, penalty, cost, loss, award, expense (including reasonable legal expenses) and demand arising out of or in connection with any omission or inaccuracy in the information or guidance provided by the Incumbent Contractor pursuant to Clause 7.2.3 or contained in the Preliminary Prescribed Particulars.

- 8.4.2 The Replacement Contractor shall fully indemnify the Incumbent Contractor (and its Subcontractors) and the Authority from and against each and every claim, proceeding, liability, action, fine, penalty, cost, loss, award, expense (including reasonable legal expenses) and demands arising out of or in connection with:
- 8.4.2.1 any Employment Claim by any Transferring Employee or any claim submitted on their behalf by a trade union or employee representative or any other claim or demand arising from any act, fault or omission by the Replacement Contractor (or its Subcontractors) on or after the Cutover Date;
 - 8.4.2.2 any changes in the working conditions of any Transferring Employees occurring on or after the Cutover Date; or
 - 8.4.2.3 the fact that any Transferring Employee will not be employed on the same terms and conditions as those enjoyed immediately prior to the Cutover Date or with benefits equivalent to those enjoyed immediately prior to the Cutover Date.
- 8.4.3 The Incumbent Contractor shall fully indemnify the Authority and Replacement Contractor (and its Subcontractors) from and against each and every claim, proceeding, liability, action, fine, penalty, cost, loss, award, expense (including reasonable legal expenses) and demands arising out of or in connection with any Employment Claim by any Incumbent Contractor Personnel or former Incumbent Contractor Personnel or any claim submitted on their behalf by a trade union or employee representative or any other claim or demand arising from any act, fault or omission by the Incumbent Contractor (or its Subcontractors or agents) prior to the Cutover Date.

8.5 Additional Unanticipated Transferring Employees

- 8.5.1 The provisions of this Paragraph 7.5 shall apply if the employment or engagement of any Incumbent Contractor Personnel who is or are not on the List of Transferring Employees transfers or is alleged to have transferred to the Replacement Contractor or Authority in accordance with the Transfer Regulations or otherwise on or after the Cutover Date.
- 8.5.2 The Replacement Contractor or Authority as appropriate may, within six (6) weeks of becoming aware of the transfer or the alleged transfer, notify the Incumbent Contractor of such person ("**Notification**"). If the Replacement Contractor or the Authority provides Notification, it shall give the Incumbent Contractor a period of twenty eight (28) days from the date of such Notification in which to offer (or procure that the appropriate Subcontractor offers) employment to such person and for such person to accept such offer of employment ("**Offer Period**").
- 8.5.3 If there has been no Notification by the Replacement Contractor or the Authority within the six (6) weeks period specified in Clause 7.5.2 above, such person shall be deemed to be a Transferring Employee whose

employment transferred to the Replacement Contractor on the Cutover Date pursuant to the Transfer Regulations and the terms of this Agreement.

- 8.5.4 If the Incumbent Contractor (or the appropriate Subcontractor) makes such an offer of employment pursuant to clause 7.5.2 above, the Replacement Contractor or as appropriate the Authority (as appropriate) shall give all reasonable assistance to the Incumbent Contractor in order to procure that such person accepts such offer of employment.
- 8.5.5 If, on the expiry of the Offer Period, such person has not accepted the offer of employment or if the Incumbent Contractor (or as appropriate its Subcontractor) has not made an offer of employment to such person or if such person has accepted such offer of employment but has not served notice of termination on the Replacement Contractor or Authority (as appropriate) the Replacement Contractor or Authority (as appropriate) may terminate the employment (or in the case of an alleged transfer take such steps as are necessary to terminate any contract of employment which is alleged to exist) of such person within twenty one (21) days from the expiry of the Offer Period and the provisions of clause 7.5.6 below shall apply.
- 8.5.6 The Incumbent Contractor shall fully indemnify the Replacement Contractor and the Authority from and against all claims, proceeding, liability, action, fine, penalty, cost, loss, award, expense (including reasonable legal expense) and demands arising out of or relating to such termination (or purported termination), any legally required action taken in order to effect such termination and from and against any Employment Claim or other sums payable to such person in relation to his employment prior to such termination, provided always that the Replacement Contractor or Authority (as the case may be):
- 8.5.6.1 gives such person his or her contractual notice of termination or statutory minimum notice (whichever is the greater) or payment in lieu thereof; and
 - 8.5.6.2 complies in all material respects with the statutory dismissal procedures as set out in part 1 of Schedule 2 to the Employment Act 2002 where applicable.

9. PENSIONS

9.1 Provision of Pension Schemes

- 9.1.1 The Replacement Contractor shall provide pension scheme(s) (the "Replacement Pension Schemes") which are certified by the Government Actuary's Department (GAD) as providing:
- 9.1.1.1 Broadly Comparable benefits to those provided by the 'Classic' section of the Principal Civil Service Pension Scheme (including any pay increases required to match the employees take home pay) for the Group B Transferring Employees;
 - 9.1.1.2 Substantially Similar benefits to those provided by the Incumbent Pension Schemes for the Group C Transferring

Employees who are in, or are eligible to join, a defined benefit pension scheme;

9.1.1.3 Substantially Similar benefits to those provided by the Incumbent Pension Schemes for the Group C Transferring Employees who are in, or are eligible to join, a defined contribution pension scheme; and

9.1.1.4 access to the Replacement Contractor's standard money purchase pension scheme for all Transferring Employees who meet the minimum criteria for joining such a scheme and are not eligible to join the pension schemes identified in Clauses 8.1.1.1 to 8.1.1.3 above.

9.1.2 The Replacement Contractor shall offer membership of the appropriate Replacement Pension Schemes to each Transferring Employee (unless such Transferring Employee fails to meet the minimum criteria for such Replacement Pension Scheme pursuant to Clause 8.1.1.4 above) with effect from the Cutover Date.

9.1.3 The Replacement Contractor shall procure the observance of the provisions of this Paragraph 8 by its Subcontractors to the effect that the Subcontractors provide the same pension rights, options and benefits to the Transferring Employees or Transferring Members (as appropriate) who at any time or from time to time become employed by a Subcontractor as the Replacement Contractor is required to provide under this Agreement from the date at which they become employed by a Subcontractor and for so long as they remain so.

9.2 Option to Bulk Transfer

9.2.1 The Authority may, at its sole discretion, require that all or some of the Potential Transferring Members have the option to elect for a transfer payment to be made from the Incumbent Pension Schemes to the Replacement Pension Schemes for the purpose of acquiring additional rights in the Replacement Pension Schemes.

9.2.2 The Replacement Contractor shall therefore procure that each Potential Transferring Member who joins the Replacement Pension Schemes shall have the option to elect for a transfer payment to be made from the Incumbent Pension Schemes to the Replacement Pension Schemes for the purpose of acquiring additional rights in the Replacement Pension Schemes.

9.2.3 Details of the option to transfer described in Paragraph 8.2.2 above, shall be contained in the transfer letter ("Transfer Letter"), which shall have attached to it an appropriate form of acceptance for completion by the Potential Transferring Members. The Transfer Letter and acceptance forms shall be in a form prepared by the Incumbent Contractor and agreed by the Replacement Contractor. The Transfer Letter shall be sent to the Potential Transferring Members by the Incumbent Contractor no later than sixty (60) days after the Cutover Date and shall specify that any response to the Transfer Letter shall be sent to the Incumbent Contractor. The election to

transfer will expire no later than ninety (90) days after dispatch of the Transfer Letter.

- 9.2.4 The Replacement Contractor agrees to procure that, subject to receipt of the full amount of the Transfer Amount calculated pursuant to Paragraph 8.3 below, any Potential Transferring Member who elects to be transferred on a bulk transfer basis will be granted credit on a year for year (or such other adjusted period of service basis which may be agreed by the parties (and approved by GAD)) to be of equivalent or better actuarial value in a scheme that provides benefits for the Potential Transferring Member which are:

9.2.4.1 Broadly Comparable to those provided by the 'Classic' section of the Principal Civil Service Pension Scheme (including any pay increases required to match the employees take home pay) for the Group B Transferring Employees; or

9.2.4.2 Substantially Similar to those provided by the Incumbent Pension Schemes for the Group C Transferring Employees who are in, or are eligible to join, a defined benefit pension scheme.

9.3 Bulk Transfer Calculation

- 9.3.1 The Transfer Amount for the Transferring Members shall be calculated in accordance with the Incumbent Contractor's actuarial assumptions and methodologies set out and agreed in Appendix 1 of Schedule C and this Paragraph 8.3.
- 9.3.2 The Incumbent Contractor shall provide the Replacement Contractor and the Authority with a complete and accurate list of the Transferring Members within thirty (30) days of the expiry of the option to transfer given in the Transfer Letter in accordance with Paragraph 8.2.3 above.
- 9.3.3 Subject to Paragraph 8.3.4 below, the Incumbent Contractor shall use its reasonable endeavours to procure that within ninety (90) days of the expiry of the option to transfer given in the Transfer Letter in accordance with Paragraph 8.2.3 above, the Incumbent Actuary shall calculate the Transfer Amount and notify such calculation to the Replacement Actuary.
- 9.3.4 The Replacement Contractor shall use all reasonable endeavours to procure that within sixty (60) days of receipt of the notification of the calculation in Paragraph 8.3.3, the Replacement Actuary shall confirm and verify that the Transfer Amount has been calculated in accordance with the Incumbent Contractor's actuarial assumptions and methods set out and agreed in Appendix 1 of Schedule C. In the event the Incumbent Actuary and the Replacement Actuary are unable to agree on the value of the Transfer Amount, the parties shall refer to the Dispute Resolution Procedure for resolution.
- 9.3.5 The Parties undertake to procure that all information and data (which shall be true, complete and accurate in all respects) necessary in order to permit the Incumbent Actuary to calculate and the Replacement Actuary to verify

the Transfer Amount shall be given to those actuaries as soon as practicable and without unreasonable delay.

9.4 Payment of the Transfer Amount

- 9.4.1 Subject to the calculation of the Transfer Amount for the Transferring Members having been determined by the Incumbent Actuary and verified by the Replacement Contractor Actuary, the Incumbent Contractor shall use reasonable endeavours to procure that the Transfer Payment will be paid by the trustees of the Incumbent Pension Schemes to the trustees of the Replacement Pension Schemes by the Payment Date. This payment will be made by way of a transfer to the Replacement Pension Scheme of such assets as the trustees of the Incumbent Pension Scheme and Replacement Pension Scheme may agree, provided that in default of agreement it will be paid in cash.
- 9.4.2 To the extent the trustees of the Incumbent Pension Schemes fail to pay their respective parts of the Transfer Payment to the trustees of the Replacement Pension Scheme, the Incumbent Contractor shall pay to the Replacement Contractor (no later than ten (10) days after receipt of a written demand from the Replacement Contractor) the Transfer Deficit as adjusted by the Timing Adjustment from the Payment Date to the actual payment under this paragraph.
- 9.4.3 The Replacement Contractor shall procure that any sums received in accordance with Clause 8.4.2 shall be paid to the trustees of the relevant Replacement Pension Scheme as soon as reasonably possible.

9.5 Bulk Transfer Shortfall

- 9.5.1 The Parties agree that if the Transfer Payment is less than the Bulk Transfer Liability for the Transferring Members and the Authority elects that all or some of the Transferring Members have the option to elect to transfer payment to be made from the Incumbent Pension Schemes to the Replacement Pension Schemes for the purpose of acquiring additional rights in the Replacement Pension Schemes the provision of this Paragraph 8.5 shall apply.
- 9.5.2 The Replacement Contractor shall use all its reasonable endeavours to procure that within thirty (30) days of the Payment Date, the Replacement Actuary shall notify such value of the Shortfall to the Authority and GAD.
- 9.5.3 The Authority shall use all its reasonable endeavours to procure that within thirty (30) days of receipt of the notification of the calculation in Paragraph 8.5.2 GAD shall confirm and verify that the Shortfall has been calculated in accordance with the Replacement Contractor's actuarial assumptions and methodologies set out and agreed in Appendix 2 of Schedule C.
- 9.5.4 The Replacement Contractor undertakes to procure that any additional information and data (which shall be true, complete and accurate in all aspects) necessary in order to permit GAD to verify the Shortfall amount shall be given to GAD as soon as practicable and without unreasonable delay.

9.5.5 The Authority shall, subject to the limits specified in paragraph 3.1 of Schedule 6 of the Replacement Agreement, pay to the Replacement Contractor the amounts agreed by the Authority and Replacement Contractor as covering the shortfall liability in accordance with the provisions of the Replacement Agreement.

9.5.6 The Replacement Contractor shall procure that any sums received in accordance with Clause 8.5.5 shall be paid to the trustees of the relevant Replacement Pension Scheme as soon as reasonably possible.

10. INVOICING

10.1 The Parties shall pay all sums due under this Agreement within thirty (30) days of receipt of a valid invoice.

10.2 Interest shall be payable on any late payments under this Agreement in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

11. CONFIDENTIALITY

11.1 Without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information, the Incumbent Contractor and the Replacement Contractor acknowledge that any Confidential Information obtained from or relating to the Crown, its servants or agents is the property of the Crown.

11.2 Each Party hereby warrants that:

11.2.1 any person employed or engaged by that Party (in connection with this Agreement in the course of such employment or engagement) shall only use Confidential Information for the purposes of this Agreement;

11.2.2 any person employed or engaged by that Party (in connection with this Agreement in the course of such employment or engagement) shall not disclose any Confidential Information to any third party without the prior written consent of both of the other Parties;

11.2.3 that Party shall take all necessary precautions to ensure that all Confidential Information is treated as confidential and not disclosed (save as aforesaid) or used other than for the purposes of this Agreement by its employees, servants, agents or Subcontractors; and

11.2.4 neither it nor any person engaged by it, whether as a servant or a consultant or otherwise, shall use the Confidential Information for the solicitation of business from the other or from the other Party's servants or consultants or otherwise.

11.3 The provisions of Clauses 10.1 and 10.2 shall not apply to any information which:

11.3.1 is or becomes public knowledge other than by breach of this Clause 10; or

11.3.2 is in the possession of the receiving Party without restriction in relation to disclosure before the date of receipt from the disclosing Party; or

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- 11.3.3 is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or
- 11.3.4 is independently developed without access to the Confidential Information; or
- 11.3.5 is required to be disclosed by law or by any judicial, arbitral, regulatory or other authority of competent jurisdiction.
- 11.4 Nothing in this Clause 10 shall be deemed or construed to prevent the Authority from disclosing any Confidential Information obtained from the Incumbent Contractor or from the Replacement Contractor:
- 11.4.1 to any other department, office or agency of Her Majesty's Government, provided that the Authority has required that such information is treated as confidential by such departments, offices and agencies, and their servants or agents, including requiring such servants or agents to enter into a confidentiality undertaking where appropriate; or
- 11.4.2 to any consultant, contractor or other person engaged by the Authority in connection herewith, provided that the Authority shall have obtained from the consultant, contractor or other person a signed confidentiality undertaking on substantially the same terms as are contained in this Clause 10; or
- 11.4.3 which is disclosed by the Authority in the discharge of the Authority's obligations to supply information for parliamentary, governmental, judicial or other administrative purposes.
- 11.5 Nothing in Clause 11.2 shall prevent any Party from using data processing techniques, ideas and know how gained during the performance of this Agreement in the furtherance of its normal business, to the extent that this does not relate to a disclosure of Confidential Information.
- 12. WARRANTIES**
- 12.1 The Incumbent Contractor warrants and represents that:
- 12.1.1 it has full capacity and authority and all necessary consents (including but not limited to, where its procedures so require, the consent of its parent company) to enter into and to perform this Agreement and that this Agreement is executed by a duly authorised representative of the Incumbent Contractor;
- 12.1.2 its obligations hereunder shall be performed by appropriately experienced, qualified and trained personnel with all due skill, care and diligence including but not limited to good industry practice and (without limiting the generality of this Clause) in accordance with its own established internal procedures;
- 12.1.3 all information supplied to the Authority or the Replacement Contractor pursuant to this Agreement, or during the procurement of the Replacement Agreement, is materially accurate and complete.

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- 12.2 The Replacement Contractor warrants and represents that:
- 12.2.1 it has full capacity and authority and all necessary consents (including but not limited to, where its procedures so require, the consent of its parent company) to enter into and to perform this Agreement and that this Agreement is executed by a duly authorised representative of the Replacement Contractor; and
 - 12.2.2 its obligations hereunder shall be performed by appropriately experienced, qualified and trained personnel with all due skill, care and diligence including but not limited to good industry practice and (without limiting the generality of this Clause) in accordance with its own established internal procedures.
- 12.3 Except as expressly stated in this Agreement, all warranties and conditions, whether express or implied by statute, common law or otherwise (including but not limited to fitness for purpose) are hereby excluded to the maximum extent permitted by law.
- 13. LIMITATION OF LIABILITY**
- 13.1 None of the Parties exclude or limit their liability for:
- 13.1.1 death or personal injury resulting from negligence, or for any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982; or
 - 13.1.2 any losses or damages in respect of the provisions of Clauses 7 and 8.
- 13.2 Nothing in this Agreement shall exclude or limit the liability of any Party in respect of fraud or fraudulent misrepresentation.
- 13.3 Subject always to Clauses 13.1 and 13.2, any liability of the Incumbent Contractor to the Authority or of the Authority to the Incumbent Contractor for all claims arising whether in contract, tort (including negligence), misrepresentation (other than where made fraudulently), breach of statutory duty or otherwise under this Agreement shall be limited to the limits set out in the Original Agreement.
- 13.4 Subject always to Clauses 13.1 and 13.2, any liability of the Replacement Contractor to the Authority or of the Authority to the Replacement Contractor for all claims arising whether in contract, tort (including negligence), misrepresentation (other than where made fraudulently), breach of statutory duty or otherwise under this Agreement shall be limited to the limits set out in the Replacement Agreement.
- 13.5 Subject always to Clause 13.1 and 13.2, the liability of the Incumbent Contractor to the Replacement Contractor or of the Replacement Contractor to the Incumbent Contractor for all claims (by way of indemnity or otherwise) arising whether in contract, tort (including negligence), misrepresentation (other than where made fraudulently), breach of statutory duty or otherwise under this Agreement shall be limited to five hundred thousand pounds (£500,000).
- 13.6 For the avoidance of doubt, the aggregate liability of the Incumbent Contractor under the Original Agreement shall be inclusive of any liability to the Replacement Contractor hereunder.

- 13.7 For the avoidance of doubt, the aggregate liability of the Replacement Contractor under the Replacement Agreement shall be inclusive of any liability to the Incumbent Contractor hereunder.
- 13.8 Subject always to Clauses 13.1 and 13.2, in no event shall any Party be liable for:
- 13.8.1 indirect or consequential loss or damage; and/or
 - 13.8.2 loss of profits, business, revenue, goodwill or anticipated savings.
- 13.9 Subject always to Clauses 13.3, 12.4 and 13.5 the provisions of Clause 13.8 shall not be taken as limiting:
- 13.9.1 the right of each Party to claim from any other Party for additional operational and administrative costs and expenses; and/or
 - 13.9.2 the right of each Party to claim from any other Party for any costs or expenses rendered nugatory.

14. DISPUTE RESOLUTION PROCEDURE

General

- 14.1 All disputes between any of the Parties arising out of or relating to this Agreement shall be referred, by any Party involved in the dispute, to the parties specified in the Detailed Transition Plan acting as a joint body for dispute resolution.
- 14.2 Work and activity to be carried out under this Agreement shall not cease or be delayed by this Dispute Resolution Procedure.
- 14.3 For the avoidance of doubt this Clause 13 shall in no way prejudice any rights or remedies of the Parties under this Agreement including and without limitation the right of termination.
- 14.4 Subject to Clause 13.17, each Party shall bear its own costs in relation to any procedure adopted pursuant to this Clause 13.

Escalation

- 14.5 If the dispute cannot be resolved by the Parties' representatives nominated under Clause 14.1 within a maximum of seven (7) days (or such other time as otherwise agreed in writing by the Parties) after it has been referred to them under Clause 14.1 then:
- 14.5.1 if the dispute is agreed by the parties to be of a technical nature or is expressed by this Agreement to be subject to expert determination it may be referred for final determination to an expert (referred to in this Clause as the "Neutral Adviser") who shall be deemed to act as expert and not as arbitrator; or
 - 14.5.2 otherwise the Parties shall attempt to settle the dispute by mediation in accordance with Clauses 14.6 - 14.10; or, failing that
 - 14.5.3 it shall be determined pursuant to Clause 15.10.

Mediation

- 14.6 If any dispute is not resolved within seven (7) days of referral to the Parties' representatives under Clause 13.1 above, then (subject to Clause 13.5.1) the Parties shall attempt to settle the dispute by mediation in accordance with the CEDR Model Mediation Procedure.
- 14.7 To initiate the mediation any Party may give notice in writing (the "ADR notice") to the other Parties requesting a mediation. If the Parties cannot agree the identity of a mediator within seven (7) days of the ADR notice, CEDR will, at the request of any Party, appoint a mediator. The mediation is to take place not later than twenty eight (28) days or such other period as the Parties may agree after the ADR notice. If there is an issue with regard to the conduct of the mediation upon which the Parties cannot agree within fourteen (14) days of the ADR notice, then CEDR will, at the request of any Party, decide the issue for the Parties after consultation with them.
- 14.8 Any of the Parties may invite the mediator to provide a non-binding but informative opinion in writing. The mediator need only comply with such a request if he/she considers it would be helpful. Any written opinion given by the mediator shall contain suggestions as to the settlement terms which he/she considers appropriate in all the circumstances and will be provided on a without prejudice basis and shall not be used in evidence in any legal proceedings arising in connection with this Agreement without the prior written consent of the Parties.
- 14.9 If the Parties accept the mediator's opinion or otherwise reach agreement on the resolution of the dispute, such agreement shall be confirmed in writing and, once signed by the authorised representatives of the Parties shall be binding on the Parties.
- 14.10 If the Parties fail to reach agreement within twenty eight (28) days or such other period as the Parties may agree of the mediator being appointed then any dispute between them may be referred to litigation pursuant to Clause 15.10.

Expert Determination

- 14.11 The Neutral Adviser shall be selected after a written request by one Party to the others by mutual agreement or, failing agreement, within fourteen (14) days shall be chosen at the request of any Party by the President for the time being of the Chartered Institute of Arbitrators who shall be requested to choose a suitably qualified and experienced Neutral Adviser for the dispute in question.
- 14.12 Fourteen (14) days after the Neutral Adviser has accepted the appointment the Parties shall submit a written report on the dispute to the Neutral Adviser and to each other and seven (7) days thereafter shall submit any written replies they wish to make to the Neutral Adviser and to each other. Unless agreed otherwise between the Parties, each report and reply shall be not more than twenty (20) pages in length and shall only be supported by such evidence as is strictly necessary.
- 14.13 The Parties will then afford the Neutral Adviser all necessary assistance which the Neutral Adviser requires to consider the dispute. The Neutral Advisor may require the Parties to attend an oral hearing which shall be limited to 8 hours in total.

- 14.14 The Neutral Adviser shall be instructed to deliver his determination to the Parties within fourteen (14) days (or such other period as may be agreed between the Parties and the Neutral Adviser) after the submission of the written replies pursuant to Paragraph 13.12.
- 14.15 Decisions of the Neutral Adviser shall be final and binding and not subject to appeal except in the case of fraud or manifest error (in which case the dispute shall be determined pursuant to Clause 15.10).
- 14.16 The Neutral Adviser shall have the same powers to require any Party to produce any documents or information to him and the other Party as an arbitrator.
- 14.17 The fees of the Neutral Adviser shall be borne by the Parties in the proportions determined by the Neutral Adviser having regard (amongst other things) to the conduct of the Parties in relation to the dispute in question.

Cooperation in Proceedings

- 14.18 The Incumbent Contractor acknowledges that in order to ensure the effective resolution of disputes occurring between the Authority, Replacement Contractor and any other incumbent supplier of the Authority, the Incumbent Contractor may be required to participate in proceedings for the resolution of such dispute.
- 14.19 The Incumbent Contractor shall provide the Authority and Replacement Contractor with all reasonable assistance and information that the Authority or Replacement Contractor may request from it in order to ensure the effective resolution of a dispute between the Authority, Replacement Contractor and any other incumbent supplier of the Authority.
- 14.20 The Authority reserves the right to join any linked disputes between the Parties or other incumbent suppliers of the Authority on the terms specified in this Clause 14.

Pension Disputes

- 14.21 For any dispute pursuant to Clause 8.3.4 the Parties agree that:
- 14.21.1 in the event the Parties choose to resolve the dispute by mediation, GAD shall act as a mediator; and
- 14.21.2 in the event the Parties choose to resolve the dispute by expert determination, an expert shall be appointed by the President of the Institute of Actuaries.

15. TERMINATION AND CONSEQUENCES OF TERMINATION**15.1 Termination**

- 15.1.1 The Authority has the right to terminate this Agreement at any time by notice in writing to the Incumbent Contractor and the Replacement Contractor whenever the Authority has the right to terminate the Original Agreement but without prejudice to Clause 14.2.
- 15.1.2 The Authority has the right to terminate this Agreement at any time by notice in writing to the Incumbent Contractor and Replacement Contractor whenever the Authority has the right to terminate the Replacement Agreement but without prejudice to Clause 14.2.

15.2 Consequences of Termination

- 15.2.1 On the termination of this Agreement as the result of the expiry or termination of the Replacement Agreement, the Incumbent Contractor and the Authority shall continue to comply with their obligations under the Original Agreement.
- 15.2.2 On the termination of this Agreement as the result of the expiry or the termination of the Original Agreement, the Replacement Contractor and the Authority shall continue to comply with their obligations under the Replacement Agreement.
- 15.2.3 Except as expressly provided in this Agreement, termination of this Agreement shall be without prejudice to any accrued rights and obligations hereunder.

16. GENERAL PROVISIONS**16.1 Force Majeure**

- 16.1.1 For the purposes of this Agreement the expression “Force Majeure” shall mean any cause affecting the performance by a Party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control including (but without limiting the generality thereof) governmental regulations, fire, flood, or any disaster, or an industrial dispute affecting a third party for which a substitute third party is not reasonably available. Any act, event, omission, happening or non-happening will only be considered Force Majeure if it is not attributable to the wilful act, neglect or failure to take reasonable precautions of the affected Party, its servants, agents or employees. For the avoidance of doubt, any industrial dispute by the employees of any of the Parties shall not be considered an event of Force Majeure.
- 16.1.2 No Party shall in any circumstances be liable to the other Parties for any loss of any kind whatsoever including but not limited to any damages or abatement of charges whether directly or indirectly caused to or incurred by such Party by reason of any failure or delay in the performance of its obligations hereunder which is due to Force Majeure. Notwithstanding the foregoing, all of the Parties shall use all reasonable endeavours to continue to perform, or resume performance of, such obligations hereunder for the duration of such Force Majeure event. The Incumbent Contractor shall remain liable to perform any contingency services pursuant to the Original Agreement, save where such contingency services are themselves also affected by the Force Majeure event.
- 16.1.3 If any Party becomes aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part it shall forthwith notify the other Parties by the most expeditious method then available and shall inform the other Parties of the period which it is estimated that such failure or delay shall continue.

16.2 Assignment and Subcontracting

Neither the Incumbent Contractor nor the Replacement Contractor shall assign, sublicense or declare a trust in respect of its rights under all or a part of this Agreement or the benefit or advantage hereof without the consent of the Authority first being obtained in writing (such consent not to be unreasonably withheld or delayed).

16.3 Notices

16.3.1 Any notice or other communication in connection with this Agreement shall be deemed to have been properly delivered if sent by recorded or registered post or by fax and shall be deemed for the purposes of this Agreement to have been given or made at the time the letter would, in the ordinary course of post, be delivered or at the time shown on the sender's fax transmission report.

16.3.2 For the purposes of Clause 16.3.1 above the address of each of the Parties shall be those specified in the Detailed Transition Plan.

16.4 Further Assurance

The Incumbent Contractor shall carry out whatever further actions the Authority and/or the Replacement Contractor reasonably requires from time to time (including execution of further documents) for the purpose of giving the Authority and/or the Replacement Contractor the full benefit of the provisions of this Agreement.

16.5 Entire Agreement

16.5.1 This Agreement, together with the Original Agreement and Replacement Agreement, constitutes the entire agreement between the Parties in relation to its subject matter, and replaces and extinguishes all prior agreements, draft agreements, arrangements, undertakings, or collateral contracts of any nature made by the parties, whether oral or written, in relation to such subject matter.

16.5.2 Each Party acknowledges that in entering into this Agreement it is not relying on, and shall have no rights or remedies (whether in tort, under statute or otherwise) in respect of, any statements, collateral or other warranties, assurances, undertakings or representations (whether innocently or negligently made) by any other Party to this Agreement.

16.6 Rights of Third Parties

This Agreement is not intended to be for the benefit of, and shall not be enforceable by, any third party (being any person other than the parties and their permitted successors and assignees) who claims rights under the Contracts (Rights of Third parties) Act 1999 or otherwise.

16.7 Severability

If any Clause, or part of a Clause, of this Agreement, is found by any court or administrative body of competent jurisdiction to be illegal, invalid or unenforceable, and the provision in question is not of a fundamental nature to the Agreement as a whole, the legality, validity or enforceability of the remainder of this Agreement

(including the remainder of the Clause which contains the relevant provision) shall not be affected.

16.8 Amendments

16.8.1 No change under this Agreement shall be effective unless made in accordance with this Clause 15.8.

16.8.2 The change must be approved on behalf of all of the Parties at an appropriate level of authorisation and must be made by a written instrument, signed on behalf of all of the Parties, which expressly purports to amend this Agreement and which expressly refers to the Clause(s) or Schedule(s) so amended.

16.8.3 Unless and until such amendment is made in accordance with Clause 15.8.2, this Agreement shall not in any way be considered to have been amended.

16.9 No waiver

The failure to exercise, or delay in exercising, a right, power or remedy provided by this Agreement or by law shall not constitute a waiver of that right, power or remedy. If a party waives a breach of any provision of this Agreement this shall not operate as a waiver of a subsequent breach of that provision, or as a waiver of a breach of any other provision.

16.10 Jurisdiction

This Agreement is governed by English law and, subject to Clause 13, the Parties hereby submit to the exclusive jurisdiction of the courts of England and Wales.

Signed:

Signed by:
Full name (capitals):
Position:
For and on behalf of the Authority

Signed by:
Full name (capitals):
Position:
For and on behalf of the Incumbent Contractor

Signed by:
Full name (capitals):
Position:
For and on behalf of the Replacement Contractor