

## **Schedule 30**

### **Employee Transfer Arrangements on Entry, Staff Transfer on Exit and Pensions**

## ANNEX 1

### EMPLOYEE TRANSFER ARRANGEMENTS ON ENTRY

#### 1. DEFINITIONS

- 1.1 In this Schedule, save where otherwise provided, words and terms defined in Schedule 1 (Definitions) shall have the meaning ascribed to them in Schedule 1 (Definitions).

#### 2. AUTHORITY EMPLOYEES

##### 2.1 Authority Employee Information / Charges Adjustment

- 2.1.1 Three months prior to the Relevant Transfer Date, the Authority shall provide the Contractor with the Provisional List. The Authority shall inform the Contractor of any changes to the Provisional List as soon as reasonably practicable up to 14 days prior to the Relevant Transfer Date.
- 2.1.2 The Contractor shall provide any information provided to it by the Authority under paragraph 2.1.1 above to an Employing Subcontractor within seven Business Days of receipt to the extent that such Expected Authority Transferees are to transfer to an Employing Subcontractor under a Relevant Transfer on the Relevant Transfer Date.
- 2.1.3 Fourteen days prior to the Relevant Transfer Date the Authority shall provide to the Contractor the Final List, together with Employee Liability Information in respect of Expected Authority Transferees to the extent not already provided, save that where this information has previously been provided, the Authority is only obliged to confirm whether this is still accurate.
- 2.1.4 Paragraphs 2.1.1 and 2.1.3 above are subject to the Authority's obligations in respect of the Data Protection Act 1998 (the "DPA") and the Authority shall use its reasonable endeavours to obtain the consent of its employees to the extent necessary under the DPA or provide the data in anonymous form in order to enable disclosure of the information required under paragraphs 2.1.1 or 2.1.3 above.
- 2.1.5 Where any differences between the employee lists at Appendix 2 (which shows the employee information on which the Contractor based the Authority personnel costs element of the Charges, that element being £ [REDACTED]) and the Final List result in reasonable additional Costs to the Contractor and/or any Employing Subcontractor, the Contractor may make a reasonable adjustment to the Charges to meet such reasonable additional Costs that the Contractor and/or any Employing Subcontractor incurs as a result of such a change provided that such a change is not as a result of an act or omission of the Contractor and/or any Employing Subcontractor. The Contractor shall produce such reasonable evidence of the reasonable additional Costs incurred as the Authority may reasonably require as soon as is reasonably practicable and in any event no later than 28 days following the receipt of such a request prior to any adjustment

being made. No adjustment to the Charges shall be made where there is a failure to produce such evidence within this timescale or where the Authority considers such information insufficient.

- 2.1.6 Where the Authority considers that any differences between the employee lists at Appendix 2 (which shows the employee information on which the Contractor based the Authority personnel costs element of the Charges, that element being [REDACTED]) and the Final List result in a reduction of Costs (including, without limitation, any reduction in employment and pension costs due to the Contractor and/or Employing Subcontractor employing new recruits in place of Authority employees who were on the list at Appendix 2 but not the Final List) to the Contractor and/or any Employing, the Authority may make a reasonable adjustment to the Charges to reflect any reasonable reduction in Costs (including, without limitation, any reduction in employment and pension costs due to the Contractor and/or Employing Subcontractor employing new recruits in place of Authority employees who were on the list at Appendix 2 but not the Final List) to the Contractor and/or any Employing Subcontractor. The Authority or the Contractor (as appropriate) shall produce such reasonable evidence as the other Party shall reasonably require as soon as is reasonably practicable and in any event no later than 28 days after a request is made in writing in order to establish such a reduction in Costs. A failure by the Contractor to produce such evidence shall preclude the Contractor from objecting to an adjustment to the Charges. A failure by the Authority to produce such evidence, save where such a failure is as a result of an act or omission of the Contractor or Employing Subcontractor, shall result in no adjustment to the Charges.
- 2.1.7 The Authority shall notify the Contractor of any changes to the terms and conditions of any Expected Authority Transferee and/or Authority Employee that are made after the Effective Date but prior to the Relevant Transfer Date as soon as reasonably practicable. The Contractor shall provide any such information to an Employing Subcontractor within seven (7) Business Days of receipt to the extent that such employees are to transfer to an Employing Subcontractor under a Relevant Transfer on the Relevant Transfer Date.
- 2.1.8 Where, following the Relevant Transfer Date, the Contractor and/or the Authority provides reasonable evidence to the other Party that any of the details in the Final List were inaccurate (other than details in respect of the number or identity of the Expected Authority Transferees which shall not be taken into account in respect of any Charges adjustment due to additional Costs) the Charges shall be adjusted to reflect the adjustment which would have been made under paragraphs 2.1.5 and/or 2.1.6 above (if any) had the Final List been accurate on the Relevant Transfer Date. The Authority or the Contractor (as appropriate) shall produce such reasonable evidence of the inaccuracies and/or the additional Costs and/or reduction in Costs (including, without limitation, any reduction in employment and pension costs due to the Contractor and/or Employing Subcontractor employing new recruits in place of Expected Authority Transferees who were on the Final List but who do not transfer) incurred as the other Party may reasonably require as soon as is reasonably practicable and in any event, no later than 28 days following the receipt of such a request prior to any adjustments being made. Where there is a failure by the Contractor to produce such evidence within this timescale or where the Authority

reasonably considers such information insufficient, no adjustment to the Charges shall be made. A failure by the Authority to produce reasonable evidence to demonstrate inaccuracies and/or the reduction in Costs, save where such a failure is as a result of an act or omission of the Contractor or Employing Subcontractor, shall result in no adjustment to the Charges.

- 2.1.9 No changes shall be made to the Charges in respect of inaccuracies raised under paragraphs 2.1.5, 2.1.6 or 2.1.8 more than six (6) months following the Relevant Transfer Date.
- 2.1.10 In the event that a claim or allegation is made by an Unexpected Employee that he has or should have transferred to the Contractor and/or any Subcontractor by virtue of the Transfer Regulations and this Agreement, the Party receiving the claim or allegation shall notify the other Party (or the Contractor shall notify the Authority on the Subcontractor's behalf) in writing within ten (10) Business Days of receiving written notification of the Unexpected Employee's claim or allegation, whereupon:
- (a) the Authority shall, as soon as reasonably practicable, offer and/or confirm continued employment to the Unexpected Employee or take such other steps so as to effect a written withdrawal of the claim or allegation; and
  - (b) in the event that the Unexpected Employee's claim or allegation is not withdrawn or resolved the Authority shall notify the Contractor (who will notify any Subcontractor who is a party to such claim or allegation), and the Contractor or Subcontractor shall either employ the Unexpected Employee or as soon as reasonably practicable, serve notice to terminate the Unexpected Employee's employment in accordance with his contract of employment; and
  - (c) save to the extent covered by any of the indemnities set out in paragraphs 2.2.9 to 2.2.11 below, the Authority shall effect an adjustment to the Charges which has the effect of reimbursing the Contractor for any of the following liabilities incurred by the Contractor or Subcontractor in dealing with or disposing of the Unexpected Employee's claim or allegation:
    - (i) any additional costs of employing the Unexpected Employee to provide the Services under this Agreement up to the date of dismissal where the Unexpected Employee has been dismissed in accordance with paragraph 2.1.10 (b) above;
    - (ii) any liabilities acquired by virtue of the Transfer Regulations in relation to the Unexpected Employee;
    - (iii) any liabilities relating to the termination of the Unexpected Employee's employment provided the Contractor or Subcontractor has used reasonable endeavours to find alternative employment for the Unexpected Employee or, if this has not been possible, provided the Contractor or Subcontractor has carried out the termination fairly and in accordance with all statutory obligations imposed on an employer;

- (iv) any liabilities incurred under a settlement of the Unexpected Employee's claim which was reached with the express permission of the Authority;
  - (v) reasonable administrative costs incurred by the Contractor or Subcontractor in dealing with the Unexpected Employee's claim or allegation, subject to a cap per Unexpected Employee of £[REDACTED]; and
  - (vi) legal and other professional costs reasonably incurred;
- (d) the Contractor shall be deemed to have waived its right to an adjustment as per paragraph 2.1.10(c) above if it fails without reasonable cause to take, or fails to procure any Subcontractor takes, any action in accordance with any of the timescales referred to in this paragraph 2.1.10.

2.1.11 The Authority shall indemnify the Contractor in respect of any statutory or contractual or contractual redundancy payment, any redundancy payment made as a result of following Authority practise or any applicable collective agreements (excluding, for the avoidance of doubt, any sum for unfair dismissal, damages, pensions, interest or costs) which shall be payable to any of the Authority Employees provided that the dismissal by reason of redundancy:-

- (a) arises from the Contractor or the Employing Subcontractor complying with the timing and costs of the "Ringfenced Redundancy Costs" as set out in the finance model included at Schedule 18, and
- (b) is made in accordance with the terms of paragraph 4.1.5 of Schedule 17 (Charges and Invoicing), and
- (c) The Contractor warrants that it shall and shall procure that any Employing Subcontractor shall:-
  - (i) seek to effect the dismissal on grounds of redundancy of any Authority Employee in accordance with the terms and conditions of employment of the Authority Employee and in accordance with any applicable collective agreements; and
  - (ii) comply with all relevant statutory obligations which are imposed on an employer; and
  - (iii) use its reasonable endeavours to effect any dismissal on grounds of redundancy fairly (which shall include, but not be limited to, using reasonable endeavours to find suitable alternative employment for the relevant Authority Employee).

2.1.12 For the purposes of paragraphs 2.1.11, it will be for the Contractor if so requested to demonstrate to the reasonable satisfaction of the Authority that in any particular case:-

- (a) redundancy is or was the genuine reason for the dismissal; and
  - (b) the Service Provider or any Subcontractor has followed a fair procedure in effecting the dismissal.
- 2.1.13 For the avoidance of doubt, the indemnity set out in paragraph 2.1.11 above in relation to employees performing Project Services shall only apply to those employees that have been subject to this Employer Transfer Agreement.

## 2.2 Obligations in Respect of Authority Employees

- 2.2.1 The Contractor and the Authority acknowledge, and the Contractor shall procure that the Employing Subcontractors acknowledge, that the provision of the Services under this Agreement will constitute a Relevant Transfer for the purposes of the Transfer Regulations.
- 2.2.2 The Contractor agrees and shall procure that the Employing Subcontractors agree that from the Relevant Transfer Date the contracts of employment of any Authority Employees together with any collective agreements (save insofar as such contracts and such agreements relate to benefits for old age, invalidity or survivors under any occupational pension scheme) will take effect as if originally made between the Contractor or an Employing Subcontractor and the Authority Employees (or the relevant trade union, as the case may be).
- 2.2.3 The Authority and the Contractor shall (and the Contractor shall procure that any Employing Subcontractors shall):
- (a) before and in relation to the Relevant Transfer Date liaise with each other and shall co-operate with each other in order to implement effectively the smooth transfer of the Authority Employees to the Contractor or Employing Subcontractor; and
  - (b) comply with their respective obligations under the Transfer Regulations including their obligations to inform and consult under Regulation 13.
- 2.2.4 The Authority shall be responsible for all emoluments and outgoings in respect of an Authority Employee (including without limitation all wages, bonuses, commissions, payments in respect of holiday taken up to the Relevant Transfer Date, PAYE, national insurance contributions and contributions to retirement benefit schemes) in respect of the period prior to the Relevant Transfer Date on which that Authority Employee transfers to the Contractor or Employing Subcontractor.
- 2.2.5 The Contractor or Employing Subcontractor (as the case may be) shall have responsibility for all emoluments and outgoings (including without limitation all wages, bonuses, commissions, payments in respect of holiday taken after the Relevant Transfer Date, PAYE, national insurance contributions and contributions to retirement benefit schemes) in relation to an Authority Employee with effect from and including the Relevant Transfer Date on which that Authority Employee transfers until the date that Authority Employee leaves the employment of the Contractor and/or Employing Subcontractor.

- 2.2.6 No later than three months after the Relevant Transfer Date the Contractor shall pay to the Authority a sum equal to the outstanding balance on the Relevant Transfer Date of any loan, salary, advance or other indebtedness of any Authority Employee due to the Authority immediately prior to the Relevant Transfer.
- 2.2.7 The Authority shall indemnify the Contractor against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any claim or claims by any Authority Employee brought against the Contractor and/or any Employing Subcontractor at any time arising out of or in connection with any acts or omissions of the Authority which occurred prior to the Relevant Transfer Date for that Authority Employee provided that all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with such claims are not the result of any act or omission of the Contractor and/or Employing Subcontractor.
- 2.2.8 The Authority shall indemnify the Contractor against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any claim or claims by any Authority Employee or trade union representative or Authority Employee representative brought against the Contractor, whether before or after the Relevant Transfer Date, arising out of any failure by the Authority to comply with its obligations under Regulation 13 of the Transfer Regulations in respect of any Authority Employee or any other employee of the Authority who transfers to the Contractor or any Employing Subcontractor pursuant to this Agreement and the Transfer Regulations or any other employee of the Authority affected by the Relevant Transfer effected by this Agreement (as defined by Regulation 13 of the Transfer Regulations), except to the extent that all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with such claims are the result of any act or omission of the Contractor and/or Employing Subcontractor.
- 2.2.9 The Contractor shall indemnify the Authority against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with:
- (a) any claim or claims brought by any Authority Employee against the Authority at any time on or after the Relevant Transfer Date on which that Authority Employee transferred which arise as a result of an act or omission of the Contractor or any Subcontractor during the period from and including the Relevant Transfer Date;
  - (b) any claim or claims brought by any employees (other than any Authority Employee) engaged in connection with the Services by the Contractor or any Subcontractor against the Authority at any time on or after the Relevant Transfer Date (including for the avoidance of doubt any health and safety and personal injury claims) which arise as a result of an act or omission of the Contractor or any Subcontractor from and including the Relevant Transfer Date

save to the extent that all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with such claims are the result of the act or omission of the Authority.

2.2.10 The Contractor shall indemnify the Authority against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any claim or claims by any employee or trade union representative or employee representative brought against the Authority, whether before or after the Relevant Transfer Date, arising out of any failure by the Contractor or any Subcontractor to comply with their obligations under Regulation 13 of the Transfer Regulations in relation to any Authority Employee or any other employee engaged wholly or mainly in connection with the Services by the Contractor or any Subcontractor or any other employee of the Contractor or any Subcontractor affected by the Relevant Transfer effected by this Agreement (as defined by Regulation 13 of the Transfer Regulations), save to the extent that any reasonable costs (including reasonable legal costs), losses, and expenses and all damages, compensation, fines and liabilities arising out of such claims are the result of the act or omission of the Authority.

2.2.11 The Contractor shall indemnify the Authority in respect of all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and other liabilities arising out of or in connection with or as a result of a substantial change proposed or made by the Contractor or any Employing Subcontractor to the working conditions of all or any Authority Employees to the material detriment of such Authority Employees. For the purposes of this paragraph the expressions "substantial change" and "material detriment" shall have the same meaning as for the purposes of Regulation 4(9) of the Transfer Regulations.

### 2.3 Post Transfer Reporting

2.3.1 The Contractor shall provide (and/or shall procure an Employing Subcontractor shall provide) the Authority with the following information as part of the normal reporting regime of this Agreement when any of the following events occur in relation to the Relevant Transfer:

- (a) disputes relating to compliance with the Transfer Regulations which are regarded as unresolved by a recognised Trade Union;
- (b) any court action or tribunal proceedings relating to compliance with the Transfer Regulations;
- (c) completed court action or tribunal proceedings relating to compliance with the Transfer Regulations;
- (d) out of court settlements relating to compliance with the Transfer Regulations

such reports shall also include information relating to Authority Employees transferred under the Transfer Regulations to Subcontractors as a result of this Agreement.



- 2.3.2 The Contractor shall provide (and/or shall procure an Employing Subcontractor shall provide) the Authority with information about the proposed agreed or imposed changes to terms and conditions of service in respect of Authority Employees. Such information shall be provided within 28 days of request made by the Authority and such request to be made no more than once in any period of twelve calendar months.
- 2.3.3 The Contractor acknowledges that information referred to in this paragraph 2.3 may also be used in considering the Contractor's bid to re-let, or in considering the Contractor's bid(s) for other contracts let by the Authority.
- 2.4 Application of Paragraphs in this Schedule to employed Unexpected Employees**
- 2.4.1 Paragraphs 2.2.2, 2.2.4 to 2.2.6, 2.2.7, 2.2.9, 2.2.11 and 2.3 of this Schedule and paragraph 2.5 of Schedule 30 Appendix 2 (Staff Transfer on Exit) shall apply to any Unexpected Employee whom the Contractor and/or any Subcontractor has decided to employ in accordance with paragraph 2.1.10(b) above save that references to "the Relevant Transfer Date" in paragraphs 2.2.4 to 2.2.6, 2.2.7 and 2.2.9 of this Schedule shall be construed as being references to the date on which such an Unexpected Employee took up employment with the Contractor or Subcontractor.
- 2.5 Contract Changes during the Service Agreement**
- 2.5.1 In the event there is a Contract Change which gives rise to a Relevant Transfer the provisions which shall apply to any transfer of employees pursuant to the Transfer Regulations from the Authority to the Contractor or any Subcontractors shall be dealt with at the time of the Contract Change, although the parties agree that the principles set out in the provisions of paragraphs 2, 3 and 4 of this Schedule in their entirety shall apply.
- 2.6 Employee Liability Information**
- 2.6.1 The Parties consider that the provisions of this Agreement (and in particular paragraph 2.1.5 of this Schedule) provide sufficient protection and opportunity for compensation to the Contractor or Employing Subcontractors in the event of any breach by the Authority of its obligations under regulation 11 of the Transfer Regulations.
- 2.6.2 The Parties agree that the Authority is not a "third party" for the purpose of Regulation 11(7)(b) of the Transfer Regulations and nothing in this Agreement shall have the effect of making the Authority such a third party.
- 2.7 General**
- 2.7.1 The Contractor shall not recover any Costs and/or other losses under this Schedule where such Costs and/or losses are recoverable by the Contractor elsewhere in this Agreement and/or have been recovered under the Transfer Regulations or otherwise.
- 3. PREVIOUS CONTRACTOR EMPLOYEES**
- 3.1 Employee Information**

- 3.1.1 Three months prior to the Relevant Transfer Date, the Authority shall provide to the Contractor the information listed in Appendix 4 in respect of Previous Contractor Employees, to the extent that such information has been provided to the Authority by the Previous Contractor.
- 3.1.2 The Authority shall provide the Contractor with any update to the information provided under paragraph 3.1.1 as soon as is reasonably practicable, to the extent that such information has been provided to the Authority by the Previous Contractor.
- 3.1.3 The Contractor shall provide any information provided to it by the Authority pursuant to paragraphs 3.1.1 and 3.1.2 above to an Employing Subcontractor within seven Business Days of receipt to the extent that such Previous Contractor Employees are to transfer to an Employing Subcontractor under a Previous Contractor Relevant Transfer on the Previous Contractor Relevant Transfer Date.
- 3.1.4 The Authority does not warrant the accuracy of the information provided under paragraphs 3.1.1 and 3.1.2 above.
- 3.1.5 Where the information provided by the Authority with respect to Previous Contractor Employees is inaccurate or where it differs from the Previous Contractor Employee information detailed in Appendix 2, and results in reasonable additional Costs to the Contractor and/or any Employing Subcontractor over and above the assumed Previous Contractor Employees personnel costs element of the Charges, that element being [REDACTED], the Contractor may make a reasonable adjustment to the Charges to meet such reasonable additional Costs that the Contractor and/or any Employing Subcontractor incurs as a result of the inaccurate information provided. The Contractor shall produce such reasonable evidence of the reasonable additional Costs incurred as the Authority may reasonably require as soon as is reasonably practicable and in any event no later than 28 days following the receipt of such a request prior to any adjustment being made. No adjustment to the Charges shall be made where there is a failure to produce such evidence within this timescale or where the Authority in its reasonable opinion considers such information insufficient.
- 3.1.6 Where the Authority considers that any differences between the employee lists at Appendix 2 (which shows the employee information on which the Contractor based the Previous Contractor Employees personnel costs element of the Charges, that element being £[REDACTED]) and the information provided by the Authority pursuant to paragraphs 3.1.1 and 3.1.2 above result in a reduction of Costs (including, without limitation, any reduction in employment and pension costs due to the Contractor and/or Employing Subcontractor employing new recruits in place of Previous Contractor Employees who were on the list at Appendix 2 but not in the updated information provided by the Authority) to the Contractor and/or any Employing Subcontractor, the Authority may make a reasonable adjustment to the Charges to reflect any reasonable reduction in Costs (including, without limitation, any reduction in employment and pension costs due to the Contractor and/or Employing Subcontractor employing new recruits in place of Previous Contractor Employees who were on the list at Appendix 2 but not in the updated information provided by the Authority) to the Contractor and/or any Employing Subcontractor. The

Authority and or the Contractor (as appropriate) shall produce such reasonable evidence as the other Party shall reasonably require as soon as is reasonably practicable and in any event no later than 28 days after a request is made in writing in order to establish such a reduction in Costs. A failure by the Contractor to produce such evidence shall preclude the Contractor from objecting to an adjustment to the Charges. A failure by the Authority to produce such evidence, save where such a failure is as a result of an act or omission of the Contractor or Employing Subcontractor, shall result in no adjustment to the Charges.

- 3.1.7 No changes shall be made to the Charges in respect of inaccuracies raised under paragraphs 3.1.4 or 3.1.6 more than six (6) months following the Relevant Transfer Date.

### 3.2 **Obligations in respect of Previous Contractor Employees**

- 3.2.1 The Contractor and the Authority acknowledge (and the Contractor shall procure that the Employing Subcontractor acknowledges) that the provision of the Services under this Agreement will constitute a Relevant Transfer.
- 3.2.2 The Contractor agrees (and will procure that the Employing Subcontractor agrees) that from the Relevant Transfer Date the contracts of employment of any Previous Contractor Employees together with any collective agreements (save insofar as such contracts and such agreements relate to benefits for old age, invalidity or survivors under any occupational pension scheme) will take effect as if originally made between the Contractor or an Employing Subcontractor and the Previous Contractor Employees (or the relevant trade union, as the case may be) subject to any variations to such contracts of employment made pursuant to regulation 9 of the Transfer Regulations, where applicable.
- 3.2.3 Save for any liabilities in respect of Previous Contractor Employees under a Relevant Statutory Scheme or Schemes, the Contractor or Employing Subcontractor (as the case may be) shall have responsibility for all emoluments and outgoings (including without limitation all wages, bonuses, commissions, payments in respect of holiday taken after the Relevant Transfer Date, PAYE, national insurance contributions and contributions to retirement benefit schemes) in relation to the Employees with effect from and including the Relevant Transfer Date on which that Previous Contractor Employee transfers until the date the Previous Contractor Employee leaves the employment of the Contractor or Employing Subcontractor.
- 3.2.4 In the event that a claim or allegation is made by an employee of the Previous Contractor, other than an employee listed within Appendix 2 of this Schedule (as such list is updated by subsequent information notified by the Authority pursuant to paragraphs 3.1.1 and 3.1.2 above), that he has or should have transferred to the Contractor and/or any Subcontractor by virtue of the Transfer Regulations and this Agreement, (an "**Unexpected Previous Contractor Employee**") the Party receiving the claim or allegation shall notify the other Party in writing within ten (10) Business Days of receiving written notification of the Unexpected Previous Contractor Employee's claim or allegation whereupon:

- (a) the Contractor shall take (or procure that the relevant Subcontractor shall take) such steps as are necessary to effect a written withdrawal of the claim or allegation; and
- (b) in the event that the Unexpected Previous Contractor Employee's claim or allegation is not withdrawn or resolved the Contractor shall notify the Authority and the Contractor or, as appropriate, Subcontractor shall either employ the Unexpected Previous Contractor Employee or—, as soon as reasonably practicable, serve notice to terminate the Unexpected Previous Contractor Employee's employment in accordance with his contract of employment; and
- (c) save to the extent covered by any of the indemnities set out in paragraphs 3.3.1 to 3.3.3 below, the Authority shall effect an adjustment to the Charges which has the effect of reimbursing the Contractor for any of the following liabilities incurred by the Contractor or Subcontractor in dealing with or disposing of the Unexpected Contractor Employee's claim or allegation:
  - (i) any additional costs of employing the Unexpected Contractor Employee to provide the Services under this Agreement up to the date of dismissal where the Unexpected Previous Contractor Employee has been dismissed in accordance with paragraph 3.2.4(b) above;
  - (ii) any liabilities acquired by virtue of the Transfer Regulations in relation to the Unexpected Previous Contractor Employee;
  - (iii) any liabilities relating to the termination of the Unexpected Previous Contractor Employee's employment provided the Contractor or Subcontractor has used reasonable endeavours to find alternative employment for the Unexpected Previous Contractor Employee or, if this has not been possible, provided the Contractor or Subcontractor has carried out the termination fairly and in accordance with all statutory obligations imposed on an employer;
  - (iv) any liabilities incurred under a settlement of the Unexpected Previous Contractor Employee's claim which was reached with the express permission of the Authority;
  - (v) reasonable administrative costs incurred by the Contractor or Subcontractor in dealing with the Unexpected Previous Contractor Employee's claim or allegation, subject to a cap per Unexpected Contractor Employee of [REDACTED]; and
  - (vi) legal and other professional costs reasonably incurred;
- (d) the Contractor shall be deemed to have waived its right to an adjustment as described in paragraph 3.2.4(c) above if it fails without reasonable cause to take, or fails to procure any

Subcontractor takes, any action in accordance with any of the timescales referred to in this paragraph 3.2.4.

### 3.3 Indemnities

3.3.1 The Contractor shall indemnify the Authority for itself and for any Previous Contractor against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with:

- (a) any claim or claims brought by any Previous Contractor Employee against the Authority at any time on or after the Relevant Transfer Date on which that Previous Contractor Employee transferred which arise as a result of an act or omission of the Contractor or any Subcontractor during the period from and including the Relevant Transfer Date;
- (b) any claim or claims brought by any employees (other than any Previous Contractor Employee) engaged in connection with the Services by the Contractor or any Subcontractor against the Authority at any time on or after the Relevant Transfer Date (including for the avoidance of doubt any health and safety and personal injury claims) which arise as a result of an act or omission of the Contractor or any Subcontractor from and including the Relevant Transfer Date

save to the extent that all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with such claims are the result of the act or omission of the Authority.

3.3.2 The Contractor shall indemnify the Authority (for itself and for any Previous Contractor) against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any claim or claims by any employee or trade union representative or employee representative brought against the Authority, whether before or after the Relevant Transfer Date, arising out of any failure by the Contractor or any Subcontractor to comply with their obligations under Regulation 13 of the Transfer Regulations in relation to any Previous Contractor Employee or any other employee engaged wholly or mainly in connection with the Services by the Contractor or any Subcontractor or any other employee of the Contractor or any Subcontractor affected by the Relevant Transfer effected by this Agreement (as defined by Regulation 13 of the Transfer Regulations), save to the extent that any reasonable costs (including reasonable legal costs), losses, and expenses and all damages, compensation, fines and liabilities arising out of such claims are the result of the act or omission of the Authority.

3.3.3 The Contractor shall indemnify the Authority (for itself and for any Previous Contractor) in respect of all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and other liabilities arising out of or in connection with or as a result of a substantial change proposed or made by the Contractor or any Employing Subcontractor to the working conditions of all or any Authority Employees

to the material detriment of such Previous Contractor Employees. For the purposes of this paragraph the expressions "substantial change" and "material detriment" shall have the same meaning as for the purposes of Regulation 4(9) of the Transfer Regulations.

- 3.3.4 The Authority shall indemnify and keep indemnified the Contractor against any claim or claims (and all costs and expenses thereof) by any Previous Contractor Employee against it arising out of or in connection with any act or omission of the Previous Contractor to the Transfer Date.
- 3.3.5 The Authority shall indemnify the Contractor in respect of any statutory or contractual redundancy payment, any redundancy payment made as a result of following Previous Contractor practise or any applicable collective agreements (excluding, for the avoidance of doubt, any sum for unfair dismissal, damages, pensions, interest or costs), which shall be payable to any of the Previous Contractor Employees provided that the dismissal by reason of redundancy:-
- (a) arises from the Contractor or the Employing Subcontractor complying with the timing and costs of the "Ringfenced Redundancy Costs" as set out in the finance model included at Schedule 18.
- 3.3.6 The Contractor warrants that it shall and shall procure that any Employing Subcontractor shall:-
- (a) seek to effect the dismissal on grounds of redundancy of any Previous Contractor Employee in accordance with the terms and conditions of employment of the Previous Contractor Employee and in accordance with any applicable collective agreements; and
  - (b) comply with all relevant statutory obligations which are imposed on an employer; and
  - (c) use its reasonable endeavours to effect any dismissal on grounds of redundancy fairly (which shall include, but not be limited to, using reasonable endeavours to find suitable alternative employment for the relevant Previous Contractor Employee).
- 3.3.7 For the purposes of paragraphs 3.3.5 and 3.3.6, it will be for the Contractor if so requested to demonstrate to the reasonable satisfaction of the Authority that in any particular case:-
- (a) redundancy is or was the genuine reason for the dismissal; and
  - (b) the Service Provider or any Subcontractor has followed a fair procedure in effecting the dismissal
- 3.3.8 For the avoidance of doubt, the indemnity set out in paragraph 3.3.5 above in relation to employees performing Project Services shall only apply to those employees that have been subject to this Employer Transfer Agreement.

#### 3.4 Post Transfer Reporting

3.4.1 The Contractor shall provide (or shall procure that an Employing Subcontractor shall provide) the Authority with the following information as part of the normal reporting regime of this Agreement when any of the following events occur in relation to the transfer of Previous Contractor Employees:

- (a) disputes relating to compliance with the Transfer Regulations which are regarded as unresolved by a recognised Trade Union;
- (b) any court action or tribunal proceedings relating to compliance with the Transfer Regulations;
- (c) completed court action or tribunal proceedings relating to compliance with the Transfer Regulations; and
- (d) out of court settlements relating to compliance with the Transfer Regulations if possible having regard to the wording of the settlement

such reports shall also include information relating to Previous Contractor Employees transferred under the Transfer Regulations to Subcontractors as a result of this Agreement.

3.4.2 The Contractor shall provide (and/or shall procure an Employing Subcontractor shall provide) the Authority with information about the proposed agreed or imposed changes to terms and conditions of service in respect of Previous Contractor Employees. Such information shall be provided within 28 days of request made by the Authority and such request to be made no more than once in any period of twelve calendar months.

3.4.3 The Contractor acknowledges that the information referred to in this paragraph 3.3.8 may also be used in considering the Contractor's bid to re-let, or in considering the Contractor's bid(s) for other contracts let by the Authority.

### 3.5 Employee Liability Information

3.5.1 The Parties consider that the provisions of this Agreement provide sufficient protection and opportunity for compensation to the Contractor or Employing Subcontractors in the event of any breach by the Authority of its obligations under regulation 11 of the Transfer Regulations.

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

## 4. CODE OF PRACTICE ON WORKFORCE MATTERS

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

4.2 All New Joiners who become members of the Code of Practice on Workforce Matters Compliant Pension Scheme shall remain eligible to participate in such a

scheme throughout the period of their employment with the Contractor or any Subcontractor in connection with the Services.

- 4.3 The Contractor shall notify the Authority within seven (7) days of any dispute arising in connection with the application of the Code of Practice on Workforce Matters under this contract and the Contractor and the Authority shall seek to resolve the dispute.
- 4.4 In the event that the Authority considers that a resolution of the dispute in respect of the Code of Practice on Workforce Matters is not resolved under paragraph 4.3 above, it shall be resolved by the alternative dispute resolution procedure set out in Appendix 1.
- 4.5 Any costs arising out of the appointment of the Independent Person shall be shared between the Authority and the Contractor.
- 4.6 The Contractor shall comply with any reasonable requests by the Authority in connection with the Authority's requirement to monitor compliance with the Code of Practice on Workforce Matters.
- 4.7 Subject to paragraph 4.5 above, the Authority and the Contractor shall bear their own costs arising out of the use of the dispute resolution procedure in Appendix 1.



**Appendix 1**

## Code of Practice on Workforce Matters – Alternative Dispute Resolution Procedure

- 1.1 In the event that a dispute arises under paragraph 4.3 of this Schedule, the Contractor and the Authority shall agree the appointment of an Independent Person and, upon agreement of both parties, two other persons, one with an employer background and one with a trade union background to assist the Independent Person, within fourteen (14) working days] days of such notification.
- 1.2 Where the Contractor and the Authority fail to agree the appointment of an Independent Person within the time period specified in paragraph 1.1 of Appendix 1, the Authority's choice shall prevail.
- 1.3 The Contractor and the Authority shall supply any Independent Person with such information as he may request within the timescale set by the Independent Person or, where no such timescale is given, within fourteen (14) working days of such a request.
- 1.4 Where an Independent Person decides that the package of terms and conditions offered by the Contractor is not compliant with the Code of Practice on Workforce Matters, the Contractor shall, within ten (10) working days (or such longer period agreed between the parties and the Independent Person) of such a decision, arrange a meeting with the parties concerned including any recognised trade unions and/or elected representatives of the New Joiners concerned, and the Authority and the Independent Person will be notified of the date and be given the opportunity to attend the meeting.
- 1.5 The Contractor will use its best endeavours to reach agreement on terms and conditions for New Joiners which are compliant with the Code of Practice on Workforce Matters and the view of the Independent Person as to whether or not any revised terms are compliant with the Code of Practice on Workforce Matters shall be binding on the Contractor.
- 1.6 Where no agreement is reached as to terms and conditions for New Joiners which are compliant with the Code of Practice on Workforce Matters, the Contractor shall then make final submissions to the Independent Person within the timescale requested by the Independent Person or, where no timescale is given, within five (5) working days of his request to do so in order that the Independent Person can determine the terms and conditions to be offered to New Joiners.
- 1.7 The determination of the Independent Person as to the terms and conditions to be offered to New Joiners shall be binding on the Contractor and shall apply to all New Joiners.

## Appendix 2

List of employment information on which the Contractor based the Charges for Authority and Previous Contractor Employees personnel costs

Employee Reference	Current Employer	Start Date	Job Title
CIS.002	Serco		Junior SQL Server Admin
CIS.003	Serco		Boundary Systems Admin
CIS.006	Serco		Network Technician
CIS.007	Serco		IT Technician
CIS.008	Serco		IT Technician
CIS.010	Serco		Peoplesoft Support
CIS.013	Serco		Neighbourhood Technician
CIS.014	Serco		CAS Manager
CIS.015	Serco		Procurement Support Administrator
CIS.017	Serco		CIS Contract Manager
CIS.018	Serco		SHEF Manager
CIS.019	Serco		Resource Coordinator
CIS.020	Serco		System Integration Engineer
CIS.021	Serco		Boundary Systems Team Leader
CIS.022	Serco		Peoplesoft Technical Support
CIS.023	Serco		E-Mail System Admin Team Leader
CIS.024	Serco		IT Stores Technician
CIS.025	Serco		Project Manager
CIS.026	Serco		Senior Network Administrator
CIS.027	Serco		IT Technician
CIS.028	Serco		Senior Project Manager
CIS.029	Serco		(S) Net Nt Sys Admin
CIS.030	Serco		IT Technician
CIS.031	Serco		Data Centre Manager
CIS.032	Serco		System Integration Engineer
CIS.033	Serco		Network Team Leader
CIS.034	Serco		Peoplesoft Developer
CIS.035	Serco		Peoplesoft Support
CIS.036	Serco		Deputy Data Centre Manager
CIS.037	Serco		NT Syst Admin Team Leader
CIS.038	Serco		Mobile ATO
CIS.039	Serco		NT Sys Admin
CIS.040	Serco		Systems Integration Engineer
CIS.041	Serco		IT Technician
CIS.042	Serco		Deputy Data Centre Manager
CIS.043	Serco		Systems Administrator (server)
CIS.044	Serco		PA to Operational Leadership Team (Secondment)
CIS.045	Serco		Oracle DBA
CIS.046	Serco		Stores Technician
CIS.047	Serco		Neighbourhood Technician
CIS.048	Serco		Senior Network Administrator
CIS.049	Serco		Senior IT Technician
CIS.050	Serco		IT Stores Technician
CIS.051	Serco		Service Desk Agent

Employee Reference	Current Employer	Start Date	Job Title
CIS.052	Serco		Project Manager
CIS.053	Serco		Project Manager
CIS.054	Serco		IT Technician
CIS.055	Serco		Neighbourhood Technician
CIS.056	Serco		Account Security Manager
CIS.057	Serco		Desktop Manager
CIS.059	Serco		ERS Support
CIS.060	Serco		Technical Lead
CIS.061	Serco		Peoplesoft Support
CIS.062	Serco		Business Support Manager
CIS.063	Serco		Principal Technical Architect
CIS.064	Serco		IT Technician
CIS.065	Serco		NT Systems Administrator Team Lead
CIS.066	Serco		Neighbourhood Technician
CIS.068	Serco		Peoplesoft Support
CIS.070	Serco		Database Administrator
CIS.071	Serco		Change Manager
CIS.072	Serco		NT System Administrator
CIS.074	Serco		CIS Site Manager
CIS.075	Serco		Service Desk Agent
CIS.076	Serco		Corporate Application Systems Support
CIS.077	Serco		Training Co-ordinator
CIS.078	Serco		Peoplesoft Support
CIS.079	Serco		IT Stores Technician
CIS.080	Serco		Senior IMAC Technician
CIS.081	Serco		CIS Site Manager
CIS.082	Serco		Junior Sys Admin
CIS.084	Serco		Magic systems Developer
CIS.085	Serco		CAS/Magic Support
CIS.086	Serco		IT Technician 2
CIS.090	Serco		Senior Sys admin
CIS.091	Serco		Mobile SCIDA
CIS.092	Serco		Network Engineer
CIS.093	Serco		Infrastructure Manager
CIS.095	Serco		System Integration Engineer
CIS.096	Serco		Voice Data Engineer
CIS.098	Serco		Server Manager
CIS.099	Serco		Application System Administrator (Messaging)
CIS.100	Serco		Server Systems Admin
CIS.101	Serco		IMAC Technician
CIS.102	Serco		NT Sys Admin
CIS.103	Serco		Service Co-Ordinator
CIS.104	Serco		Site Information Technology Security Officer (SITSO)
CIS.105	Serco		Business Process Developer Sms
CIS.106	Serco		Service Co-Ordinator
CIS.107	Serco		IT Technician
CIS.108	Serco		SCIDA
CIS.109	Serco		Service Desk Agent

Employee Reference	Current Employer	Start Date	Job Title
CIS.110	Serco		Central Services Manager
CIS.111	Serco		Service Desk Manager
CIS.112	Serco		Executive Assistant
CIS.113	Serco		Technical Operations Manager
CIS.114	Serco		Project Manager
CIS.116	Serco		Business Process Developer Sms
CIS.117	Serco		Senior Project Services Manager
CIS.118	Serco		Nt System Administrator
CIS.119	Serco		Magic Administrator
CIS.120	Serco		Neighbourhood Technician
CIS.121	Serco		Neighbourhood Technician
CIS.122	Serco		Network Technician
CIS.123	Serco		SCIDA
CIS.124	Serco		SCIDA
CIS.125	Serco		IT Technician
CIS.126	Serco		Network Technician
CIS.127	Serco		Service Desk Agent
CIS.128	Serco		I-Serve Support/Developer
CIS.129	Serco		Data Centre Manager
CIS.131	Serco		Senior IMAC Technician
CIS.133	Serco		Training Delivery Manager
CIS.135	Serco		Neighbourhood Technician
CIS.136	Serco		Stores Technician
CIS.137	Serco		IT Technician
CIS.138	Serco		SQL Database Administrator
CIS.140	Serco		Finance Manager
CIS.141	Serco		IT Technician
CIS.143	Serco		System Integration Engineer
CIS.144	Serco		Service Desk Agent
CIS.145	Serco		Boundary Systems Admin
CIS.146	Serco		Cas Technical Co-Ordinator
CIS.147	Serco		Neighbourhood Technician
CIS.148	Serco		Service Desk Agent
CIS.149	Serco		Service Desk Agent
CIS.150	Serco		Network Engineer
CIS.151	Serco		E-Mail System Administrator
CIS.152	Serco		Neighbourhood Technician
CIS.153	Serco		IMAC Technician
CIS.155	Serco		Quality Manager
CIS.157	Serco		Senior Nt Sys Administrator
CIS.158	Serco		Application System Administrator
CIS.159	Serco		Snet Nt Unix Sys Admin
CIS.160	Serco		Service Desk Agent
CIS.161	Serco		Procurement Manager
CIS.162	Serco		Contract Support Manager
CIS.163	Serco		Change Control Coordinator
CIS.164	Serco		IT Technician
CIS.165	Serco		NT Sys Admin
CIS.167	Serco		Application System Administrator
CIS.168	Serco		Asset Manager

Employee Reference	Current Employer	Start Date	Job Title
CIS.169	Serco		IMAC Technician
CIS.170	Serco		Junior Email Systems Administrator
CIS.171	Serco		Voice Data Engineer
CIS.172	Serco		System Integration Engineer
CIS.173	Serco		Account Customer Relationship Manager
CIS.174	Serco		Senior NT
CIS.175	Serco		Technical Architect
CIS.176	Serco		Drawing Office Manager
CIS.177	Serco		IT Technician
CIS.178	Serco		Systems Integration Engineer
CIS.179	Serco		Network Technician
CIS.180	Serco		Server Systems Admin
CIS.181	Serco		Network Engineer
CIS.183	Serco		HR Business Partner
CIS.185	Serco		Change Administrator
CIS.186	Serco		Technical Architect
CIS.187	Serco		Dstl Network Engineer
CIS.188	Serco		Dstl Service Desk Agent
CIS.189	Serco		Senior Project Manager
CIS.190	Serco		Unix Systems Admin
CIS.191	Serco		Telecomms Administrator
CIS.192	Serco		IT Purchase/Project Support
CIS.193	Serco		Procurement Support Administrator
CIS.194	Serco		Boundary Systems Administrator
CIS.195	Serco		Change Control Librarian
CIS.196	Serco		Unix (SNAPS) Systems Administrator
CIS.197	Serco		Unix Systems Administrator
CIS.198	Serco		Trainee Web Developer
CIS.199	Serco		Email Systems Administrator (Blackberry)

**Appendix 3**

## List of Ex-Authority Employees

Employee Reference	Current Employer	Start Date	Job Title
	DSTL		Web Author / designer
	DSTL		Project Manager
	DSTL		Project Manager
	DSTL		Lead Developer
	DSTL		Assistant Project Manager
	DSTL		Web Author / designer
	DSTL		Junior Developer
	DSTL		Lead Developer
	DSTL		Associate Project Manager

**Appendix 4****PERSONNEL INFORMATION TO BE RELEASED PURSUANT TO THIS AGREEMENT**

Pursuant to paragraphs 2.1.1 and 3.1.1 of this Schedule, the written statement of employment particulars as required by section 1 of the Employment Rights Act 1996 together with the following information (save where that information is included within that statement) will be provided to the extent it is not included within the written statement of employment particulars:

1. Personal, Employment and Career

a) Employee's full name; [Steria would assume this information will contain name prefix]

b) Date of birth and age;

[Steria proposes the addition of the following information:

Marital Status

Maiden Name (if applicable)

Previously TUPE transferred Y/N (Where Yes organisation transferred from and date of TUPE transfer)

Ex Public Sector (fair deal)]

c) Home address;

[Steria proposes the addition of the following information:

Telephone Number

Emergency contact details]

d) Security Vetting Clearance;

e) Job title;

f) Work location;

g) Conditioned hours of work;

[Steria proposes the addition of the following information:

contractual weekly hours and FTE weekly hours, working pattern]

h) Employment Status;

[Steria proposes the addition of the following information:

% of time spent delivering in-scope service]

i) Details of training and operating licensing required for Statutory and Health and Safety reasons;

j) Details of training or sponsorship commitments;

k) Standard Annual leave entitlement and current leave year entitlement and record;

l) Annual leave reckonable service date;

m) Details of disciplinary or grievance proceedings taken by transferring employees in the last two years;

n) Information of any legal proceedings between employees and their employer within the previous two years that the transferor has reasonable grounds to believe that an

employee may bring against the transferee arising out of their employment with the transferor;

- o) Issue of Uniform/Protective Clothing;
- p) Working Time Directive opt-out forms; and
- q) Date from which the latest period of continuous employment began.

[Steria proposes the addition of the following information:

Notice Period (from Employee and Employer)]

## 2. Performance Appraisal

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

## 3. Superannuation and Pay

- a) Maternity leave or other long-term leave of absence;
- b) Annual salary, Pensionable salary and rates of pay band/grade;

[Steria also proposes the addition of the following information:

Benefits (e.g. Level of Life Assurance, Level of PMI, Level of PHI, AN Other contractual benefits, Flexible Benefits)]

- c) Shifts, unsociable hours or other premium rates of pay;
- d) Overtime history for the preceding twelve-month period;
- e) Allowances and bonuses for the preceding twelve-month period;
- f) Details of outstanding loan, advances on salary or debts;
- g) Bank/building society account details for payroll purposes Tax Code;
- h) Cumulative pay for tax and pension purposes;
- i) Cumulative tax paid;
- j) National Insurance Number;
- k) National Insurance contribution rate;
- l) Other payments or deductions being made for statutory reasons;
- m) Any other voluntary deductions from pay;
- n) Civil Service Pension Scheme Membership (Opt-out of Civil Service Pension Scheme, Classic, Classic Plus, Premium, Defined Contribution) or, where relevant Contractor Scheme or other Contractor/Subcontractor\_\_pension scheme membership;
- o) For pension purposes, the notional reckonable service date;
- p) Pensionable pay history for three years to date of transfer;
- q) Percentage of any pay currently contributed under additional voluntary contribution arrangements; and
- r) Percentage of pay currently contributed under any added years arrangements.

## 4. Medical



- a) Sickness and absence records for the immediately preceding four-year period; and
  - b) Details of any active restoring efficiency case for health purposes.
5. Disciplinary
- a) Details of any active restoring efficiency case for reasons of performance; and
  - b) Details of any active disciplinary cases where corrective action is on going.
6. Further information
- a) Information about specific adjustments that have been made for an individual under the Disability Discrimination Act 1995;
  - b) Short term variations to attendance hours to accommodate a domestic situation;
  - c) Individuals that are TA members, or staff may have been granted special leave as a School Governor; and
  - d) Information about any maternity or other statutory leave or other absence from work.

**Appendix 5 – Actuary's Letter**