

**CUSTOMER CONTRACT REQUIREMENTS
BRITISH CHINOOK ENGINEERING SERVICES
CUSTOMER CONTRACT CS4D/1431**

CUSTOMER CONTRACT REQUIREMENTS

The following customer contract requirements apply to this contract to the extent indicated below. If this contract is for the procurement of commercial items under a Government prime contract, as defined in FAR Part 2.101, see Section 3 below.

1. Prime Contract Special Provisions The following prime contract special provisions apply to this purchase order

CSD/1431 CHINOOK HELICOPTER ENGINEERING SERVICES .

1. The following DEFCONS shall apply to the contract (full text can be accessed at <http://www.aof.mod.uk/aofcontent/tactical/toolkit/content/defcons/defcon.htm>):

DEFCON 5J	(Edn 07/08)	Unique Identifiers
DEFCON 76	(Edn 12/06)	Contractor's Personnel at Government Establishments
DEFCON 501	(Edn 04/04)	Definitions and Interpretations
DEFCON 502	(Edn 06/08)	Specifications
DEFCON 503	(Edn 07/05)	Amendments to Contract
DEFCON 507	(Edn 10/98)	Delivery
DEFCON 509	(Edn 09/97)	Recovery of Sums Due
DEFCON 513	(Edn 06/10)	Value Added Tax
DEFCON 515	(Edn 10/04)	Bankruptcy and Insolvency
DEFCON 516	(Edn 06/04)	Racial Discrimination
DEFCON 518	(Edn 09/97)	Transfer
DEFCON 520	(Edn 08/09)	Corrupt Gifts and Payments of Commission
DEFCON 521	(Edn 10/04)	Sub-Contracting to Supported Employment Enterprises
DEFCON 522	(Edn 07/99)	Payment (See Annex A)
DEFCON 522J	(Edn 05/03)	Payment under P2P
DEFCON 523	(Edn 03/99)	Payment of Bills Using the Bankers Automated Clearing Service (BACS) System

DEFCON 524	(Edn 10/98)	Rejection
DEFCON 525	(Edn 10/98)	Acceptance
DEFCON 526	(Edn 08/02)	Notices
DEFCON 527	(Edn 09/97)	Waiver
DEFCON 528	(Edn 10/04)	Overseas Expenditure and Import Licenses
DEFCON 529	(Edn 09/97)	Law (English)
DEFCON 530	(Edn 07/04)	Dispute Resolution (English Law)
DEFCON 531	(Edn 05/05)	Disclosure of Information
DEFCON 532A	(Edn 06/10)	Protection of Personal Data (Where personal data is not being processed on behalf of the Authority)
DEFCON 534	(Edn 06/97)	Prompt Payment (Sub Contracts)
DEFCON 537	(Edn 06/02)	Rights of Third Parties
DEFCON 538	(Edn 06/02)	Severability
DEFCON 566	(Edn 08/06)	Change of Control of Contractor
DEFCON 601	(Edn 10/04)	Redundant Materials in respect of Defcon 611
DEFCON 602A	(Edn 12/06)	Quality Assurance (With Quality Plan)
DEFCON 604	(Edn 11/04)	Progress Reports
DEFCON 609	(Edn 10/98)	Contractor's Records
DEFCON 610A	(Edn 12/02)	Enabling Contracts – Duration Period (Tasking Contracts)
DEFCON 611	(Edn 07/10)	Issued Property
DEFCON 615A	(Edn 03/04)	Orders for Articles / Services under Enabling Contracts
DEFCON 617	(Edn 12/02)	Enabling Contracts – Estimated Quantities
DEFCON 618	(Edn 12/02)	Enabling Contracts – Standing Offer
DEFCON 625	(Edn 10/98)	Co-operation on Expiry of Contract
DEFCON 632	(Edn 02/07)	Third Party Intellectual Property Rights – Rights and Restrictions
DEFCON 642	(Edn 06/97)	Progress Meetings
DEFCON 643	(Edn 07/04)	Price Fixing

DEFCON 684	(Edn 01/04)	Limitation on Claims (Aviation Products)
DEFCON 694	(Edn 06/06)	Accounting for Property of the Authority

1.2 – DEFCON NOTES

1.2.1 DEFCON 76 (General Conditions of Contract Applicable to Work Performed by Contractor's Personnel at Government Establishments)

1.2.2 The Contractor shall be required to apply the Government's Baseline Personnel Security Standard (BPSS) to those individual employees, sub-contractors and agents who will require access to Government Establishments, including any of Her Majesty's Ships or Vessels and Service Stations.

1.2.3 DEFCON 524 (Rejection) and DEFCON 525 (Acceptance)

1.2.3.1 The Contractor is reminded that under the provision of the Late Payment of Commercial Debts (Interest) Act, 1998, (DEFCON 522 refers), a payment made by the Authority to the Contractor for the supply of any article or service supplied against the Contract may not necessarily signify acceptance of the said article supplied against the Contract. The Authority reserves the right to invoke the terms of DEFCON 524 (Rejection) even if payment has already been made to the Contractor for the said article or service.

1.2.4 DEFCON 609 (Contractor's Records)

1.2.4.1 The Contractor shall provide the Authority with periodical access to the Contractor's processes and records for the purposes of assessing the contractor's achievements under the supplementary clause to DEFCON 76 (Edn 12/06) Note 1 above.

1.2.5 DEFENCE STANDARDS (DEFSTANS)

1.2.5.1 The following DEFSTAN shall apply to the Contract:

DEFSTAN 05-99 (Issue 2 Dated 7 Jan 04) – Managing Government Furnished Assets In Industry

1.3. PRECEDENCE

1.3.1 Where any condition herein conflicts with the other condition or requirement contained elsewhere in the contract the Contractor must seek guidance from the Commercial Branch named in the contract as to which prevails.

CONDITION 1.4 - DEFINITIONS

1.4.1 In the Contract, the terms and expressions shall be interpreted as follows except where the context requires otherwise;

1.4.1.1 Reference in the Contract to any Condition, Sub-Condition, Schedule, Paragraph or Annex is, except where it is expressly stated to the contrary, a reference to such Condition, Sub-Condition, Schedule, Paragraph or Annex of the

Contract;

1.4.1.2 Any reference to the Contract or to another document shall include any permitted variation, amendment or supplement to such document;

1.4.1.3 Any reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument (including any European Union Instrument) as amended, replaced, consolidated or re-enacted;

1.4.1.4 “Designated Officer” (DO) means officer responsible for the overall supervision of the contract.

1.4.1.5 Reference to “DEFFORM” 111 should read Schedule 4.

1.4.1.6 “Statement of Requirement” (SOR) means Schedule 3 that specifies the services to be performed by the Contractor on behalf of the Authority and minimum performance standards that are to be achieved.

1.4.1.7 “Price Schedule or Pricing Schedule means Schedule 1 that details the pricing arrangement for service to be provided pursuant to the Contract.

1.4.1.8 “Unit” Means the Ministry of Defence Establishment, Unit or Station named in the Schedules.

1.4.1.9 “Lead in Period” means the period between Contract award and Vesting Day.

1.4.1.10 “Vesting Day” means the date on which the Contractor commences the provision of services pursuant to this contract.

1.5 IN RESPECT OF DEFCON 643

1.5.1 This DEFCON shall only be applicable to the introduction of new labour categories where labour rates have not been previously agreed.

2. Security of Data

a. Each of the parties shall:

i. ensure as far as reasonably practicable, that Data is properly stored, is not accessible to unauthorised persons, is not altered, lost or destroyed and is capable of being retrieved only by properly authorised persons;

ii. ensure that, in addition to any security, proprietary and other information disclosure provision contained in the Contract, Messages and Associated Data are maintained in confidence, are not disclosed or transmitted to any unauthorised person and are not used for any purpose other than that communicated by the sending party or permitted by the Contract; and

iii. protect further transmission to the same degree as the originally transmitted Message and Associated Data when further transmissions of Messages and Associated Data are permitted by the Contract or expressly authorised by the sending party.

b. The sending party shall ensure that Messages are marked in accordance with the requirements of the Contract. If a further transmission is made the sender shall ensure that such markings are repeated in the further transmission.

c. The parties may apply special protection to Messages by encryption or by other agreed means, and may apply designations to the Messages for protective Interchange, handling and storage procedures. Unless the parties otherwise agree, the party receiving a Message so protected or designated shall use at least the same level of protection and protective procedures for any further transmission of the Message and its Associated Data for all responses to the Message and for all other communications by Interchange or otherwise to any other person relating to the Message.

d. If either party becomes aware of a security breach or breach of confidence in relation to any Message or in relation to its procedures or systems (including, without limitation, unauthorised access to their systems for generation, authentication, authorisation, processing, transmission, storage, protection and file management of Messages) then it shall immediately inform the other party of such breach. On being informed or becoming aware of a breach the party concerned shall:

- i. immediately investigate the cause, effect and extent of such breach;
- ii. report the results of the investigation to the other party; and
- iii. use all reasonable endeavours to rectify the cause of such breach.

e. Each party shall ensure that the contents of Messages that are sent or received are not inconsistent with the law, the application of which could restrict the content of a Message or limit its use, and shall take all necessary measures to inform without delay the other party if such an inconsistency arises.

3. Authenticity of Messages

a. Each Message shall identify the sending party and receiving party and its authenticity shall be verified by the means specified in the Adopted Protocol.

b. The parties agree not to contest the authenticity, admissibility or enforceability of Messages under the provisions of any applicable law relating to whether certain agreements be in writing and signed by the party to be bound thereby. Messages, when printed from electronic files and records established and maintained in the normal course of business will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form.

4. Integrity of Messages

a. The sending party shall ensure as far as is reasonably practicable that all Messages are complete, accurate and secure against being altered in the course of transmission and shall be liable for the direct consequences of any failure to perform his obligations.

b. Each party will accord all Messages the same status as would be applicable to a document or to information sent other than by electronic means, unless a Message can be shown to have been corrupted as a result of technical failure on the part of a machine, system or transmission line involved in the process of Interchange.

c. Upon either party becoming aware that a Message has been corrupted or if any Message is identified as incorrect then that party shall inform the other and the sending party shall re-transmit the Message as soon as practicable with a clear indication that it is a corrected Message.

d. The sending party shall not be liable for the consequences of a corrupted or incorrect transmission or any failure to re-transmit if the error is or should in all the circumstances be reasonably obvious to the receiving party. In such event the receiving party shall immediately notify the sending party thereof.

e. If the receiving party has reason to believe that a Message is not intended for him he shall notify the sending party and if so requested by the sending party shall, so far as is reasonably possible, Expunge from his system the

information contained in such Message.

5. Contracts (Rights of Third Parties) Act 1999

- a. **New Provider may enforce the terms of Clause 1.19 against the Contractor in accordance with the Contracts (Rights of Third Parties) Act 1999.**
- b. **The consent of a New Provider (save where the New Provider is the Authority) is not required to rescind, vary or terminate this Contract.**
- c. **Nothing in Clause 3.1.22 shall affect the accrued rights of the New Provider prior to the rescission, variation or termination of this Contract.**

6. PENSION MATTERS (a numbering system beginning with "3" is used in this section for the subsections):

DEFINITIONS

3.2.1 In this Condition unless the context otherwise requires, the following expressions have the following meanings:

“Actuary”: a Fellow of the Institute of Actuaries or a Fellow of the Faculty of Actuaries;

“Actuary’s Letter”: the bulk transfer terms issued by the PCSPS Actuary in respect of the Previous Contractor’s Scheme, (copies of which will be supplied at Contract Award), which specify the actuarial methods and assumptions for calculating the transfer value from PCSPS to the Previous Contractor’s Scheme;

“Assigned Employee” means an employee wholly or mainly employed, assigned or engaged in providing the Services;

“Ex-Authority Employee” means any ex-employee of the Authority listed in Annex A to Section 3 who:

- (a) **on the day before his employment first transferred from the Authority, was in Reckonable Service or would have been in Reckonable Service, but for the fact that he was long term absent from work; and**
- (b) **on the day before the Relevant Transfer Date is in service under the Previous Contractor’s Scheme by virtue of which he accrues pension benefits or would be in such service under the Previous Contractor’s Scheme, but for the fact that he is long term absent from work.**

“AVC (Additional Voluntary Contributions) Transfer Value” means the amount available as a transfer payment under the PCSPS AVC Scheme in respect of the invested contributions made by Consenting Employees to the PCSPS AVC Scheme towards securing Money Purchase Benefits thereunder;

“Consenting Employees” means those of the Ex-Authority Employees who join the Contractor’s Scheme on the Relevant Transfer Date and who consent in writing to payment of the Transfer Payment to the Contractor’s Scheme and who do not withdraw that request

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

“Contractor’s Actuary” means the Actuary appointed by the Contractor for the purposes of this Schedule;

“Contractor’s Scheme” means the one or more retirement benefits schemes established by the Contractor or in which it participates for the purposes of this Condition 3.2 (Pension Matters). A reference to the Contractor’s Scheme shall, where appropriate, include a reference to the trustees or administrators thereof;

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

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

“GAD” means the Government Actuary’s Department;

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

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

“Opted-out Ex-Authority Employee” means an Ex-Authority Employee who on the day before the date on which his employment first transferred from the Authority:

- a) had opted-out of membership of the PCSPS; and
- b) had retained the right under the rules of the PCSPS to opt back into membership of the PCSPS;

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

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

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

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

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

“Former Partnership Pension Account Employees” means Ex-Authority Employees who are members of the Previous Contractor’s Designated Stakeholder Pension Scheme who on the day before the Previous Relevant Transfer Date were entitled to a contribution from the Authority to the Partnership Pension Account;

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

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

“Previous Contractor” means a contractor providing the Services immediately prior to the Service Commencement Date.

“Previous Contractor's Scheme” means a retirement benefits scheme established by a Previous Contractor which provides benefits for and in respect of Ex-Authority Employees.

“Previous Contractor’s Partnership Pension Account Scheme” means a retirement benefits scheme established by the Previous Contractor for Former Partnership Pension Account Employees;

“Reckonable Service” means reckonable service under the Previous Contractor’s Scheme within the meaning of the rules of the Previous Contractor’s Scheme;

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

“Relevant Transfer Date” means the date on which the Relevant Transfer is effected;

“Service Commencement Date” means the date of commencement of the Services [if different from date of contract award];

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

“Sub-Contractor” means any person who enters into a Sub-Contract with the Contractor;

“Transfer Payment” means the value of the retirement and death benefits under the Contractor's Scheme prospectively and contingently payable to and in respect of the Ex-Authority Employees calculated by the Contractor's Scheme Actuary in accordance with the agreed bulk transfer terms and in accordance with Clause 2.4;

“Transfer Value Payment Date” means the date of payment of the Transfer Value;

“Transfer Value” means the value of the retirement and death benefits under the Previous Contractor’s Scheme which are prospectively and contingently payable to and in respect of the Consenting Employees as calculated by the Contractor’s Scheme Actuary in accordance with the Actuary’s Letter and verified by the Previous Contractor’s Actuary.

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

Contractor's Scheme

3.2.2 The Contractor shall notify the details of the Contractor's Scheme to the Authority no later than the Service Commencement Date.

Requirements of Contractor's Scheme for Ex-Authority Employees

- 3.2.3 **The Contractor shall procure that, by no later than the Service Commencement Date the Contractor's Scheme:**
- 3.2.3.1 **is approved and treated as exempt by the Board of Inland Revenue for the purposes of Chapter I Part XIV the Income and Corporation Taxes Act 1988; and**
 - 3.2.3.2 **is certified in writing by GAD as providing for and in respect of Ex-Authority Employees, benefits for their service from the Relevant Transfer Date which are broadly comparable to the benefits which would have been provided for and in respect of them for that service under the terms of the PCSPS as at the day before the Relevant Transfer Date], had they remained active members in Reckonable Service under the PCSPS; and**
 - 3.2.3.3 **is certified in writing by the Contractor's Scheme Actuary as containing provisions allowing Ex-Authority Employees who formerly were contributing members of the PCSPS AVC Scheme, to make additional voluntary contributions on a basis which, in his reasonable opinion, is broadly comparable to that obtaining under the PCSPS AVC Scheme as at the day before the Relevant Transfer Date, but for this purpose ignoring any provision of the PCSPS AVC Scheme entitling members thereof to acquire added years of Reckonable Service; and**
 - 3.2.3.4 **contains a provision enabling it to accept transfer payments from the Previous Contractor's Scheme; and**
 - 3.2.3.5 **for the purpose of determining whether an Ex-Authority Employee is entitled to benefits (including any enhancement of service on ill-health retirement or death benefits) under the Contractor's Scheme, takes periods of employment with the Authority and the Previous Contractor into account as a single unbroken period; and**
 - 3.2.3.6 **satisfies such other requirements, either in addition to or in substitution for all or any of the foregoing requirements in this paragraph, as GAD may at any time prior to the Relevant Transfer Date impose in respect of Ex-Authority Employees.**
- 3.2.4 **The Contractor shall further procure that:**
- 3.2.4.1 **where an Ex-Authority Employee or group of Ex-Authority Employees leaves or leave the employment of the Contractor as a result of the transfer of any undertaking which is the whole or a part of the Services, the Transfer Payment payable in respect of them shall be a past service reserve calculated on such reasonable terms and assumptions (including, for the avoidance of doubt, a reasonable assumption as to their future increases in pensionable earnings) as are determined by the trustees of the Contractor's Scheme, acting on the advice of the Contractor's Scheme Actuary; and**
 - 3.2.4.2 **no amendment shall be made to the Contractor's Scheme which could reduce the value of the benefits of any Ex-Authority Employee accrued to the date upon which the power to amend is exercised, such value to be calculated as a past service reserve on the basis of such reasonable terms and assumptions (including, for the avoidance of doubt, a reasonable assumption as to their future increases in pensionable earnings) as are determined by the trustees of the Contractor's Scheme,**

- acting on the advice of the Contractor's Scheme Actuary; and
- 3.2.4.3** the Contractor's Scheme Actuary shall, in calculating a Transfer Payment under this Clause, apply the same terms and assumptions as were applied in the Actuary's Letter, subject to an adjustment in respect of market fluctuations since the date of the Actuary's Letter; and
- 3.2.4.4** The Contractor undertakes to submit to the Authority such documents, information and other evidence as the Authority may reasonably require from time to time and at any time to enable it to be satisfied that the Contractor and the Contractor's Scheme comply and continue to comply with the requirements of this Condition 3.2 (Pension Matters) relating to Ex-Authority Employees.

Membership of Contractor's Scheme

3.2.5 The Contractor shall procure that:

- 3.2.5.1** all Ex-Authority Employees shall be admitted automatically to membership of the Contractor's Scheme on the Relevant Transfer Date (other than any of them who opts out of membership of the Contractor's Scheme in writing on or before that date in a form approved by the Authority); and
- 3.2.5.2** all Ex-Authority Employees who become members of the Contractor's Scheme shall be eligible to remain members of it throughout the period of their employment with the Contractor in connection with the Services; and
- 3.2.5.3** membership of the Contractor's Scheme for Ex-Authority Employees shall not be conditional on their agreeing to payment of the Transfer Value in respect of them; and
- 3.2.5.4** any Opted-out Ex-Authority Employee who is a member of a Previous Contractor's Designated Stakeholder Scheme who had the option to join the Previous Contractor's Scheme and has not exercised that option by the day immediately prior to the Relevant Transfer Date:
- 3.2.5.4.1** shall be given the option, exercisable only once, to become a member of the Contractor's Scheme at any time after the Relevant Transfer Date with effect from the date of the exercise of that option on the same terms as to contributions and benefits from the date of joining as apply to Ex-Authority Employees who were in Reckonable Service under the Previous Contractor's Scheme; and
- 3.2.5.4.2** shall be given the option, exercisable only once, to opt out of the Contractor's Scheme and join the Designated Stakeholder Schemes on the same terms as to contributions from the Contractor as applied to contributions from the Previous Contractor.

Calculation of Transfer Value

3.2.6 The Contractor agrees:

3.2.6.1 on or after the date of the Relevant Transfer Date to invite the Ex-Authority Employees who join the Contractor's Scheme to request in writing payment of the Transfer Value in respect of them by the Previous Contractor's Scheme to the Contractor's Scheme; and

3.2.6.2 that Ex-Authority Employees shall be given three months from the Relevant Transfer Date or the date on which the said invitations are issued (whichever is later), in which to return their written requests to the Contractor.

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

3.2.7.1 all such information within their respective possession or under their respective control as the Authority, the Previous Contractor's Actuary and/or the Contractor's Actuary may reasonably request for the purposes of calculating or verifying the Transfer Value or for any other purpose of this paragraph shall be made available promptly to them; and

3.2.7.2 with the exception of the request forms referred to in Clause 3.2.6 (Calculation of Transfer Value), no notice or communication pertaining to a Transfer Value will be issued or given to the Ex-Authority Employees by the Authority or by the Contractor before the Relevant Transfer Date without the written approval of the other party (such approval not to be unreasonably withheld or delayed).

Payment of Transfer Value

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

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

3.2.9.1 each of the Consenting Employees is awarded a credit of such period of pensionable service in the Contractor's Scheme as the [Contractor's Scheme Actuary has determined]; and

3.2.9.2 that, for the purpose of calculating benefits for and in respect of the Consenting Employees under the Contractor's Scheme, the pensionable service so credited and the pensionable service which each of the Consenting Employees accrues in the Contractor's Scheme from the date of the Relevant Transfer are treated in the Contractor's Scheme as a single unbroken period.

Former Partnership Pension Account Employees

3.2.10 The Contractor undertakes :

3.2.10.1 to establish or participate in and to notify to the Authority no later than the Service Commencement Date a retirement benefits scheme which provides for and in respect of Former Partnership Pension Account Employees:

3.2.10.1.1 benefits which (as evidenced by current GAD certificate) are

broadly comparable to the benefits to which they would have been entitled under the Partnership Pension Account III Health Benefits Scheme, had they continued in "eligible service" under the Partnership Pension Account III Health Benefits Scheme (within the meaning of rule A2 of its Rules) after the Relevant Transfer Date, for this purpose treating their respective periods of eligible service and employment with the Contractor as a single unbroken period; and

3.2.10.1.2 benefits which (as evidenced by a current GAD certificate) are broadly comparable to the benefits to which they would have been entitled under the Partnership Pension Account Death Benefits Scheme, had they continued in "eligible employment" under the Partnership Pension Account Death Benefits Scheme (within the meaning of rule A1(1) of its Rules) after the Relevant Transfer Date, for this purpose treating their respective periods of eligible service and employment with the Contractor as a single unbroken period.

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

3.2.11 The Contractor shall:

3.2.11.1 comply with all applicable requirements of Part I of the Welfare Reform and Pensions Act 1999 and in particular shall designate one or more stakeholder pension schemes for the purposes of s.3 of that Act; and

3.2.11.2 notify the Designated Stakeholder Schemes to the Authority promptly following their designation (including any Stakeholder Pension Schemes designated from time to time by the Contractor either in substitution for or in addition to any other Designated Stakeholder Scheme); and

3.2.11.3 contribute with effect from the Relevant Transfer Date to such of those Designated Stakeholder Schemes in respect of Former Partnership Pension Account Employees as each of them may join, at the same annual rates and on the same terms as were in force for employer contributions from the Authority to the Partnership Pension Account on the day prior to the Relevant Transfer Date; and

3.2.11.4 obtain and submit to the Authority the written certificate of GAD (including all replacement certificates) that the Designated Stakeholder Schemes and the rate of and terms relating to the contributions paid to them by the Contractor are broadly comparable to the Partnership Pension Account.

Sub-Contracting

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

- 3.2.12.1 to have in place a retirement benefits scheme which is certified in writing by GAD as providing for and in respect of Ex-Authority Employees, benefits for their service from the date transfer which are broadly comparable to the benefits which would have been provided for and in respect of them for that service under the terms of the PCSPS as at the day before their employment transferred from the Authority, had they remained in Reckonable Service under the PCSPS; and**
- 3.2.12.2 to procure that the Ex-Authority Employees shall be admitted automatically to membership of the scheme on the date of they transfer to the employment of the Sub-Contractor (other than any Ex-Authority Employee who opts out of membership of the scheme in writing on or before that date in a form approved by the Authority); and**
- 3.2.12.3 to procure that the Ex-Authority Employees shall be eligible to remain active members of the relevant Sub-Contractor's scheme or schemes throughout the period of their employment with the Sub-Contractor in connection with the Services; and**
- 3.2.12.4 to contribute with effect from the date of transfer to a Stakeholder Pension Scheme in respect of Former Partnership Pension Account Employees as each such employee may join, at annual rates no less than and on the terms no less favourable than those in force for employer contributions from the Contractor to the Designated Stakeholder Schemes on the day prior to the date of transfer; and**
- 3.2.12.5 to have in place one or more retirement benefits schemes which provide for and in respect of Former Partnership Pension Account Employees benefits which are certified by GAD as broadly comparable to the benefits to which they would have been entitled under the Partnership Pension Account Ill Health Benefits Scheme and the Partnership Pension Account Death Benefits Scheme on the day prior to the Relevant Transfer Date; and**
- 3.2.12.6 to procure that all Former Partnership Pension Account Employees shall be admitted automatically to membership of the scheme or schemes specified in sub-Clauses 3.2.12.4 and 3.2.12.5 (Sub-Contracting) on the Relevant Transfer Date (other than any Former Partnership Pension Account Employee who opts out of membership in writing on or before that day in a form approved by the Authority); and**
- 3.2.12.7 to comply with the obligations contained in this Condition 3.2 in relation to any Ex-Authority Employee who immediately before such transfer was a member of the Contractor's Scheme and/or any Former Partnership Pension Account Employee, in the same manner as they applied to the**

Contractor; and

3.2.12.8 to procure that similar obligations to those under this Condition 3.2 (Pension Matters), including those in this sub-Clause 3.2.12 (Sub-Contracting), are imposed on any subsequent transferee of the Ex-Authority Employees, and/or Former Partnership Pension Account Employees.

3.2.13 The Authority may from time to time and at any time require the Contractor to obtain and to produce to the Authority such information and evidence concerning the Sub-Contractor and the Contractor's pension schemes as the Authority may reasonably require in order to be satisfied that the provisions of this Condition 3.2 (Pension Matters) have been and continue to be satisfied and the Contractor shall promptly use all reasonable endeavours to obtain the same following the receipt of such a request.

Expiry or termination of this Contract – bulk transfer terms

3.2.14 Where the Authority intends to terminate all or any of the Services or part of the Contract and the Authority has notified the Contractor of the identity of the New Provider, the Contractor shall use its reasonable endeavours to procure that the trustees of the Contractor's Scheme or relevant Sub-Contractor's pension schemes, offer to the trustees of each of the New Provider's schemes bulk transfer terms in respect of the Ex-Authority Employees prospectively transferring to the employment of the New Provider and provide for a Transfer Payment calculated by applying the same terms and assumptions as were applied in the Actuary's Letter, subject to a reasonable adjustment in respect of market fluctuations since the date of the Actuary's Letter.

3.2.15 The Contractor shall further use its reasonable endeavours to procure that:

3.2.15.1 the Ex-Authority Employees who are members of the Contractor's Scheme (or relevant Sub-Contractor's pension schemes) and who are to transfer to the employment of the New Provider:

3.2.15.1.1 are invited, on or before the date on which this Contract terminates, to request payment of the Transfer Payment from the Contractor's Scheme (or relevant Sub-Contractor's pension schemes) to the New Provider's scheme; and

3.2.15.2 shall be given three months from the date on which this Contract terminates or the date on which the said invitations are issued, whichever is later, in which to return the requests to the trustees of the Contractor's Scheme (or relevant Sub-Contractor's pension schemes); and

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

- 3.2.16** Where the Contractor has failed to procure that trustees of the Contractor's Scheme (or failed to procure that the trustees of any relevant Sub-Contractors' schemes) offer bulk transfer terms in accordance with Clauses 3.2.14, the Contractor shall so advise the Authority and the Authority may issue such reasonable requests, if any, as it thinks fit. The Contractor shall comply with and shall use its reasonable endeavours that all Sub-Contractors shall comply with, all such reasonable requests.
- 3.2.17** Notwithstanding any provision of this Condition 3.2 the Authority shall have no liability as a result of or arising out of the failure of any party to agree bulk transfer terms or to implement bulk transfer terms which have been agreed, nor shall it be liable for the costs or expenses incurred by any party, including the Contractor and/or any Sub-Contractor, in negotiating or endeavouring to negotiate bulk transfer terms or in carrying out or endeavouring to carry out any direction or request of the Authority issued under this Condition 3.2 (Pension Matters).

Authority to be indemnified

- 3.2.18** The Contractor shall indemnify the Authority on demand and shall keep it indemnified in full from and against all direct or indirect liability, loss, damages, injury, claims, costs and expenses incurred by the Authority, including the costs and expenses (whether legal, actuarial or other) incurred by the Authority in preparing for, defending and implementing any court, Employment Tribunal or Pensions Ombudsman proceedings, order, judgment, award or direction, awarded against or incurred or paid by the Authority to and/or in favour of any Ex-Authority Employee, Former Partnership Pension Account Employee or any other person:
- 3.2.18.1** as a result of the failure of the Contractor to comply with the provisions of this Condition 3.2 (Pension Matters) and/or of the failure of any Sub-Contractor to comply with the terms of its contract with the Contractor; and
 - 3.2.18.2** arising out of or attributable to or in any way connected with the provision or transmission by the Authority (whether to employees or any other party) of information supplied to it by the Contractor or a Sub-Contractor in connection with a re-tendering or proposed re-tendering of all or any of the Services.
- 3.2.19** The indemnity in 3.2.18 above shall not apply if the direct or indirect liability, loss, damage, injury, claim, costs or expenses are wholly attributable to an act or omission of the Authority.

7. LIABILITY AND INSURANCE

7.1. Contractor shall for the full term of the Contract maintain all necessary statutory insurance and other appropriate insurances in order to fulfil his requirements under the Contract.

7.2. If Contractor fails to effect and maintain the insurance(s) described above, he shall rectify any insurance cover shortfall, to the satisfaction of the Buyer within a period of three working days from the date of notification by the Buyer. In the event that the Contractor fails to meet the insurance requirements and fails to rectify any shortfall with the timescale detailed above, the Buyer shall have the irrevocable right to effect insurance cover and deduct the cost of the insurance obtained together with the cost of processing from any payment due to the Contractor under the Contract.

7.3. Contractor shall, on reasonable prior notice, provide a copy of the insurance(s) certificate(s) referred to above.

7.4. The Contractor shall at all times provide the Buyer with advance notice where he proposes any change to the insurance(s) or cover held.

7.5. The Contractor shall at all times provide the Authority with details of any risk he becomes aware of, which is outside of his control and could impact on his policy cover.

7.6. The Contractor shall be responsible for and keep the Buyer, including its servants, agents, representatives, employees and Sub-contractors fully indemnified against all damages, losses, costs, expenses, actions, demands, proceedings, claims and liability made against or suffered or incurred in respect of personal injury, illness or disease (including injury, illness or disease resulting in death) or loss or damage to property and arising directly or indirectly out of any acts or omissions of the Contractor, his servants, agents or Sub-contractors in connection with the Contract, provided that its indemnity shall not apply to the extent that the Contractor is able to show that such injury, illness or disease, or loss or damage to property was caused or contributed to by the negligence or wilful default of the Authority or any government servant.

7.7. The Contractor shall consult the Buyer prior to pursuing any claim against a Third Party for loss of or damage to Government Property and shall notify the Buyer of the circumstances in which the loss or damage occurred and the estimated cost of repairs or replacements. No repair of damage for which a Third Party is responsible shall be executed without the prior consent of the Authority.

8. SUB CONTRACTORS

8.1. The Contractor shall provide the Buyer with full details of any sub-contractors he proposes to employ in order to fulfil any aspect of the services required under the Contract.

8.2. The Contractor shall provide the Authority with full details of any proposed changes to his sub-contracting requirements prior to implementing any such changes.

8.3. If the Contractor places a sub-contract for any aspect of work required under this Contract, he shall indemnify and keep the Buyer fully indemnified in respect of any claims, cost demands and liabilities of any kind whatsoever in connection with or arising out of the sub-contract that would not

have arisen but for the sub-contract.

9. ACCIDENTS OCCURRING ON GOVERNMENT PROPERTY

9.1 The Contractor shall notify Buyer any accidents occurring during work being undertaken in connection with the Contract at Government sites by telephone immediately, giving the following information:

- a. Name of injured party.
- b. Date, time and place of accident.
- c. Injuries if any and degree of severity.
- d. Place(s) to which injured parties have been taken.
- e. Brief description of events leading to the accident.
- f. Other such information as the Authority may reasonably request.

9.2 The Contractor shall make available to the Buyer all relevant information and facilities, including access to his employees for the purpose of immediate and detailed investigations of any accident. If requested by the Buyer, the Contractor shall undertake such an investigation and submit a written report as requested.

10. PUBLIC RELATIONS

10.1 The responsibility for communicating with representatives of the popular and technical press, radio, television and other communication media on all matters concerning the Contract tasks and the Establishment as a whole is borne solely by the Buyer's customer.

10.2 The Contractor and his staff may not communicate on these matters with any communication media representative unless specifically granted permission to do so, in writing, by the Buyer.

11. EMPLOYMENT MATTERS

Definitions

3.1.1. In this Clause unless the context otherwise requires and without prejudice to the provisions of Condition 1.3 above, the following expressions shall have the following meanings:

“Ex-Authority Employees” means those ex-employees of the Authority who are listed in Appendix 1 to Annex B to Special Notices and Instructions to Tenderers at the Relevant Transfer Date who have not resigned, been reassigned or objected to the Relevant Transfer, or been dismissed where the Previous Contractor is the subject of bankruptcy proceedings or any analogous insolvency proceedings which have been instituted with a view to the liquidation of assets of the Previous Contractor and are under the supervision of an insolvency practitioner;

“Business Day” means any day excluding:

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

“CSCS” means Civil Service Compensation Scheme;

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

“Contractor's Scheme” means the one or more retirement benefits schemes established by the Contractor or in which it participates for the purposes of Condition 3.2, (Pension Matters). A reference to the Contractor's Scheme shall, where appropriate, include a reference to the trustees or administrators thereof;

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

“Expiry Date” means the date of expiry of this Contract by whatever means

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

“Previous Contractor??” means Sodexo Ltd and Serco Ltd;

“Previous Contractor Employee” means an employee who immediately prior to 0001 hours on the Relevant Transfer Date is an employee of the Previous Contractor and assigned to carry out the services which will be performed by the Contractor under this Contract;

“Previous Contractor Third Party Employee” means an employee of any third party employer contracted to provide services to the Previous Contractor the same as or similar to any of the Services who immediately before the Relevant Transfer to the Contractor or any Sub-Contractor is employed or engaged to carry out those services;

“Previous Relevant Transfer Date” means the date of transfer under the Transfer Regulations of the Ex-Authority Employees to the Previous Contractor;

“Relevant Employee” means the Ex-Authority Employees, Previous Contractor Employees and the Previous Contractor Third Party Employees;

“Relevant Statutory Scheme” has the same meaning as in regulation 8 of the Transfer Regulations;

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

“Relevant Transfer Date” means the date on which the Relevant Transfer is effected;

“Services” means as referred to in the Statement of Requirement at Schedule 3;

“Service Commencement Date” means the date of commencement of the Services;

“Sub-Contractor” means any person who enters into a Sub-Contract with the Contractor;

“Subsequent Transferring Employee” means an employee assigned, engaged or employed in the provision of the Services who is transferred under the Transfer Regulations to a New Provider on

expiry or termination of this Contract;

“Subsequent Contract” means the contract for Services with the New Provider;

“Subsequent Contract Award” means the award of a contract for the Services to a New Provider;

“Subsequent Relevant Transfer” means a transfer of employees assigned, engaged or employed in the provision of the Services from the Contractor or any Sub-Contractor to a New Provider under the Transfer Regulations;

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

“Third Party Employees” means the employees of any third party employer contracted to provide services to the Authority the same as or similar to any of the Services who immediately before any relevant transfer of those services (within the meaning of the Transfer Regulations) to the Contractor or any Sub-Contractor is employed or engaged to carry out those services;

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

Employees

- 11.1 **Within four (4) weeks of Service Commencement Date, the Authority shall provide the Contractor with the information listed in contract in respect of Relevant Employees together with any Employee Liability Information in respect of such Relevant Employees to the extent that such information and Employee Liability Information has been provided to the Authority by the Previous Contractor.**
- 11.2 The Authority shall provide the Contractor with any update to the information and Employee Liability Information provided above as soon as is reasonably practicable.
- 11.3 The Authority does not warrant the accuracy of the information provided above.
- 11.4 **The Contractor and the Authority acknowledge that the provision of the Services under this Contract will constitute a Relevant Transfer.**
- 11.5 **The Contractor agrees that from the Relevant Transfer Date the contracts of employment of any Relevant 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 and the Relevant 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.**
- 11.6 **Save for any liabilities in respect of Relevant Employees under a Relevant Statutory Scheme or Schemes, the Contractor or Sub-Contractor (as the case may be) shall have responsibility for all emoluments and outgoings (including without limitation all wages, bonuses, commissions, holiday entitlement accrued up to the Relevant Transfer Date, PAYE, national insurance contributions and contributions to retirement benefit schemes) in relation to the Relevant Employees with effect from and including the Relevant Transfer Date until the Expiry Date.**

- 11.7 **If the Contractor terminates the contract of employment of any Ex-Authority Employee on or after the Relevant Transfer Date by reason of redundancy (as defined by section 139 of the Employment Rights Act 1996), the Contractor shall pay that Ex-Authority Employee compensation which is certified by GAD as broadly equivalent in terms of value and manner of payment to that which would have been paid to that Authority Employee under the CSCS if that Authority Employee had still been serving the Crown as a Civil Servant and been entitled to compensation under the CSCS at the date of termination of his/her contract of employment (the terms of the CSCS being those at the date that the Ex-Authority Employee transferred out of the Civil Service).**

11.8 **Post Transfer Reporting**

The Contractor shall provide the Authority with the following information as part of the normal reporting regime of this Contract.

- any proposed, agreed or imposed changes to terms and conditions of service in respect of persons wholly or mainly employed or engaged in provision of the Services under this Contract;
- disputes relating to compliance with the Transfer Regulations which are regarded as unresolved by a recognised Trade Union;
- any court action or tribunal proceedings relating to compliance with the Transfer Regulations;
- completed court action or tribunal proceedings relating to compliance with the Transfer Regulations; and
- out of court settlements relating to compliance with the Transfer Regulations if possible having regard to the wording of the settlement

and the Contractor acknowledges that the information referred to in this Clause 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.

- 11.9 **Information on Re-tender, Expiry or Termination. No earlier than two years preceding the Expiry Date or at any time after the service of a notice to terminate or other expiry of this Contract and on receipt of a written request by the Authority, the Contractor shall (and shall procure that any Sub-Contractor shall):**

- supply to the Authority such full and accurate and up-to-date information as may be requested by the Authority relating to the employees who are wholly or mainly employed, assigned or engaged in providing the Services under this Contract, separately identifying former employees of the Authority who transferred to the Contractor and indicating which are members of the Contractor's Scheme.
- provide the information promptly and in any event not later than three months from the date when a request for such information is made and at no cost to the Authority;
- permit the Authority to use the information for informing any prospective New Provider for any services which are substantially the same as the Services provided pursuant to this Contract; and
- enable and assist the Authority and a New Provider to communicate with and meet

those employees and their trade union or other employee representatives.

- 11.10 On notification to the Contractor by the Authority of a New Provider, or any time within 6 months of the Expiry Date or after the Authority has given notice to terminate or other expiry of this Contract, whichever is first, and on receipt of a written request by the Authority, the Contractor shall:

fully and accurately disclose to the Authority such information including any Employee Liability Information relating to his employees and relating to all employees of any third party who are employed, assigned or engaged in providing the Services under this Contract, separately identifying former employees of the Authority who transferred to the Contractor and indicating which are members of the Contractors Scheme;

provide the information promptly and in any event not later than three months from the date when a request for such information is made (save when the written request is received less than 3 months prior to the Expiry Date, in which case no later than 28 days from the date of that request) and at no cost to the Authority; and

permit the Authority to use the information for informing any prospective New Provider for any services which are substantially the same as the Services provided pursuant to this Contract.

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

materially amend or promise to amend the rates of remuneration or other terms and conditions of employment of any person wholly or mainly employed or engaged in providing the Services;

replace or re-deploy from the Services any person wholly or mainly employed or engaged in providing the Services, or materially increase the number of persons performing the Services;

reorganise any working methods or assign to any person wholly or mainly employed or engaged in providing the Services any duties unconnected with the Services; or

terminate or give notice to terminate the employment of any person wholly or mainly employed or engaged in providing the Services

save for genuine business reasons without the prior written agreement of the Authority, such agreement not to be unreasonably withheld or delayed, and the Contractor shall indemnify and keep indemnified the Authority in respect of any reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any breach of Clauses, 3.1.10., 3.1.11 and 3.1.12.

- 11.12 Contractor shall provide the information requested within three months of receipt of that request.

11.13 Redundancy Liability on Termination or Expiry

The Authority shall indemnify the Contractor against any liability of the Contractor to make redundancy payments to Ex-Authority Employees as a consequence of dismissal by reason of redundancy provided that the dismissal by reason of redundancy (as defined by section 139 of the Employment Rights Act 1996) arises from the expiry or termination of this Contract otherwise than by reason of the Contractor's acts or omissions in breach of 3.1.16, such payments do not exceed the amount that a Ex-Authority Employee would be entitled to were he/she serving the Crown as a Civil Servant at the date of dismissal and entitled to a payment under the CSCS and that such a dismissal takes place within 6 months of such expiry or termination.

11.14 For the avoidance of doubt, the indemnity set out above shall not include:

any claims for and costs arising out of the unfair dismissal of Ex-Authority Employees;

any payments for monies paid to Ex-Authority Employees in lieu of notice; and

any payment for monies paid to Ex-Authority Employees in lieu of untaken annual leave.

11.15 The Contractor warrants that it will:

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

comply with all relevant statutory obligations which are imposed on an employer; and

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

11.16 In the event that the Contractor by its acts or omissions is in breach of the warranties under this clause in respect of a Ex-Authority Employee, the Authority will not be liable to indemnify the Contractor in respect of that Ex-Authority Employee.

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

any claim or claims by Subsequent Transferring Employees or by the New Provider or any sub-contractor of the New Provider at any time on or after the Subsequent Transfer Date which arise as a result of an act or omission of the Contractor or any Sub-Contractor during the period from and including the Relevant Transfer Date and prior to the Subsequent Transfer Date;

any claim by any employee or trade union representative or employee representative arising whether before or after the Subsequent Transfer Date out of any failure by the Contractor or any Sub-Contractor to comply with their obligations under Regulation 13 of the Transfer Regulations in relation to any Subsequent Transferring Employee or any other employee engaged wholly or

mainly in connection with the Services by the Contractor or any Sub-Contractor.

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

the employment or the termination of the employment of each of the Subsequent Transferring Employees by the New Provider or any Sub-Contractor of the New Provider at any time on or after the Subsequent Transfer Date which arise as a result of an act or omission of the New Provider or any Sub-Contractor of the New Provider during the period from and including the Subsequent Transfer Date; and

any claim by any employee or trade union representative or employee representative arising whether before or after the Subsequent Transfer Date out of any failure by the New Provider or any Sub-Contractor of the New Provider to comply with their obligations under Regulation 13 of the Transfer Regulations in relation to any Subsequent Transferring Employee or any other employee engaged wholly or mainly in connection with the Services by the New Provider or any Sub-Contractor of the New Provider.

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

- 11.20 Contracts (Rights of Third Parties) Act 1999

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

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

12. PENSION MATTERS

12.1 DEFINITIONS

In this Condition unless the context otherwise requires, the following expressions have the following meanings:

“Actuary”: a Fellow of the Institute of Actuaries or a Fellow of the Faculty of Actuaries;

“Actuary's Letter”: the bulk transfer terms issued by the PCSPS Actuary in respect of the Previous Contractor's Scheme, (copies of which will be supplied at Contract Award), which specify the actuarial methods and assumptions for calculating the transfer value from PCSPS to the Previous Contractor's Scheme;

“Assigned Employee” means an employee wholly or mainly employed, assigned or engaged in providing the Services;

“Ex-Authority Employee” means any ex-employee of the Authority listed in Annex A to Section 3 who:

- (a) on the day before his employment first transferred from the Authority, was in Reckonable Service or would have been in Reckonable Service, but for the fact that he was long term absent from work; and
- (b) on the day before the Relevant Transfer Date is in service under the Previous Contractor's Scheme by virtue of which he accrues pension benefits or would be in such service under the Previous Contractor's Scheme, but for the fact that he is long term absent from work.

“AVC (Additional Voluntary Contributions) Transfer Value” means the amount available as a transfer payment under the PCSPS AVC Scheme in respect of the invested contributions made by Consenting Employees to the PCSPS AVC Scheme towards securing Money Purchase Benefits thereunder;

“Consenting Employees” means those of the Ex-Authority Employees who join the Contractor's Scheme on the Relevant Transfer Date and who consent in writing to payment of the Transfer Payment to the Contractor's Scheme and who do not withdraw that request before the Transfer Value Payment Date. For the avoidance of doubt an Ex-Authority Employee shall cease to be a Consenting Employee if he dies or withdraws his consent before the Transfer Value Payment Date;

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

“Contractor's Scheme” means the one or more retirement benefits schemes established by the Contractor or in which it participates for the purposes of this Condition 3.2 (Pension Matters). A reference to the Contractor's Scheme shall, where appropriate, include a reference to the trustees or administrators thereof;

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

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

“GAD” means the Government Actuary's Department;

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

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

“Opted-out Ex-Authority Employee” means an Ex-Authority Employee who on the day before the date on which his employment first transferred from the Authority:

- a) had opted-out of membership of the PCSPS; and
- b) had retained the right under the rules of the PCSPS to opt back into membership of the PCSPS;

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

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

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

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

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

“Former Partnership Pension Account Employees” means Ex-Authority Employees who are members of the Previous Contractor’s Designated Stakeholder Pension Scheme who on the day before the Previous Relevant Transfer Date were entitled to a contribution from the Authority to the Partnership Pension Account;

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

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

“Previous Contractor” means a contractor providing the Services immediately prior to the Service Commencement Date.

“Previous Contractor's Scheme” means a retirement benefits scheme established by a Previous Contractor which provides benefits for and in respect of Ex-Authority Employees.

“Previous Contractor's Partnership Pension Account Scheme” means a retirement benefits scheme established by the Previous Contractor for Former Partnership Pension Account Employees;

“Reckonable Service” means reckonable service under the Previous Contractor’s Scheme within the meaning of the rules of the Previous Contractor’s Scheme;

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

“Relevant Transfer Date” means the date on which the Relevant Transfer is effected;

“Service Commencement Date” means the date of commencement of the Services [if different from date of contract award];

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

“Sub-Contractor” means any person who enters into a Sub-Contract with the Contractor;

“Transfer Payment” means the value of the retirement and death benefits under the Contractor's Scheme prospectively and contingently payable to and in respect of the Ex-Authority Employees calculated by the Contractor's Scheme Actuary in accordance with the agreed bulk transfer terms and in accordance with Clause 2.4;

“Transfer Value Payment Date” means the date of payment of the Transfer Value;

“Transfer Value” means the value of the retirement and death benefits under the Previous Contractor's Scheme which are prospectively and contingently payable to and in respect of the Consenting Employees as calculated by the Contractor's Scheme Actuary in accordance with the Actuary's Letter and verified by the Previous Contractor's Actuary.

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

12.1 Contractor's Scheme

The Contractor shall notify the details of the Contractor's Scheme to the Authority no later than the Service Commencement Date.

12.2 Requirements of Contractor's Scheme for Ex-Authority Employees

12.2.1 The Contractor shall procure that, by no later than the Service Commencement Date the Contractor's Scheme:

is approved and treated as exempt by the Board of Inland Revenue for the purposes of Chapter I Part XIV the Income and Corporation Taxes Act 1988; and

is certified in writing by GAD as providing for and in respect of Ex-Authority Employees, benefits for their service from the Relevant Transfer Date which are broadly comparable to the benefits which would have been provided for and in respect of them for that service under the terms of the PCSPS as at the day before the Relevant Transfer Date], had they remained active members in Reckonable Service under the PCSPS; and

is certified in writing by the Contractor's Scheme Actuary as containing provisions allowing Ex-Authority Employees who formerly were contributing members of the PCSPS AVC Scheme, to make additional voluntary contributions on a basis which, in his reasonable opinion, is broadly comparable to that obtaining under the PCSPS AVC Scheme as at the day before the Relevant Transfer Date, but for this purpose ignoring any provision of the PCSPS AVC Scheme entitling members thereof to acquire added years of Reckonable Service; and

contains a provision enabling it to accept transfer payments from the Previous Contractor's Scheme; and

for the purpose of determining whether an Ex-Authority Employee is entitled to benefits (including any enhancement of service on ill-health retirement or death benefits) under the Contractor's Scheme, takes periods of employment with the Authority and the Previous Contractor into account as a single unbroken period; and

satisfies such other requirements, either in addition to or in substitution for all or any of the foregoing requirements in this paragraph, as GAD may at any time prior to the Relevant Transfer Date impose in respect of Ex-Authority Employees.

12.2.2 The Contractor shall further procure that:

where an Ex-Authority Employee or group of Ex-Authority Employees leaves or leave the employment of the Contractor as a result of the transfer of any undertaking which is the whole or a part of the Services, the Transfer Payment payable in respect of them shall be a past service reserve calculated on such reasonable terms and assumptions (including, for the avoidance of doubt, a reasonable assumption as to their future increases in pensionable earnings) as are determined by the trustees of the Contractor's Scheme, acting on the advice of the Contractor's Scheme Actuary; and

no amendment shall be made to the Contractor's Scheme which could reduce the value of the benefits of any Ex-Authority Employee accrued to the date upon which the power to amend is exercised, such value to be calculated as a past service reserve on the basis of such reasonable terms and assumptions (including, for the avoidance of doubt, a reasonable assumption as to their future increases in pensionable earnings) as are determined by the trustees of the Contractor's Scheme, acting on the advice of the Contractor's Scheme Actuary; and

the Contractor's Scheme Actuary shall, in calculating a Transfer Payment under this Clause, apply the same terms and assumptions as were applied in the Actuary's Letter, subject to an adjustment in respect of market fluctuations since the date of the Actuary's Letter; and

The Contractor undertakes to submit to the Authority such documents, information and other evidence as the Authority may reasonably require from time to time and at any time to enable it to be satisfied that the Contractor and the Contractor's Scheme comply and continue to comply with the requirements of this Condition 3.2 (Pension Matters) relating to Ex-Authority Employees.

12.3 Membership of Contractor's Scheme

12.3.1 The Contractor shall procure that:

all Ex-Authority Employees shall be admitted automatically to membership of the Contractor's Scheme on the Relevant Transfer Date (other than any of them who opts out of membership of the Contractor's Scheme in writing on or before that date in a form approved by the Authority); and

all Ex-Authority Employees who become members of the Contractor's Scheme shall be eligible to remain members of it throughout the period of their employment with the Contractor in connection with the Services; and

membership of the Contractor's Scheme for Ex-Authority Employees shall not be conditional on their agreeing to payment of the Transfer Value in respect of them; and

any Opted-out Ex-Authority Employee who is a member of a Previous Contractor's Designated Stakeholder Scheme who had the option to join the Previous Contractor's Scheme and has not exercised that option by the day immediately prior to the Relevant Transfer Date:

shall be given the option, exercisable only once, to become a member of the Contractor's Scheme at any time after the Relevant Transfer Date with effect from the date of the exercise of that option on the same terms as to contributions and benefits from the date of joining as apply to Ex-Authority Employees who were in Reckonable Service under the Previous Contractor's Scheme; and

shall be given the option, exercisable only once, to opt out of the Contractor's Scheme and join the Designated Stakeholder Schemes on the same terms as to contributions from the Contractor as applied to contributions from the Previous Contractor.

12.4 Calculation of Transfer Value

12.4.1 The Contractor agrees:

on or after the date of the Relevant Transfer Date to invite the Ex-Authority Employees who join the Contractor's Scheme to request in writing payment of the Transfer Value in respect of them by the Previous Contractor's Scheme to the Contractor's Scheme; and

that Ex-Authority Employees shall be given three months from the Relevant Transfer Date or the date on which the said invitations are issued (whichever is later), in which to return their written requests to the Contractor.

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

all such information within their respective possession or under their respective control as the Authority, the Previous Contractor's Actuary and/or the Contractor's Actuary may reasonably request for the purposes of calculating or verifying the Transfer Value or for any other purpose of this paragraph shall be made available promptly to them; and

with the exception of the request forms referred to above (Calculation of Transfer Value), no notice or communication pertaining to a Transfer Value will be issued or given to the Ex-Authority Employees by the Authority or by the Contractor before the Relevant Transfer Date without the written approval of the other party (such approval not to be unreasonably withheld or delayed).

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

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

12.6.1 each of the Consenting Employees is awarded a credit of such period of pensionable service in the Contractor's Scheme as the [Contractor's Scheme Actuary has determined]; and

12.6.2 that, for the purpose of calculating benefits for and in respect of the Consenting Employees under the Contractor's Scheme, the pensionable service so credited and the pensionable service which each of the Consenting Employees accrues in the Contractor's Scheme from the date of the Relevant Transfer are treated in the Contractor's Scheme as a single unbroken period.

12.7 Former Partnership Pension Account Employees

12.7.1 The Contractor undertakes :

to establish or participate in and to notify to the Authority no later than the Service Commencement Date a retirement benefits scheme which provides for and in

respect of Former Partnership Pension Account Employees:

benefits which (as evidenced by current GAD certificate) are broadly comparable to the benefits to which they would have been entitled under the Partnership Pension Account Ill Health Benefits Scheme, had they continued in "eligible service" under the Partnership Pension Account Ill Health Benefits Scheme (within the meaning of rule A2 of its Rules) after the Relevant Transfer Date, for this purpose treating their respective periods of eligible service and employment with the Contractor as a single unbroken period; and

benefits which (as evidenced by a current GAD certificate) are broadly comparable to the benefits to which they would have been entitled under the Partnership Pension Account Death Benefits Scheme, had they continued in "eligible employment" under the Partnership Pension Account Death Benefits Scheme (within the meaning of rule A1(1) of its Rules) after the Relevant Transfer Date, for this purpose treating their respective periods of eligible service and employment with the Contractor as a single unbroken period.

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

12.8 The Contractor shall:

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

12.9 Sub-Contracting

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

to have in place a retirement benefits scheme which is certified in writing by GAD as providing for and in respect of Ex-Authority Employees, benefits for their service from the date transfer which are broadly comparable to the benefits which would have been provided for and in respect of them for that service under the terms of the PCSPS as at the day before their employment transferred from the Authority, had they remained in Reckonable Service under the PCSPS; and

to procure that the Ex-Authority Employees shall be admitted automatically to membership of the scheme on the date of they transfer to the employment of the Sub-Contractor (other than any Ex-Authority Employee who opts out of membership of the scheme in writing on or before that date in a form approved by the Authority); and

to procure that the Ex-Authority Employees shall be eligible to remain active members of the relevant Sub-Contractor's scheme or schemes throughout the period of their employment with the Sub-Contractor in connection with the Services; and

to contribute with effect from the date of transfer to a Stakeholder Pension Scheme in respect of Former Partnership Pension Account Employees as each such employee may join, at annual rates no less than and on the terms no less favourable than those in force for employer contributions from the Contractor to the Designated Stakeholder Schemes on the day prior to the date of transfer; and

to have in place one or more retirement benefits schemes which provide for and in respect of Former Partnership Pension Account Employees benefits which are certified by GAD as broadly comparable to the benefits to which they would have been entitled under the Partnership Pension Account Ill Health Benefits Scheme and the Partnership Pension Account Death Benefits Scheme on the day prior to the Relevant Transfer Date; and

to procure that all Former Partnership Pension Account Employees shall be admitted automatically to membership of the scheme or schemes specified in this clause on the Relevant Transfer Date (other than any Former Partnership Pension Account Employee who opts out of membership in writing on or before that day in a form approved by the Authority); and

to comply with the obligations contained in this clause in relation to any Ex-Authority Employee who immediately before such transfer was a member of the Contractor's Scheme and/or any Former Partnership Pension Account Employee, in the same manner as they applied to the Contractor; and

to procure that similar obligations to those under this Condition 3.2 (Pension Matters), including those in this sub-Clause 3.2.12 (Sub-Contracting), are imposed on any subsequent transferee of the Ex-Authority Employees, and/or Former Partnership Pension Account Employees.

12.9.2 The Authority may from time to time and at any time require the Contractor to obtain and to produce to the Authority such information and evidence concerning the Sub-Contractor and the Contractor's pension schemes as the Authority may reasonably require in order to be

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

12.10 Expiry or termination of this Contract – bulk transfer terms

12.10.1 Where the Authority intends to terminate all or any of the Services or part of the Contract and the Authority has notified the Contractor of the identity of the New Provider, the Contractor shall use its reasonable endeavours to procure that the trustees of the Contractor's Scheme or relevant Sub-Contractor's pension schemes, offer to the trustees of each of the New Provider's schemes bulk transfer terms in respect of the Ex-Authority Employees prospectively transferring to the employment of the New Provider and provide for a Transfer Payment calculated by applying the same terms and assumptions as were applied in the Actuary's Letter, subject to a reasonable adjustment in respect of market fluctuations since the date of the Actuary's Letter.

12.10.2 The Contractor shall further use its reasonable endeavours to procure that:

the Ex-Authority Employees who are members of the Contractor's Scheme (or relevant Sub-Contractor's pension schemes) and who are to transfer to the employment of the New Provider:

are invited, on or before the date on which this Contract terminates, to request payment of the Transfer Payment from the Contractor's Scheme (or relevant Sub-Contractor's pension schemes) to the New Provider's scheme; and

shall be given three months from the date on which this Contract terminates or the date on which the said invitations are issued, whichever is later, in which to return the requests to the trustees of the Contractor's Scheme (or relevant Sub-Contractor's pension schemes); and

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

12.10.3 Where the Contractor has failed to procure that trustees of the Contractor's Scheme (or failed to procure that the trustees of any relevant Sub-Contractors' schemes) offer bulk transfer terms in accordance with Clauses 3.2.14, the Contractor shall so advise the Authority and the Authority may issue such reasonable requests, if any, as it thinks fit. The Contractor shall comply with and shall use its reasonable endeavours that all Sub-Contractors shall comply with, all such reasonable requests.

12.10.4 Notwithstanding any provision of this Condition 3.2 the Authority shall have no liability as a result of or arising out of the failure of any party to agree bulk transfer terms or to implement bulk transfer terms which have been agreed, nor shall it be liable for the costs or expenses incurred by any party, including the Contractor and/or any Sub-Contractor, in negotiating or endeavouring to negotiate bulk transfer terms or in carrying out or endeavouring to carry out any direction or request of the Authority issued under this Clause (Pension Matters).

12.11 Authority to be indemnified

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

as a result of the failure of the Contractor to comply with the provisions of this Condition 3.2 (Pension Matters) and/or of the failure of any Sub-Contractor to comply with the terms of its contract with the Contractor; and

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

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

13. CONDITION 3.3 CODE OF PRACTICE ON WORKFORCE MATTERS

13.1 DEFINITIONS

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

“ACAS” means the Advisory, Conciliation, and Arbitration Service;

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

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

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

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

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

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

13.3 In the event that a New Joiner shall be employed by the Contractor (or any Sub-Contractor) to provide the Services, the Contractor shall offer (or shall procure that the Sub-Contractor shall) offer those persons terms and conditions of employment which are no less favourable as an overall package of terms and conditions than the terms and conditions of the Ex-Authority Employees.

13.4 The Contractor shall consult with any recognised trade unions of that New Joiner or where there is no such recognised trade union, their elected representatives, if any.

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

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

13.6.1 be deemed to have joined the Code of Practice on Workforce Matters Compliant

Pension Scheme from the date of commencement of employment with the Contractor or any Sub-Contractor; and

13.6.2 be eligible to remain members of it throughout the period of their employment with the Contractor or any Sub-Contractor in connection with the Services;

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

14 - QUALITY ASSURANCE AND KEY PERFORMANCE INDICATORS

14.1 CONDITION - QUALITY ASSURANCE

14.1.1 The Contractor shall present and agree with the Authority a Quality Plan (QP) not less than 30 days prior to Contract Start date of the Contract. The QP, including Key Performance Indicators, (see Condition 6.2 below), is to be used in support of the Contract and shall describe fully the methods which the Contractor shall employ for the purpose of;

14.1.1.1 implementing and providing the Services;

14.1.1.2 ensuring satisfactory performance of the Contract;

14.1.1.3 complying with Good Industry Practice;

14.1.1.4 reporting on the application of its Quality Assurance at meetings to be called as and when requested by the Designated Office. The Contractor shall also provide contract management and audit reports as and when requested by the Designated Officer.

14.1.2 The Contractor shall implement the QP within 3 months of starting the contract. Where the Tender stated that the QP would be accredited by a third party this shall be completed within the agreed period from the Contract Start date.

14.1.3 The Designated Officer (DO) shall be responsible for ensuring that all necessary management arrangements and resources are in place and working properly. He shall also be responsible for the development of the required services and contracting strategies and shall have an understanding of how service issues affect the Authority and consumers on the ground. The DO will maintain a relationship with the Supplier's Managing Director and if necessary the Area Manager.

14.2 – KEY PERFORMANCE INDICATORS

14.2.1 The Contractor shall work jointly with the Designated Officer to develop Key Performance Indicators (KPIs) against which satisfactory performance of the contract will be measured and also, where feasible, to indicate that the contract services are being carried out in accordance with the Authority's policy on Sustainable Development. The KPIs are to be fully and consistently met throughout the contract period.

14.2.2 The contractor shall provide clear evidence that the KPIs have been effectively performed and reports are to be provided as and when requested by the Designated Officer.

14.2.3 Measurement of output against the KPIs shall be recorded on a continuous basis.

14.2.4 If, during the course of the contract it becomes apparent that an individual or group of KPIs fail to accurately capture the required output the Authority and the Contractor will agree appropriate

revisions to the KPIs.

15 – SUB CONTRACTORS

15.1 The Contractor shall provide the Authority with full details of any sub-contractors he proposes to employ in order to fulfil any aspect of the services required under the Contract.

15.2 The Contractor shall provide the Authority with full details of any proposed changes to his sub-contracting requirements prior to implementing any such changes.

15.3 If the Contractor places a sub-contract for any aspect of work required under this Contract, he shall indemnify and keep the Authority fully indemnified in respect of any claims, cost demands and liabilities of any kind whatsoever in connection with or arising out of the sub-contract that would not have arisen but for the sub-contract.

15.4 The Contractor shall ensure, to the extent that they are applicable, that the Conditions of this contract are reflected in any Sub-contracts placed by him for any part of the work or Services under the Contract and the Contractor shall not place Sub-contracts with any individual, company or firm unless that individual, company or firm agrees to assume the same obligations corresponding to those imposed on the Contractor by these Conditions. The Contractor shall nevertheless remain liable for the due observance of these Conditions by his servants, agents and Sub-contractors/consultants.

16 - HEALTH AND SAFETY

16.1 – HEALTH AND SAFETY

16.1 For the purposes of the Contract, the Health and Safety Plan shall be developed by the Contractor and presented to the Authority

16.2 - SAFETY, HEALTH AND HYGIENE

16.2.1 The Contractor, his servants, agents and sub-contractors shall exercise a duty of care for themselves and for others and co-operate fully in establishing and maintaining safe and healthy working conditions. Nothing in this Condition should absolve the Contractor from any statutory Health and Safety obligation.

16.2.2 It shall be clearly understood that Health and Safety policy statements shall be construed only as regards Health and Safety matters and shall not override any particulars of the Contract.

16.2.3 Contractor activity is open to full scrutiny by the Health and Safety Executive (HSE), unless special exemptions are granted by the Authority. The General Agreement between the MOD and the HSE does not apply to the activities of a MOD Contractor.

16.2.4 The Contractor shall be responsible for all Health and Safety matters pertaining to his operation within the bounds and provisions of this Contract and shall take all reasonable measures to ensure the safety, health and welfare of his servants, agents, sub-contractors and others. In cases where the MOD has sold, loaned or specified either hardware or documentation, the Contractor should ensure the health, safety and welfare of his employees and others by conducting his own risk assessment.

16.2.5 The Contractor shall liaise with the Unit's Health and Safety organisation as required by the DO and shall participate fully in such meetings, discussions and committees as each unit DO may from time to time direct.

16.2.6 The Contractor shall ensure that all equipment used in the performance of the Contract comply with the requirements of COSHH and other relevant legislation, and with the list of such items included in their Tender. The DO shall make periodic checks of the equipment used.

16.3 ACCIDENTS OCCURRING ON GOVERNMENT PROPERTY

16.3.1 The Contractor shall notify any accidents occurring during work being undertaken in connection with the Contract at the Establishment to the DO or his representative by telephone immediately, giving the following information:

- a. Name of injured party.
- b. Date, time and place of accident.
- c. Injuries if any and degree of severity.
- d. Place(s) to which injured parties have been taken.

- e. Brief description of events leading to the accident.
- f. Other such information as the Authority may reasonably request.

16.3.2 A written report of the accident shall then be provided to the SO of the unit where the accident occurred in accordance with JSP 318 within 5 working days of the incident.

16.3.3 The Contractor shall make available to the Authority all relevant information and facilities, including access to his employees for the purpose of immediate and detailed investigations of any accident. If requested by the DO, the Contractor shall undertake such an investigation and submit a written report as requested.

16.4 - SUB CONTRACTORS

16.4.1 The Contractor is required to ensure that any of their sub-contractors are subject to the Unit's Health and Safety and Environmental Policy.

17 - SECURITY

17.1 - SECURITY MEASURES

17.1.1 The contractor shall comply with current MOD Security standards in all respects. These are detailed in Joint Services Publication 440 (JSP 440), MOD Security Instructions (e.g. AGIS), Top Level Budget (TLB) Supplementary Instruction, and local security instructions. The contractor will also use his best endeavours to adhere to any amendments or future versions, replacement documents or supplementary instructions that may be published throughout the life of the contract that may be introduced to reflect changes in technology, procedures and policy.

17.1.2 These regulations are comprehensive and detailed covering the full range of security issues. They cover the expected standards to be met by the contractor, which are the same as required by the MOD. They include the standards for physical security, the handling of Protectively Marked (PM) Material and Information, Information Technology, personnel security and the auditing regime. The contractor is advised that obtaining security clearance for staff (particularly Agency Staff) can be lengthy, but cannot be circumvented.

17.1.3 In all cases of uncertainty about the application of these Security requirements, detailed security advice must be sought from the appropriate MOD Principal Security Adviser. They provide the final arbiter on policy interpretation and integration at MOD and TLB level. The decision of the Authority in any clarification will be final. Where the contractor cannot meet the requirements of any current or future Security requirements he must inform Commercial Branch immediately.

17.2 - PUBLIC RELATIONS

17.2.1 The responsibility for communicating with representatives of the popular and technical press, radio, television and other communication media on all matters concerning the Contract tasks and the Establishment as a whole is borne solely by the Defence Public Relations Staff.

17.2.2 The Contractor and his staff may not communicate on these matters with any communication media representative unless specifically granted permission to do so, in writing, by the DO. As a rule, information deriving from, or relating to the Contract tasks, Establishment or MOD as a whole may not be communicated to a third party without the specific permission to do so, in writing, from the DO.

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18 – CO-OPERATION WITH INQUIRIES

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18.1 In the event that an accident or other incident occurs and that a Board of Inquiry or Unit Inquiry is convened in accordance with regulations from time to time in force to investigate such a matter, the Contractor shall make available to the Officer in Charge of that Inquiry all relevant information and facilities including access to his personnel for the purpose of immediate and detailed investigations. If so requested by the Officer in Charge of the investigation, the Contractor shall undertake his own investigation and shall submit written reports to that Officer.

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18.1.2 In connection with any such Inquiry, the Contractor shall take all reasonable steps to assist the Inquiry in reaching its findings and give evidence to the Inquiry if requested. To this end, the Contractor shall give evidence if called upon to do so before a Board of Inquiry or Unit Inquiry. If any of the duties of this Main Contract or any Contracted Task are sub-contracted by the Contractor, then the Contractor shall include as a Condition in the sub-contract, a stipulation that the sub-contractor shall take all reasonable steps to assist a Board of Inquiry or Unit Inquiry in reaching its findings.

19 - BUILDINGS, FACILITIES AND ASSETS

19.1 - GOVERNMENT FURNISHED EQUIPMENT AND FACILITIES

19.1.1 The Authority will provide the following to the Contractor to enable provision of the services as set out in the Statement of Work:

Tooling, specialist equipment and technical facilities,
Restroom,
Eating facilities,
Emergency healthcare coverage

19.2 - GFE DURING THE CONTRACT

19.2.1 The Contractor is to assume all maintenance and replacement responsibilities for GFE as necessary and to meet all statutory requirements for the Terms of the Contract.