

**Schedule 4**  
**Staff Transfer**  
**(Call-Off Schedule 2)**

## Call-Off Schedule 2 (Staff Transfer)

### 1. Definitions

1.1 In this schedule, the following words have the following meanings and shall supplement and be supplemented by Clause 11.2 of the core contract, contract schedule 7 (TUPE Surcharge) and contract schedule 8 (Redundancy Surcharge):

<p><b>“Acquired Rights Directive”</b></p>	<p>the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees’ rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time;</p>
<p><b>“CRTPA”</b></p>	<p>means the Contract Rights of Third Parties Act 1999;</p>
<p><b>“Employment Regulations”</b></p>	<p>the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the European Council Directive 77/187/EEC;</p>
<p><b>“Employee Liability”</b></p>	<p>all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:</p> <p>a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;</p>
	<p>b) unfair, wrongful or constructive dismissal compensation;</p>
	<p>c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;</p>
	<p>d) compensation for less favourable treatment of part-time workers or fixed term employees;</p>

	e) outstanding employment debts and unlawful deduction of wages including any PAYE and National Insurance contributions;
	f) employment claims whether in tort, contract or statute or otherwise;
	g) any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;
<b>"Former Service Provider"</b>	a service provider supplying services to the <i>Client</i> before the Relevant Transfer Date that are the same as or substantially similar to the <i>service</i> (or any part of the <i>service</i> ) and shall include any subcontractor of such service provider (or any subcontractor of any such subcontractor) involved in the provision of such services;
<b>"New Fair Deal"</b>	the revised "Fair Deal" position set out in the HM Treasury guidance: " <i>Fair Deal for Staff Pensions: Staff Transfer from Central Government</i> " issued in October 2013 including:  (i) any amendments to that document immediately prior to the Relevant Transfer Date; and  (ii) any similar pension protection in accordance with the Annexes D1-D3 inclusive to Part D of this schedule as notified to the <i>Service Provider</i> by the <i>Service Manager</i> ;
<b>"Old Fair Deal"</b>	HM Treasury guidance " <i>Staff Transfers from Central Government: A Fair Deal for Staff Pensions</i> " issued in June 1999 including the supplementary guidance " <i>Fair Deal for Staff pensions: Procurement of Bulk Transfer Agreements and Related Issues</i> " issued in June 2004;
<b>"Partial Termination"</b>	the partial termination of the contract to the extent that it relates to the provision of any part of the <i>services</i> .
<b>"Relevant Subcontractor"</b>	any person, including any group company of the <i>Service Provider</i> , to whom the provision of any part of the <i>Services</i> may be sub-contracted by the <i>Service Provider</i> (including any subcontractor of any such person);
<b>"Relevant Transfer"</b>	a transfer of employment to which the Employment Regulations applies and for the purposes of Schedule 7

	(TUPE Surcharge) paragraphs 2.1, 2.2.1 and 5.1.1 and Schedule 8 (Redundancy Surcharge) paragraphs 2.1.1 and 3.1 only shall include the situation where the Former Service Provider becomes the <i>Service Provider</i> on the Start Date;
<b>"Relevant Transfer Date"</b>	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place. For the purposes of Part D: Pensions and its Annexes, where the <i>Service Provider</i> or a Relevant Subcontractor was the Former Service Provider and there is no Relevant Transfer of the Fair Deal Employees because they remain continuously employed by the <i>Service Provider</i> (or Relevant Subcontractor), references to the Relevant Transfer Date shall become references to the Start Date;
<b>"Replacement Services"</b>	any services which are substantially similar to any of the <i>service</i> and which the <i>Client</i> receives in substitution for any of the <i>service</i> following the termination or partial termination of services provided under the contract, whether those <i>services</i> are provided by the <i>Client</i> internally and/or by any third party;
<b>"Replacement Service Provider"</b>	any third party provider of Replacement Services appointed by or at the direction of the <i>Client</i> from time to time or where the <i>Client</i> is providing Replacement Services for its own account, shall also include the <i>Client</i> ;
<b>"Replacement Subcontractor"</b>	a subcontractor of the Replacement Service Provider to whom Transferring Service Provider Employees will transfer on a Service Transfer Date (or any subcontractor of any such subcontractor);
<b>"Staffing Information"</b>	in relation to all persons identified on the Service Provider's Provisional Service Provider Personnel List or Service Provider's Final Service Provider Personnel List, as the case may be, such information as the <i>Client</i> or <i>Service Manager</i> may reasonably request (subject to all applicable provisions of the Data Protection Legislation), but including in an anonymised format:  (a) their ages, dates of commencement of employment or engagement, gender and place of work;
	(b) details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise;

	(c) the identity of the employer or relevant contracting Party;
	(d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
	(e) their wages, salaries, bonuses and profit sharing arrangements as applicable;
	(f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
	(g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
	(h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
	(i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
	(j) any other "employee liability information" as such term is defined in regulation 11 of the Employment Regulations;
<b>"Service Provider's Final Service Provider Personnel List"</b>	a list provided by the <i>Service Provider</i> of all Service Provider Staff who will transfer under the Employment Regulations on the Service Transfer Date;
<b>"Service Provider's Provisional Service Provider Personnel List"</b>	a list prepared and updated by the <i>Service Provider</i> of all Service Provider Staff who are at the date of the list wholly or mainly engaged in or assigned to the provision of the <i>services</i> or any relevant part of the <i>services</i> which it is envisaged as at the date of such list will no longer be provided by the <i>Service Provider</i> ;
<b>"Service Transfer"</b>	any transfer of the <i>service</i> (or any part of the <i>service</i> ), for whatever reason, from the <i>Service Provider</i> or any

	Relevant Subcontractor to a Replacement Service Provider or a Replacement Subcontractor;
<b>"Service Transfer Date"</b>	the date of a Service Transfer;
<b>"Start Date"</b>	the commencement of the provision of the <i>services</i> or of any relevant part of the <i>services</i> under the contract
<b>"Term"</b>	the period commencing on the Start Date and ending on the termination of the relevant contract;
<b>"Transferring Client Employees"</b>	those employees of the <i>Client</i> to whom the Employment Regulations will apply on the Relevant Transfer Date;
<b>"Transferring Former Service Provider Employees"</b>	in relation to a Former Service Provider, those employees of the Former Service Provider to whom the Employment Regulations will apply on the Relevant Transfer Date.
<b>"Transferring Service Provider Employees"</b>	those employees of the <i>Service Provider</i> and/or the Relevant Subcontractors to whom the Employment Regulations will apply on the Service Transfer Date.

## 2. INTERPRETATION

- 2.1 Where a provision in this schedule imposes any obligation on the *Service Provider* including (without limit) to comply with a requirement or provide an indemnity, undertaking or warranty, the *Service Provider* shall procure that each of its Relevant Subcontractors shall comply with such obligation and provide such indemnity, undertaking or warranty to CCS, the *Client*, Former Service Provider, Replacement Service Provider or Replacement Subcontractor, as the case may be and where the Relevant Subcontractor fails to satisfy any claims under such indemnities the *Service Provider* will be liable for satisfying any such claim as if it had provided the indemnity itself.
- 2.2 The provisions of Paragraphs 2.1 and 2.6 of Part A, Paragraph 3.1 of Part B, Paragraphs 1.5, 1.7 and 1.9 of Part C, Part D and Paragraphs 1.4, 2.3 and 2.8 of Part E of this Schedule (together "**Third Party Provisions**") confer benefits on third parties (each such person a "**Third Party Beneficiary**") and are intended to be enforceable by Third Party Beneficiaries by virtue of the CRTPA.
- 2.3 Subject to Paragraph 2.2 above, a person who is not a Party to this contract has no right under the CRTPA to enforce any term of this contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 2.4 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the *Client*, which may, if given, be given on and subject to such terms as the *Client* may determine.

2.5 Any amendments or modifications to this contract may be made, and any rights created under Paragraph 2.2 above may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

### **3. Which parts of this Schedule apply**

Only the following parts of this Schedule shall apply to this contract:

- Part C (No Staff Transfer at Start Date)
- Part D (Pensions)
  - - Annex D1 (CSPS)
  - - Annex D2 (NHSPS)
  - - Annex D3 (LGPS)
- Part E (Staff Transfer on Exit)

## **Part A: Staff Transfer at the Start Date**

Not used.

## **Part B: Staff transfer at the Start Date**

Not used.

## Part C: No Staff Transfer on the Start Date

### 1. What happens if there is a staff transfer

- 1.1 The Client and the *Service Provider* agree that the commencement of the provision of the *services* or of any part of the *services* will not be a Relevant Transfer in relation to any employees of the Client.
- 1.2 If any employee of the Client claims, or it is determined in relation to any employee of the Client, that his/her contract of employment has been transferred from the Client to the *Service Provider* and/or any Relevant Subcontractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
  - 1.2.1 the *Service Provider* shall, and shall procure that the relevant Relevant Subcontractor shall, within 5 Working Days of becoming aware of that fact, notify the Client in writing; and
  - 1.2.2 the Client may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification from the *Service Provider* or the Relevant Subcontractor (as appropriate) or take such other reasonable steps as the Client considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 1.3 If an offer referred to in Paragraph 1.2.2 is accepted (or if the situation has otherwise been resolved by the Client), the *Service Provider* shall, or shall procure that the Relevant Subcontractor shall, immediately release the person from his/her employment or alleged employment.
- 1.4 If by the end of the 15 Working Day period referred to in Paragraph 1.2.2:
  - 1.4.1 no such offer of employment has been made;
  - 1.4.2 such offer has been made but not accepted; or
  - 1.4.3 the situation has not otherwise been resolved;the *Service Provider* may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
- 1.5 Subject to the *Service Provider* and/or the relevant Relevant Subcontractor acting in accordance with the provisions of Paragraphs 1.2 to 1.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 1.8 the Client shall indemnify the *Service Provider* and/or the relevant Relevant Subcontractor against all Employee Liabilities arising out of the termination of the employment of any of the Client's employees referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the *Service Provider* takes, or shall procure that

the Relevant Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities.

- 1.6 If any such person as is described in Paragraph 1.2 is neither re employed by the Client nor dismissed by the *Service Provider* and/or any Relevant Subcontractor within the 15 Working Day period referred to in Paragraph 1.4 such person shall be treated as having transferred to the *Service Provider* and/or the Relevant Subcontractor (as appropriate) and the *Service Provider* shall, or shall procure that the Relevant Subcontractor shall, comply with such obligations as may be imposed upon it under Law.
- 1.7 Where any person remains employed by the *Service Provider* and/or any Relevant Subcontractor pursuant to Paragraph 1.6, all Employee Liabilities in relation to such employee shall remain with the *Service Provider* and/or the Relevant Subcontractor and the *Service Provider* shall indemnify the Client, and shall procure that the Relevant Subcontractor shall indemnify the Client, against any Employee Liabilities that it may incur in respect of any such employees of the *Service Provider* and/or employees of the Relevant Subcontractor.
- 1.8 The indemnities in Paragraph 1.5:
- 1.8.1 shall not apply to:
- (a) any claim for:
- (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
- (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
- in any case in relation to any alleged act or omission of the *Service Provider* and/or Relevant Subcontractor; or
- (b) any claim that the termination of employment was unfair because the *Service Provider* and/or any Relevant Subcontractor neglected to follow a fair dismissal procedure; and
- 1.8.2 shall apply only where the notification referred to in Paragraph 1.2.1 is made by the *Service Provider* and/or any Relevant Subcontractor to the Client within 6 months of the Start Date.
- 1.9 If the *Service Provider* and/or the Relevant Subcontractor does not comply with Paragraph 1.2, all Employee Liabilities in relation to such employees shall remain with the *Service Provider* and/or the Relevant Subcontractor and the *Service Provider* shall (i) comply with the provisions of Part D: Pensions of this Schedule, and (ii) indemnify the Client against any Employee Liabilities that either of them may incur in respect of any such employees of the *Service Provider* and/or employees of the Relevant Subcontractor.



# Part D: Pensions

## 1. Definitions

In this Part D and Part E, the following words have the following meanings and shall be deemed to include the definitions set out in the Annexes to this Part D:

<b>"Actuary"</b>	a Fellow of the Institute and Faculty of Actuaries;
<b>"Admission Agreement"</b>	either or both of the CSPS Admission Agreement (as defined in Annex D1: CSPS) or the LGPS Admission Agreement (as defined in Annex D3: LGPS), as the context requires;
<b>"Broadly Comparable"</b>	(a) in respect of a pension scheme, a status satisfying the condition that there are no identifiable employees who will suffer material detriment overall in terms of future accrual of pension benefits as assessed in accordance with Annex A of New Fair Deal and demonstrated by the issue by the Government Actuary's Department of a broad comparability certificate; and/or
	(b) in respect of benefits provided for or in respect of a member under a pension scheme, benefits that are consistent with that pension scheme's certificate of broad comparability issued by the Government Actuary's Department,  and <b>"Broad Comparability"</b> shall be construed accordingly;
<b>"CSPS"</b>	the schemes as defined in Annex D1 to this Part D;
<b>"CSPS Eligible Employees' McCloud Remedy"</b>	any amount charged by CSPS which is confirmed by CSPS as the remedy (in relation to the CSPS Eligible Employees' membership of CSPS) for the discrimination identified in the 2017 Employment Tribunal case of <i>McCloud v The Lord Chancellor</i> where such amount is clearly identifiable as being an additional cost which the <i>Service Provider</i> would not otherwise be able to recover as part of the Price for Service Provided to Date;
<b>"Direction Letter/Determination"</b>	has the meaning in Annex D2 to this Part D;

<b>"Fair Deal Eligible Employees"</b>	each of the CSPS Eligible Employees, the NHSPS Eligible Employees and/or the LGPS Eligible Employees (as applicable) (and shall include any such employee who has been admitted to and/or remains eligible to join a Broadly Comparable pension scheme at the relevant time in accordance with paragraph 10 or 11 of this Part D);
<b>"Fair Deal Employees"</b>	any of:
	(a) Transferring Client Employees;
	(b) Transferring Former Service Provider Employees;
	(c) employees who are not Transferring Client Employees or Transferring Former Service Provider Employees but to whom the Employment Regulations apply on the Relevant Transfer Date to transfer their employment to the <i>Service Provider</i> or a Relevant Subcontractor;
	(d) where the <i>Service Provider</i> or a Relevant Subcontractor was the Former Service Provider, the employees of the <i>Service Provider</i> (or Relevant Subcontractor);
	who at the Relevant Transfer Date are or become entitled to New Fair Deal protection in respect of any of the Statutory Schemes or a Broadly Comparable pension scheme provided in accordance with paragraph 10 of this Part D as notified by the <i>Client</i> ;
<b>"Fund Actuary"</b>	a Fund Actuary as defined in Annex D3 to this Part D;
<b>"LGPS"</b>	the scheme as defined in Annex D3 to this Part D;
<b>"NHSPS"</b>	the schemes as defined in Annex D2 to this Part D;
<b>"Statutory Schemes"</b>	means the CSPS, NHSPS or LGPS.

## **2. *Service Provider* obligations to participate in the pension schemes**

- 2.1 In respect of all or any Fair Deal Employees each of Annex D1: CSPS, Annex D2: NHSPS and/or Annex D3: LGPS shall apply, as appropriate.
- 2.2 The *Service Provider* undertakes to do all such things and execute any documents (including any relevant Admission Agreement and/or Direction Letter/ Determination, if necessary) as may be required to enable the *Service Provider* to participate in the appropriate Statutory Scheme in respect of the Fair Deal Employees and shall bear its own costs in such regard.
- 2.3 The *Service Provider* undertakes:
- 2.3.1 to pay to the Statutory Schemes all such amounts as are due under the relevant Admission Agreement and/or Direction Letter/ Determination or otherwise and shall deduct and pay to the Statutory Schemes such employee contributions as are required; and
  - 2.3.2 subject to paragraph 5 of Annex D3: LGPS to be fully responsible for all other costs, contributions, payments and other amounts relating to its participation in the Statutory Schemes, including for the avoidance of doubt any exit payments and the costs of providing any bond, indemnity or guarantee required in relation to such participation.
- 2.4 Where the *Service Provider* is the Former Service Provider (or a Relevant Subcontractor is a subcontractor of the Former Service Provider) and there is no Relevant Transfer of the Fair Deal Employees because they remain continuously employed by the *Service Provider* (or Relevant Subcontractor) at the Start Date, this Part D and its Annexes shall be modified accordingly so that the *Service Provider* (or Relevant Subcontractor) shall comply with its requirements from the Start Date or, where it previously provided a Broadly Comparable pension scheme, from the date it is able to close accrual of its Broadly Comparable pension scheme (following appropriate consultation and contractual changes as appropriate) if later. The *Service Provider* (or Relevant Subcontractor) shall make arrangements for a bulk transfer from its Broadly Comparable pension scheme to the relevant Statutory Scheme in accordance with the requirements of the previous contract with the *Client*.

## **3. *Service Provider* obligation to provide information**

- 3.1 The *Service Provider* undertakes to the *Client*:
- 3.1.1 to provide all information which the *Service Manager* may reasonably request concerning matters referred to in this Part D as expeditiously as possible; and
  - 3.1.2 not to issue any announcements to any Fair Deal Employee prior to the Relevant Transfer Date concerning the matters stated in this Part D without the consent in writing of the *Service Manager* (such consent not to be unreasonably withheld or delayed);

- 3.1.3 retain such records as would be necessary to manage the pension aspects in relation to any current or former Fair Deal Eligible Employees arising on expiry or termination of the relevant contract.

#### **4. Indemnities the *Service Provider* must give**

4.1 The *Service Provider* shall indemnify and keep indemnified CCS, NHS Pensions, the *Service Manager* and/or any Replacement Service Provider and/or any Replacement Subcontractor on demand from and against all and any Losses whatsoever suffered or incurred by it or them which:

- 4.1.1 arise out of or in connection with any liability towards all and any Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which arise from any breach by the *Service Provider* of this Part D, and/or the CSPA Admission Agreement and/or the Direction Letter/Determination and/or the LGPS Admission Agreement;

- 4.1.2 relate to the payment of benefits under and/or participation in a pension scheme (as defined in section 150(1) Finance Act 2004) provided by the *Service Provider* or a Relevant Subcontractor on and after the Relevant Transfer Date until the date of termination or expiry of the relevant contract, including the Statutory Schemes or any Broadly Comparable pension scheme provided in accordance with paragraphs 10 or 11 of this Part D;

- 4.1.3 relate to claims by Fair Deal Employees of the *Service Provider* and/or of any Relevant Subcontractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such Fair Deal Employees which Losses:

- (a) relate to any rights to benefits under a pension scheme (as defined in section 150(1) Finance Act 2004) in respect of periods of employment on and after the Relevant Transfer Date until the date of termination or expiry of the relevant contract; or

- (b) arise out of the failure of the *Service Provider* and/or any relevant Relevant Subcontractor to comply with the provisions of this Part D before the date of termination or expiry of the relevant contract; and/or

- 4.1.4 arise out of or in connection with the *Service Provider* (or its Relevant Subcontractor) allowing anyone who is not an NHSPS Fair Deal Employee to join or claim membership of the NHSPS at any time during the Term.

4.2 The indemnities in this Part D and its Annexes:

- 4.2.1 shall survive termination of the relevant contract; and

4.2.2 shall not be affected by the caps on liability contained in Option X18 (Limitation of Liability) in the contract.

## 5. What happens if there is a dispute

5.1 The dispute provisions of the contract will not apply to any dispute (i) between the CCS and/or the *Client* and/or the *Service Provider* or (ii) between their respective actuaries and/or the Fund Actuary about any of the actuarial matters referred to in this Part D and its Annexes shall in the absence of agreement between the CCS and/or the *Client* and/or the *Service Provider* be referred to an independent Actuary:

5.1.1 who will act as an expert and not as an arbitrator;

5.1.2 whose decision will be final and binding on the CCS and/or the *Client* and/or the *Service Provider*; and

5.1.3 whose expenses shall be borne equally by the CCS and/or the *Client* and/or the *Service Provider* unless the independent Actuary shall otherwise direct.

The independent Actuary shall be agreed by the Parties or, failing such agreement the independent Actuary shall be appointed by the President for the time being of the Institute and Faculty of Actuaries on the application by the Parties.

## 6. Other people's rights

6.1 The Parties agree Option Y(UK)3 (Contracts (Rights of Third Parties) Act 1999) of the contract does not apply and that the CRTPA applies to this Part D to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to him or her or it by the *Service Provider* under this Part D, in his or her or its own right under section 1(1) of the CRTPA.

6.2 Further, the *Service Provider* must ensure that the CRTPA will apply to any subcontract to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to them by the Relevant Subcontractor in his or her or its own right under section 1(1) of the CRTPA.

## 7. What happens if there is a breach of this Part D

7.1 The *Service Provider* agrees to notify the *Service Manager* should it breach any obligations it has under this Part D and agrees that the *Client* shall be entitled to terminate its contract for material default in the event that the *Service Provider*:

7.1.1 commits an irremediable breach of any provision or obligation it has under this Part D; or

7.1.2 commits a breach of any provision or obligation it has under this Part D which, where capable of remedy, it fails to remedy within a reasonable time and in any event within 28 days of the date of a notice from the *Service Manager* giving particulars of the breach and requiring the *Service Provider* to remedy it.

## 8. Transferring Fair Deal Employees

- 8.1 Save on expiry or termination of the relevant contract, if the employment of any Fair Deal Eligible Employee transfers to another employer (by way of a transfer under the Employment Regulations or other form of compulsory transfer of employment) the *Service Provider* shall or shall procure that any relevant Sub-contractor shall:
- 8.1.1 notify the *Service Manager* as far as reasonably practicable in advance of the transfer to allow the *Client* to make the necessary arrangements for participation with the relevant Statutory Scheme(s);
  - 8.1.2 consult with about, and inform those Fair Deal Eligible Employees of the pension provisions relating to that transfer; and
  - 8.1.3 procure that the employer to which the Fair Deal Eligible Employees are transferred (the "**New Employer**") complies with the provisions of this Part D and its Annexes provided that references to the "Service Provider" will become references to the New Employer, references to "Relevant Transfer Date" will become references to the date of the transfer to the New Employer and references to "Fair Deal Employees" will become references to the Fair Deal Eligible Employees so transferred to the New Employer.

## 9. What happens to pensions if this Contract ends

- 9.1 The provisions of Part E: Staff Transfer On Exit (Mandatory) apply in relation to pension issues on expiry or termination of the relevant contract.
- 9.2 The *Service Provider* shall (and shall procure that any of its Relevant Subcontractors shall) prior to the termination of the relevant contract provide all such co-operation and assistance (including co-operation and assistance from the Broadly Comparable pension scheme's Actuary) as the Replacement Service Provider and/or NHS Pension and/or CSPS and/or the relevant Administering Authority and/or the *Client* may reasonably require, to enable the Replacement Service Provider to participate in the appropriate Statutory Scheme in respect of any Fair Deal Eligible Employee that remains eligible for New Fair Deal protection following a Service Transfer.

## 10. Broadly Comparable Pension Schemes on the Relevant Transfer Date

- 10.1 If the terms of any of paragraphs 4 of Annex D2: NHSPS or 3.1 of Annex D3: LGPS applies, the *Service Provider* must (and must, where relevant, procure that each of its Relevant Subcontractors will) ensure that, with effect from the Relevant Transfer Date until the day before the Service Transfer Date, the relevant Fair Deal Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided

under the relevant Statutory Scheme, and then on such terms as may be decided by the *Client*.

- 10.2 Such Broadly Comparable pension scheme must be:
  - 10.2.1 established by the Relevant Transfer Date;
  - 10.2.2 a registered pension scheme for the purposes of Part 4 of the Finance Act 2004;
  - 10.2.3 capable of receiving a bulk transfer payment from the relevant Statutory Scheme or from a Former Service Provider's Broadly Comparable pension scheme (unless otherwise instructed by the *Client*);
  - 10.2.4 capable of paying a bulk transfer payment to the Replacement Service Provider's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (unless otherwise instructed by the *Client*); and
  - 10.2.5 maintained until such bulk transfer payments have been received or paid (unless otherwise instructed by the *Client*).
- 10.3 Where the *Service Provider* has set up a Broadly Comparable pension scheme pursuant to the provisions of this Paragraph 10, the *Service Provider* shall (and shall procure that any of its Relevant Subcontractors shall):
  - 10.3.1 supply to the *Service Manager* details of its (or its Relevant Subcontractor's) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability (which remains valid as at the Relevant Transfer Date) covering all relevant Fair Deal Employees, as soon as it is able to do so before the Relevant Transfer Date (where possible) and in any event no later than seven (7) days after receipt of the certificate;
  - 10.3.2 be fully responsible for all costs, contributions, payments and other amounts relating to the setting up, certification of, ongoing participation in and/or withdrawal and exit from the Broadly Comparable pension scheme, including for the avoidance of doubt any debts arising under section 75 or 75A of the Pensions Act 1995;
  - 10.3.3 instruct any such Broadly Comparable pension scheme's Actuary to provide all such co-operation and assistance in agreeing bulk transfer process with the Actuary to the Former Service Provider's Broadly Comparable pension scheme or the Actuary to the relevant Statutory Scheme (as appropriate) and to provide all such co-operation and assistance with any other Actuary appointed by the *Client* (where applicable). This will be with a view to the bulk transfer terms providing day for day and/or pound for pound (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) credits in the Broadly Comparable pension scheme in respect of any Fair Deal Eligible Employee who consents to such a transfer; and

- 10.3.4 provide a replacement Broadly Comparable pension scheme in accordance with this paragraph 10 with immediate effect for those Fair Deal Eligible Employees who are still employed by the *Service Provider* and/or Relevant Subcontractor and are still eligible for New Fair Deal protection in the event that the *Service Provider* and/or Relevant Subcontractor's Broadly Comparable pension scheme is terminated. The relevant Fair Deal Eligible Employees must be given the option to transfer their accrued benefits from the previous Broadly Comparable pension scheme to the new Broadly Comparable pension scheme on day for day and/or pound for pound terms (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes).
- 10.4 Where the *Service Provider* has provided a Broadly Comparable pension scheme pursuant to the provisions of this paragraph 10, the *Service Provider* shall (and shall procure that any of its Relevant Subcontractors shall) prior to the termination of the relevant contract:
- 10.4.1 allow and make all necessary arrangements to effect, in respect of any Fair Deal Eligible Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the Replacement Service Provider's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable). The bulk transfer terms provided shall be on a past service reserve basis which should be calculated allowing for projected final salary at the assumed date of retirement, leaving service or death (in the case of final salary benefits). The actuarial basis for this past service reserve basis should be aligned to the funding requirements of the Broadly Comparable pension scheme in place at the time the bulk transfer terms are offered. The bulk transfer terms shall be subject to an underpin in relation to any service credits awarded in the Broadly Comparable pension scheme in accordance with paragraph 10.3.3 such that the element of the past service reserve amount which relates to such service credits shall be no lower than that required by the bulk transfer terms that were agreed in accordance with paragraph 10.3.3 but using the last day of the Fair Deal Eligible Employees' employment with the *Service Provider* or Relevant Subcontractor (as appropriate) as the date used to determine the actuarial assumptions; and
- 10.4.2 if the transfer payment paid by the trustees of the Broadly Comparable pension scheme is less (in the opinion of the Actuary to the Replacement Service Provider's Broadly Comparable pension scheme (or to the relevant Statutory Scheme if applicable)) than the transfer payment which would have been paid had paragraph 10.4.1 been complied with, the *Service Provider* shall (or shall procure that the Relevant Subcontractor shall) pay the amount of the difference to the Replacement

Service Provider's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable) or as the *Service Manager* shall otherwise direct. The *Service Provider* shall indemnify the *Client* or the Replacement Service Provider's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (as the *Service Manager* directs) for any failure to pay the difference as required under this paragraph.

## 11. Broadly Comparable Pension Scheme in Other Circumstances

- 11.1 If the terms of any of paragraphs 2.2 of Annex D1: CSPS, 5.2 of Annex D2: NHSPS and/or 3.2 of Annex D3: LGPS apply, the *Service Provider* must (and must, where relevant, procure that each of its Relevant Subcontractors will) ensure that, with effect from the cessation of participation in the Statutory Scheme, until the day before the Service Transfer Date, the relevant Fair Deal Eligible Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided under the relevant Statutory Scheme at the date of cessation of participation in the relevant Statutory Scheme, and then on such terms as may be decided by the *Client*.
- 11.2 Such Broadly Comparable pension scheme must be:
- 11.2.1 established by the date of cessation of participation in the Statutory Scheme;
  - 11.2.2 a registered pension scheme for the purposes of Part 4 of the Finance Act 2004;
  - 11.2.3 capable of receiving a bulk transfer payment from the relevant Statutory Scheme (where instructed to do so by the *Client*);
  - 11.2.4 capable of paying a bulk transfer payment to the Replacement Service Provider's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (unless otherwise instructed by the *Client*); and
  - 11.2.5 maintained until such bulk transfer payments have been received or paid (unless otherwise instructed by the *Client*).
- 11.3 Where the *Service Provider* has provided a Broadly Comparable pension scheme pursuant to the provisions of this paragraph 11, the *Service Provider* shall (and shall procure that any of its Relevant Subcontractors shall):
- 11.3.1 supply to the *Service Manager* details of its (or its Relevant Subcontractor's) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability (which remains valid as at the date of cessation of participation in the Statutory Scheme) covering all relevant Fair Deal Eligible Employees, as soon as it is able to do so before the cessation of participation in the Statutory Scheme (where possible) and in any event no later than seven (7) days after receipt of the certificate;

- 11.3.2 be fully responsible for all costs, contributions, payments and other amounts relating to the setting up, certification of, ongoing participation in and/or withdrawal and exit from the Broadly Comparable pension scheme, including for the avoidance of doubt any debts arising under section 75 or 75A of the Pensions Act 1995;
- 11.3.3 where required to do so by the *Client*, instruct any such Broadly Comparable pension scheme's Actuary to provide all such co-operation and assistance in agreeing a bulk transfer process with the Actuary to the relevant Statutory Scheme and to provide all such co-operation and assistance with any other Actuary appointed by the *Client* (where applicable). The *Service Provider* must ensure that day for day and/or pound for pound (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) credits in the Broadly Comparable pension scheme are provided in respect of any Fair Deal Employee who consents to such a transfer from the Statutory Scheme and the *Service Provider* shall be fully responsible for any costs of providing those credits in excess of the bulk transfer payment received by the Broadly Comparable pension scheme; and
- 11.3.4 provide a replacement Broadly Comparable pension scheme in accordance with this paragraph 11 with immediate effect for those Fair Deal Eligible Employees who are still employed by the *Service Provider* and/or Relevant Subcontractor and are still eligible for New Fair Deal protection in the event that the *Service Provider* and/or Relevant Subcontractor's Broadly Comparable pension scheme is closed to future accrual and/or terminated. The relevant Fair Deal Eligible Employees must be given the option to transfer their accrued benefits from the previous Broadly Comparable pension scheme to the new Broadly Comparable pension scheme on day for day and/or pound for pound terms (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes).
- 11.4 Where the *Service Provider* has provided a Broadly Comparable pension scheme pursuant to the provisions of this paragraph 11, the *Service Provider* shall (and shall procure that any of its Relevant Subcontractors shall) prior to the termination of the relevant contract allow and make all necessary arrangements to effect, in respect of any Fair Deal Eligible Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the Replacement Service Provider's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable). The bulk transfer terms provided shall be sufficient to secure day for day and/or pound for pound credits (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) in the Replacement Service Provider's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable). For the avoidance of doubt, should the amount offered by the Broadly Comparable

pension scheme be less than the amount required by the Replacement Service Provider's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) to fund the required credits ("the Shortfall"), the *Service Provider* or the Relevant Subcontractor (as agreed between them) must pay the Replacement Service Provider's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable) the Shortfall as required, provided that in the absence of any agreement between the *Service Provider* and any Relevant Subcontractor, the Shortfall shall be paid by the *Service Provider*. The *Service Provider* shall indemnify the *Client* or the Replacement Service Provider's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (as the *Service Manager* directs) for any failure to pay the Shortfall under this paragraph.

## 12. Right of Set-off

12.1 The *Client* shall have a right to set off against any payments due to the *Service Provider* under the relevant contract an amount equal to:

12.1.1 any unpaid employer's contributions or employee's contributions or any other financial obligations under the CSPA or any CSPA Admission Agreement in respect of the CSPA Eligible Employees whether due from the *Service Provider* or from any Relevant Subcontractor or due from any third party under any indemnity, bond or guarantee;

12.1.2 any unpaid employer's contributions or employee's contributions or any other financial obligations under the NHSPA or any Direction Letter/Determination in respect of the NHSPA Eligible Employees whether due from the *Service Provider* or from any Relevant Subcontractor or due from any third party under any indemnity, bond or guarantee; or

12.1.3 any unpaid employer's contributions or employee's contributions or any other financial obligations under the LGPS or any LGPS Admission Agreement in respect of the LGPS Eligible Employees whether due from the *Service Provider* or from any Relevant Subcontractor or due from any third party under any indemnity, bond or guarantee;

and shall pay such set off amount to the relevant Statutory Scheme.

12.2 The *Client* shall also have a right to set off against any payments due to the *Service Provider* under the relevant contract all reasonable costs and expenses incurred by the *Client* as result of Paragraphs 12.1 above.

## 13. McCloud Remedy

13.1 The *Client* shall indemnify the *Service Provider* against any amount that the *Service Provider* is obliged to contribute to the CSPA in respect of the CSPA Eligible Employees' McCloud Remedy.

# Annex D1:

## Civil Service Pensions Schemes (CSPS)

### 1. Definitions

In this Annex D1: CSPS to Part D: Pensions, the following words have the following meanings:

<b>"CSPS Admission Agreement"</b>	an admission agreement in the form available on the Civil Service Pensions website immediately prior to the Relevant Transfer Date to be entered into for the CSPS in respect of the <i>services</i> ;
<b>"CSPS Eligible Employee"</b>	any CSPS Fair Deal Employee who at the relevant time is an active member or eligible to participate in the CSPS under a CSPS Admission Agreement;
<b>"CSPS Fair Deal Employee"</b>	a Fair Deal Employee who at the Relevant Transfer Date is or becomes entitled to protection in respect of the CSPS in accordance with the provisions of New Fair Deal;
<b>"CSPS"</b>	the Principal Civil Service Pension Scheme available to Civil Servants and employees of bodies under Schedule 1 of the Superannuation Act 1972 (and eligible employees of other bodies admitted to participate under a determination under section 25 of the Public Service Pensions Act 2013), as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Arrangements and (ii) Death Benefits Arrangements; the Civil Service Additional Voluntary Contribution Scheme; and "alpha" introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014.

### 2. Access to equivalent pension schemes after transfer

- 2.1 In accordance with New Fair Deal, the *Service Provider* and/or any of its Relevant Subcontractors to which the employment of any CSPS Fair Deal Employee compulsorily transfers as a result of either the award of the relevant Contract or a Relevant Transfer, if not an employer which participates automatically in the CSPS, shall each secure a CSPS Admission Agreement to ensure that CSPS Fair Deal Employees or CSPS Eligible Employees as appropriate shall be either admitted into, or offered continued membership of, the relevant section of the CSPS that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date or became eligible to join on the Relevant Transfer Date. The *Service Provider* and/or any of its Relevant Subcontractors shall procure that the CSPS Fair Deal

Employees continue to accrue benefits in the CSPA in accordance with the provisions governing the relevant section of the CSPA for service from (and including) the Relevant Transfer Date.

- 2.2 If the *Service Provider* and/or any of its Relevant Subcontractors enters into a CSPA Admission Agreement in accordance with paragraph 2.1 but the CSPA Admission Agreement is terminated during the term of the relevant contract for any reason at a time when the *Service Provider* or Relevant Subcontractor still employs any CSPA Eligible Employees, the *Service Provider* shall (and procure that its Relevant Subcontractors shall) at no extra cost to the *Client*, offer the remaining CSPA Eligible Employees membership of a pension scheme which is Broadly Comparable to the CSPA on the date those CSPA Eligible Employees ceased to participate in the CSPA in accordance with the provisions of paragraph 11 of Part D.

# Annex D2: NHS Pension Schemes

## 1. Definitions

In this Annex D2: NHSPS to Part D: Pensions, the following words have the following meanings:

<p><b>"Direction Letter/Determination"</b></p>	<p>an NHS Pensions Direction or Determination (as appropriate) issued by the Secretary of State in exercise of the powers conferred by section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 or by section 25 of the Public Service Pensions Act 2013 (as appropriate) and issued to the <i>Service Provider</i> or a Relevant Subcontractor of the <i>Service Provider</i> (as appropriate) relating to the terms of participation of the <i>Service Provider</i> or Relevant Subcontractor in the NHSPS in respect of the NHSPS Fair Deal Employees;</p>
<p><b>"NHS Broadly Comparable Employees"</b></p>	<p>each of the Fair Deal Employees who at a Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the NHSPS as a result of either:</p> <p>(a) their employment with the <i>Client</i>, an NHS Body or other employer which participates automatically in the NHSPS; or</p> <p>(b) their employment with a Former Service Provider who provides access to either the NHSPS pursuant to a Direction Letter/Determination or to a Broadly Comparable pension scheme in respect of their employment with that Former Service Provider (on the basis that they are entitled to protection under New Fair Deal (or previous guidance), having been formerly in employment with the <i>Client</i>, an NHS Body or other employer who participated automatically in the NHSPS in connection with the <i>service</i>, prior to being employed by the Former Service Provider),</p> <p>but who is now ineligible to participate in the NHSPS under the rules of the NHSPS and in respect of whom the <i>Client</i> has agreed are to be provided with a Broadly Comparable pension scheme to provide Pension Benefits that are</p>

	Broadly Comparable to those provided under the NHSPS.
<b>"NHSPS Eligible Employees"</b>	any NHSPS Fair Deal Employee who at the relevant time is an active member or eligible to participate in the NHSPS under a Direction Letter/Determination Letter.
<b>"NHSPS Fair Deal Employees"</b>	other than the NHS Broadly Comparable Employees, each of the Fair Deal Employees who at a Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the NHSPS as a result of either:
	(a) their employment with the <i>Client</i> , an NHS Body or other employer which participates automatically in the NHSPS; or
	(b) their employment with a Former Service Provider who provides access to the NHSPS pursuant to a Direction Letter/Determination or to a Broadly Comparable pension scheme in respect of their employment with that Former Service Provider (on the basis that they are entitled to protection under New Fair Deal (or previous guidance), having been formerly in employment with the <i>Client</i> , an NHS Body or other employer who participated automatically in the NHSPS in connection with the <i>service</i> , prior to being employed by the Former Service Provider),
	and, in each case, being continuously engaged for more than fifty per cent (50%) of their employed time in the delivery of services (the same as or similar to the <i>service</i> ).
	For the avoidance of doubt, an individual who is in or entitled to become a member of the NHSPS as a result of being engaged in the <i>service</i> and being covered by an "open" Direction Letter/Determination or other NHSPS "access" facility but who has never been employed directly by the <i>Client</i> , an NHS Body (or other body which participates automatically in the NHSPS) is not an NHSPS Fair Deal Employee;
<b>"NHS Body"</b>	has the meaning given to it in section 275 of the National Health Service Act 2006 as amended by

	section 138(2)(c) of Schedule 4 to the Health and Social Care Act 2012;
<b>"NHS Pensions"</b>	NHS Pensions as the administrators of the NHSPS or such other body as may from time to time be responsible for relevant administrative functions of the NHSPS;
<b>"NHSPS"</b>	the National Health Service Pension Scheme for England and Wales, established pursuant to the Superannuation Act 1972 and the Public Service Pensions Act 2013 governed by subsequent regulations under those Acts including the NHS Pension Scheme Regulations;
<b>"NHS Pension Scheme Regulations"</b>	as appropriate, any or all of the National Health Service Pension Scheme Regulations 1995 (SI 1995/300), the National Health Service Pension Scheme Regulations 2008 (SI 2008/653), the National Health Service Pension Scheme Regulations 2015 (2015/94) and any subsequent regulations made in respect of the NHSPS, each as amended from time to time;
<b>"NHS Premature Retirement Rights"</b>	rights to which any NHS Fair Deal Employee (had they remained in the employment of the <i>Client</i> , an NHS Body or other employer which participates automatically in the NHSPS) would have been or is entitled under the NHS Pension Scheme Regulations, the NHS Compensation for Premature Retirement Regulations 2002 (SI 2002/1311), the NHS (Injury Benefits) Regulations 1995 (SI 1995/866) and section 45 of the General Whitley Council conditions of service, or any other legislative or contractual provision which replaces, amends, extends or consolidates the same from time to time;
<b>"Pension Benefits"</b>	any benefits payable in respect of an individual (including but not limited to pensions related allowances and lump sums) relating to old age, invalidity or survivor's benefits provided under an occupational pension scheme.

## 2. Membership of the NHS Pension Scheme

- 2.1 In accordance with New Fair Deal, the *Service Provider* and/or any of its Relevant Subcontractors to which the employment of any NHSPS Fair Deal Employee compulsorily transfers as a result of either the award of this contract or a Relevant Transfer, if not an NHS Body or other employer which participates

automatically in the NHSPS, shall each secure a Direction Letter/Determination to enable the NHSPS Fair Deal Employees to retain either continuous active membership of or eligibility for the NHSPS for so long as they remain employed in connection with the delivery of the *service* under the relevant contract.

- 2.2 Where it is not possible for the *Service Provider* and/or any of its Relevant Subcontractors to secure a Direction Letter/Determination on or before the Relevant Transfer Date, the *Service Provider* must secure a Direction Letter/Determination as soon as possible after the Relevant Transfer Date, and in the period between the Relevant Transfer Date and the date the Direction Letter/Determination is secure, the *Service Provider* must ensure that:
- (a) all employer's and NHSPS Fair Deal Employees' contributions intended to go to the NHSPS are kept in a separate bank account; and
  - (b) the Pension Benefits and Premature Retirement Rights of NHSPS Fair Deal Employees are not adversely affected.
- 2.3 The *Service Provider* must supply to the *Service Manager* a complete copy of each Direction Letter/ Determination within 5 Working Days of receipt of the Direction Letter/Determination.
- 2.4 The *Service Provider* must ensure (and procure that each of its Sub-Contracts (if any) ensures) that all of its NHSPS Fair Deal Employees have a contractual right to continuous active membership of or eligibility for the NHSPS for so long as they have a right to membership or eligibility of that scheme under the terms of the Direction Letter/Determination.
- 2.5 The *Service Provider* will (and will procure that its Relevant Subcontractors (if any) will) comply with the terms of the Direction Letter/Determination, the NHS Pension Scheme Regulations (including any terms which change as a result of changes in Law) and any relevant policy issued by the Department of Health and Social Care in respect of the NHSPS Fair Deal Employees for so long as it remains bound by the terms of any such Direction Letter/Determination.
- 2.6 Where any employee omitted from the Direction Letter/Determination supplied in accordance with Paragraph 2 of this Annex are subsequently found to be an NHSPS Fair Deal Employee, the *Service Provider* will (and will procure that its Relevant Subcontractors (if any) will) treat that person as if they had been an NHSPS Fair Deal Employee from the Relevant Transfer Date so that their Pension Benefits and NHS Premature Retirement Rights are not adversely affected.
- 2.7 The *Service Provider* will (and will procure that its Relevant Subcontractors (if any) will) provide any guarantee, bond or indemnity required by NHS Pensions in relation to a Direction Letter/Determination.

### **3. Continuation of early retirement rights after transfer**

- 3.1 From the Relevant Transfer Date until the Service Transfer Date, the *Service Provider* must provide (and/or must ensure that its Relevant Subcontractors (if any) provide) NHS Premature Retirement Rights in respect of the NHSPS Fair Deal Employees that are identical to the benefits they would have received had

they remained employees of the *Client*, an NHS Body or other employer which participates automatically in the NHSPS.

#### **4. NHS Broadly Comparable Employees**

4.1 The *Service Provider* shall (and procure that its Relevant Subcontractors shall), with effect from the Relevant Transfer Date, offer the NHSPS Broadly Comparable Employees membership of a pension scheme which is Broadly Comparable to NHSPS on the Relevant Transfer Date in accordance with paragraph 10 of Part D. For the avoidance of doubt, this requirement is separate from any requirement to offer a Broadly Comparable pension scheme in accordance with paragraph 5.2 below.

#### **5. What the buyer can do if the *Service Provider* breaches its pension obligations**

5.1 The *Service Provider* agrees that the *Client* is entitled to make arrangements with NHS Pensions for the *Client* to be notified if the *Service Provider* (or its Relevant Subcontractor) breaches the terms of its Direction Letter/Determination. Notwithstanding the provisions of the foregoing, the *Service Provider* shall notify the *Service Manager* in the event that it (or its Relevant Subcontractor) breaches the terms of its Direction Letter/Determination.

5.2 If the *Service Provider* (or its Relevant Subcontractors, if relevant) ceases to participate in the NHSPS for whatever reason, the *Service Provider* (or any such Relevant Subcontractor, as appropriate) shall offer to offer the NHSPS Eligible Employees membership of a pension scheme which is Broadly Comparable to the NHSPS on the date the NHSPS Eligible Employees ceased to participate in the NHSPS in accordance with the provisions of paragraph 11 of Part D.

#### **6. Compensation when pension scheme access can't be provided**

6.1 If the *Service Provider* (or its Relevant Subcontractor, if relevant) is unable to provide the NHSPS Fair Deal Employees with either membership of:

6.1.1 the NHSPS (having used its best endeavours to secure a Direction Letter/Determination); or

6.1.2 a Broadly Comparable pension scheme,

the *Client* may in its sole discretion permit the *Service Provider* (or any of its Relevant Subcontractors) to compensate the NHSPS Fair Deal Employees in a manner that is Broadly Comparable or equivalent in cash terms, the *Service Provider* (or Relevant Subcontractor as relevant) having consulted with a view to reaching agreement with any recognised trade union or, in the absence of such body, the NHSPS Fair Deal Employees. The *Service Provider* must meet (or must procure that the Relevant Subcontractor meets) the costs of the *Client* determining whether the level of compensation offered is reasonable in the circumstances.

6.2 This flexibility for the *Client* to allow compensation in place of Pension Benefits is in addition to and not instead of the *Client's* right to terminate the contract.

## **7. Indemnities that a *Service Provider* must give**

- 7.1 The *Service Provider* must indemnify and keep indemnified the CCS, the *Client* and any Replacement Service Provider against all Losses arising out of any claim by any NHSPS Fair Deal Employee or any NHS Broadly Comparable Employees that the provision of (or failure to provide) Pension Benefits and NHS Premature Retirement Rights from the Relevant Transfer Date, or the level of such benefit provided, constitutes a breach of his or her employment rights.

## Annex D3:

# Local Government Pension Schemes (LGPS)

### 1. Definitions

In this Annex D3: LGPS to Part D: Pensions, the following words have the following meanings:

<b>“2013 Regulations”</b>	the Local Government Pension Scheme Regulations 2013 (SI 2013/2356) (as amended from time to time);
<b>"Administering Authority"</b>	in relation to the Fund, the relevant Administering Authority of that Fund for the purposes of the 2013 Regulations;
<b>"Fund Actuary"</b>	the actuary to a Fund appointed by the Administering Authority of that Fund;
<b>"Fund"</b>	the pension fund within the LGPS in relation to which the relevant LGPS Eligible Employee was a member of, or was entitled to become a member of, immediately before the Relevant Transfer Date (or, in the case of an LGPS Eligible Employee who was a member of, or was entitled to become a member of a scheme Broadly Comparable to the LGPS immediately before the Relevant Transfer Date, the Fund which the <i>Client</i> determines is the applicable Fund (in consultation with the Administering Authority for that Fund having regard to the requirements of the LGPS Regulations);
<b>“Initial Contribution Rate”</b>	in relation to the LGPS Eligible Employees, who are at the relevant time members of the LGPS, the % of pensionable pay representing the primary rate of the employer’s contribution (within the meaning given to that phrase by regulation 62(4) of the 2013 Regulations determined by the Fund applicable to the LGPS Eligible Employees;  (“pensionable pay” for these purposes is as defined under the 2013 Regulations)
<b>"LGPS"</b>	the Local Government Pension Scheme as governed by the LGPS Regulations, and any other regulations (in each case as amended from time to time) which are from time to time applicable to the Local Government Pension Scheme;
<b>"LGPS Admission Agreement"</b>	an admission agreement within the meaning in Schedule 1 of the 2013 Regulations;

<b>"LGPS Admission Body"</b>	an admission body (within the meaning of Part 3 of Schedule 2 of the 2013 Regulations);
<b>"LGPS Eligible Employees"</b>	any LGPS Fair Deal Employee who at the relevant time is an active member or eligible to participate in the LGPS under an LGPS Admission Agreement;
<b>"LGPS Fair Deal Employees"</b>	any Fair Deal Employee who at the Relevant Transfer Date is or becomes entitled to protection in respect of the LGPS or a pension scheme that is Broadly Comparable to the LGPS in accordance with the provisions in accordance with the provisions of New Fair Deal;
<b>"LGPS Regulations"</b>	the 2013 Regulations and The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 (SI 2014/525), and any other regulations (in each case as amended from time to time) which are from time to time applicable to the LGPS.

## 2. *Service Provider* to become an LGPS Admission Body

2.1 In accordance with the principles of New Fair Deal, the *Service Provider* and/or any of its Relevant Subcontractors to which the employment of any LGPS Fair Deal Employee compulsorily transfers as a result of either the award of the relevant contract or a Relevant Transfer, if not a scheme employer which participates automatically in the LGPS, shall each become an LGPS Admission Body by entering into an LGPS Admission Agreement on or before the Relevant Transfer Date to enable the LGPS Fair Deal Employees to retain either continuous active membership of or eligibility for the LGPS on and from the Relevant Transfer Date for so long as they remain employed in connection with the delivery of the *service* under the relevant contract.

2.2 Any LGPS Fair Deal Employees who:

2.2.1 were active members of the LGPS (or a Broadly Comparable pension scheme) immediately before the Relevant Transfer Date shall be admitted to the LGPS with effect on and from the Relevant Transfer Date; and

2.2.2 were eligible to join the LGPS (or a Broadly Comparable pension scheme) but were not active members of the LGPS (or a Broadly Comparable pension scheme) immediately before the Relevant Transfer Date shall retain the ability to join the LGPS on or after the Relevant Transfer Date if they wish to do so.

- 2.3 The *Service Provider* will (and will procure that its Relevant Subcontractors (if any) will) provide at its own cost any indemnity, bond or guarantee required by an Administering Authority in relation to an LGPS Admission Agreement.

### 3. Broadly Comparable Scheme

- 3.1 If the *Service Provider* and/or any of its Relevant Subcontractors is unable to obtain an LGPS Admission Agreement in accordance with paragraph 2.1 because the Administering Authority will not allow it to participate in the Fund, the *Service Provider* shall (and procure that its Relevant Subcontractors shall), with effect from the Relevant Transfer Date, offer the LGPS Fair Deal Employees membership of a pension scheme which is Broadly Comparable to LGPS on the Relevant Transfer Date in accordance with the provisions of paragraph 10 of Part D.
- 3.2 If the *Service Provider* and/or any of its Relevant Subcontractors becomes an LGPS Admission Body in accordance with paragraph 2.1 but the LGPS Admission Agreement is terminated during the term of the relevant contract for any reason at a time when the *Service Provider* or Relevant Subcontractors still employs any LGPS Eligible Employees, the *Service Provider* shall (and procure that its Relevant Subcontractors shall) at no extra cost to the *Client*, offer the remaining LGPS Eligible Employees membership of a pension scheme which is Broadly Comparable to the LGPS on the date the LGPS Eligible Employees ceased to participate in the LGPS in accordance with the provisions of paragraph 11 of Part D.

### 4. Discretionary Benefits

Where the *Service Provider* and/or any of its Relevant Subcontractors is an LGPS Admission Body, the *Service Provider* shall (and procure that its Relevant Subcontractors shall) comply with its obligations under regulation 60 of the 2013 Regulations in relation to the preparation of a discretionary policy statement.

### 5. LGPS Risk Sharing

- 5.1 Subject to paragraphs 5.4 to 5.10, if at any time during the term of the relevant contract the Administering Authority, pursuant to the LGPS Admission Agreement or the LGPS Regulations, requires the *Service Provider* or any Relevant Subcontractor to pay employer contributions or other payments to the Fund in aggregate in excess of the Initial Contribution Rate, the excess of employer contributions above the Initial Contribution Rate for a Contract Year (the “**Excess Amount**”) shall be paid by the *Service Provider* or the Relevant Subcontractor, as the case may be, and the *Service Provider* shall be reimbursed by the *Client*.
- 5.2 Subject to paragraphs 5.4 to 5.9 and 5.11, if at any time during the term of the relevant contract, the Administering Authority, pursuant to the LGPS Admission Agreement or the LGPS Regulations, requires the *Service Provider* or any Relevant Subcontractor to pay employer contributions or payments to the Fund

in aggregate below the Initial Contribution Rate for a Contract Year, the *Service Provider* shall reimburse the *Client* an amount equal to A–B (the “**Refund Amount**”) where:

A = the amount which would have been paid if contributions and payments had been paid equal to the Initial Contribution Rate for that Contract Year; and

B = the amount of contributions or payments actually paid by the *Service Provider* or Relevant Subcontractor for that Contract Year, as the case may be, to the Fund.

5.3 Subject to paragraphs 5.4 to 5.10, where the Administering Authority obtains an actuarial valuation and a revised rates and adjustment certificate under the LGPS Regulations and/or the terms of the LGPS Admission Agreement when the LGPS Admission Agreement ceases to have effect and the *Service Provider* or any Relevant Subcontractor is required to pay any exit payment under Regulation 64(2) of the 2013 Regulations (the “**Exit Payment**”), such Exit Payment shall be paid by the *Service Provider* or any Relevant Subcontractor (as the case may be) and the *Service Provider* shall be reimbursed by the *Client*.

5.4 The *Service Provider* and any Relevant Subcontractors shall at all times be responsible for the following costs:

5.4.1 any employer contributions relating to the costs of early retirement benefits arising on redundancy or as a result of business efficiency under Regulation 30(7) of the 2013 Regulations or otherwise;

5.4.2 any payment of Fund benefits to active members on the grounds of ill health or infirmity of mind or body under Regulation 35 of the 2013 Regulations or otherwise;

5.4.3 any payment of Fund benefits to deferred or deferred pensioner members on the grounds of ill health or infirmity of mind or body under Regulation 38 of the 2013 Regulations or otherwise;

5.4.4 any employer contributions relating to the costs of early or flexible retirement where the actuarial reduction is waived in whole or in part or a cost neutral reduction is not applied with the consent of the *Service Provider* or any Relevant Subcontractor including without limitation any decision made under Regulation 30(8) of the 2013 Regulations or Schedule 2 of The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014;

5.4.5 any employer contributions relating to the costs of enhanced benefits made at the discretion of the *Service Provider* or any Relevant Subcontractors including without limitation additional pension awarded under Regulation 31 of the 2013 Regulations or otherwise;

- 5.4.6 any increase to the employer contribution rate resulting from the award of pay increases by the *Service Provider* or Relevant Subcontractors in respect of all or any of the LGPS Eligible Employees in excess of the pay increases assumed in the Fund's most recent actuarial valuation (unless the *Service Provider* and/or any Relevant Subcontractor is contractually bound to provide such increases on the Relevant Transfer Date);
  - 5.4.7 to the extent not covered above, any other costs arising out of or in connection with the exercise of any discretion or the grant of any consent under the LGPS Regulations by the *Service Provider* or any Relevant Subcontractors where a member does not have an absolute entitlement to that benefit under the LGPS;
  - 5.4.8 any cost of the administration of the Fund that are not met through the *Service Provider's* or Relevant Subcontractor's employer contribution rate, including without limitation an amount specified in a notice given by the Administering Authority under Regulation 70 of the 2013 Regulations;
  - 5.4.9 the costs of any reports and advice requested by or arising from an instruction given by the *Service Provider* or a Relevant Subcontractor from the Fund Actuary; and/or
  - 5.4.10 any interest payable under the 2013 Regulations or LGPS Administration Agreement.
- 5.5 For the purposes of calculating any Exit Payment, Excess Amount or Refund Amount, any part of such an amount which is attributable to any costs which the *Service Provider* or Relevant Subcontractors are responsible for in accordance with paragraph 5.4 above shall be disregarded and excluded from the calculation. In the event of any dispute as to level of any cost that should be excluded from the calculation, the opinion of the Fund Actuary shall be final and binding.
- 5.6 Where the Administering Authority obtains an actuarial valuation and a revised rates and adjustment certificate under the LGPS Regulations and/or the terms of the LGPS Admission Agreement when the LGPS Admission Agreement ceases to have effect and the *Service Provider* or any Relevant Subcontractor receives payment of an exit credit payment under Regulation 64(2) of the 2013 Regulations (the "**Exit Credit**"), the *Service Provider* shall (or procure that any Relevant Subcontractor shall) reimburse the *Client* an amount equal to the Exit Credit within twenty (20) Working Days of receipt of the Exit Credit.
- 5.7 The *Service Provider* shall (or procure that the Relevant Subcontractor shall) notify the *Service Manager* in writing within twenty (20) Working Days:
- 5.7.1 of the end of each Contract Year of any Excess Amount or Refund Amount due in respect of the Contract Year that has just ended and provide a reasonable summary of how the Excess Amount or Refund Amount was calculated; and
  - 5.7.2 of being informed by the Administering Authority of any Exit Payment or Exit Credit that is determined by as being due from

or to the *Service Provider* or a Relevant Subcontractor and provide a copy of any revised rates and adjustments certificate detailing the Exit Payment or Exit Credit and its calculation.

- 5.8 Within twenty (20) Working Days of receiving the notification under paragraph 5.7 above, the *Service Manager* shall either:
- 5.8.1 notify the *Service Provider* in writing of its acceptance of the Excess Amount, Refund Amount or Exit Payment;
  - 5.8.2 request further information or evidence about the Excess Amount, Refund Amount or Exit Payment from the *Service Provider*; and/or
  - 5.8.3 request a meeting with the *Service Provider* to discuss or clarify the information or evidence provided.
- 5.9 Where the Excess Amount, Refund Amount or Exit Payment is agreed following the receipt of further information or evidence or following a meeting in accordance with paragraph 5.8 above, the *Service Manager* shall notify the *Service Provider* in writing. In the event that the *Service Provider* and the *Service Manager* are unable to agree the amount of the Excess Amount, Refund Amount or Exit Payment then they shall follow the dispute provisions of the contract.
- 5.10 Any Excess Amount or Exit Payment agreed by the *Service Manager* or in accordance with the dispute provisions of the contract shall be paid by the *Client* within timescales as agreed between the *Service Manager* and *Service Provider*. The amount to be paid by the *Client* shall be an amount equal to the Excess Amount or Exit Payment less an amount equal to any corporation tax relief which has been claimed in respect of the Excess Amount or Exit Payment by the *Service Provider* or a Relevant Subcontractor.
- 5.11 Any Refund Amount agreed by the *Service Manager* or in accordance with the dispute provisions of the contract as payable by the *Service Provider* or any Relevant Subcontractor to the *Client* shall be paid by the *Service Provider* or any Relevant Subcontractor forthwith as the liability has been agreed. In the event the *Service Provider* or any Relevant Subcontractor fails to pay any agreed Refund Amount, the *Service Manager* shall demand in writing the immediate payment of the agreed Refund Amount by the *Service Provider* and the *Service Provider* shall make payment within seven (7) Working Days of such demand.
- 5.12 This paragraph 5 shall survive termination of the relevant contract.

# Part E: Staff Transfer on Exit

## 1. Obligations before a Staff Transfer

- 1.1 The *Service Provider* agrees that within 20 Working Days of the earliest of:
- 1.1.1 receipt of a notification from the *Service Manager* of a Service Transfer or intended Service Transfer;
  - 1.1.2 receipt of the giving of notice of early termination or any Partial Termination of the relevant contract;
  - 1.1.3 the date which is 12 months before the end of the Term; and
  - 1.1.4 receipt of a written request of the *Service Manager* at any time (provided that the *Service Manager* shall only be entitled to make one such request in any 6 month period),
- it shall provide in a suitably anonymised format so as to comply with the Data Protection Legislation, the *Service Provider's* Provisional Service Provider Personnel List, together with the Staffing Information in relation to the Service Provider's Provisional Service Provider Personnel List and it shall provide an updated Service Provider's Provisional Service Provider Personnel List and Staffing Information at such intervals as are reasonably requested by the *Client*.
- 1.2 At least 20 Working Days prior to the Service Transfer Date, the *Service Provider* shall provide to the *Service Manager* or at the direction of the *Service Manager* to any Replacement Service Provider and/or any Replacement Subcontractor (i) the Service Provider's Final Service Provider Personnel List, which shall identify the basis upon which they are Transferring Service Provider Employees and (ii) the Staffing Information in relation to the Service Provider's Final Service Provider Personnel List (insofar as such information has not previously been provided and has not changed since being previously provided).
- 1.3 The *Client* shall be permitted to use and disclose information provided by the *Service Provider* under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Service Provider and/or Replacement Subcontractor.
- 1.4 The *Service Provider* warrants, for the benefit of the *Client*, any Replacement Service Provider, and any Replacement Subcontractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.
- 1.5 From the date of the earliest event referred to in Paragraph 1.1.1, 1.1.2 and 1.1.3, the *Service Provider* agrees that it shall not, and agrees to procure that each Relevant Subcontractor shall not, assign any person to the provision of the *service* who is not listed on the Service Provider's Provisional Service Provider Personnel List and shall not without the approval of the *Service Manager* (not to be unreasonably withheld or delayed):

- 1.5.1 replace or re-deploy any Service Provider Staff listed on the Service Provider Provisional Service Provider Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces
- 1.5.2 make, promise, propose, permit or implement any material changes to the terms and conditions of employment of the Service Provider Staff (including pensions and any payments connected with the termination of employment);
- 1.5.3 increase the proportion of working time spent on the *service* (or the relevant part of the *service*) by any of the Service Provider Staff save for fulfilling assignments and projects previously scheduled and agreed;
- 1.5.4 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Service Provider's Provisional Service Provider Personnel List;
- 1.5.5 increase or reduce the total number of employees so engaged, or deploy any other person to perform the *service* (or the relevant part of the *service*);
- 1.5.6 terminate or give notice to terminate the employment or contracts of any persons on the Service Provider's Provisional Service Provider Personnel List save by due disciplinary process;

and shall promptly notify, and procure that each Relevant Subcontractor shall promptly notify, the *Service Manager* or, at the direction of the *Service Manager*, any Replacement Service Provider and any Replacement Subcontractor of any notice to terminate employment given by the *Service Provider* or Relevant Subcontractor or received from any persons listed on the Service Provider's Provisional Service Provider Personnel List regardless of when such notice takes effect.

- 1.6 On or around each anniversary of the Start Date and up to four times during the last 12 months of the Term, the *Service Manager* may make written requests to the *Service Provider* for information relating to the manner in which the *services* are organised. Within 20 Working Days of receipt of a written request the *Service Provider* shall provide, and shall procure that each Relevant Subcontractor shall provide, to the *Service Manager* such information as the *Service Manager* may reasonably require relating to the manner in which the *services* are organised, which shall include:
  - 1.6.1 the numbers of employees engaged in providing the *service*;
  - 1.6.2 the percentage of time spent by each employee engaged in providing the *service*;
  - 1.6.3 the extent to which each employee qualifies for membership of any of the Statutory Schemes or any Broadly Comparable

scheme set up pursuant to the provisions of any of the Annexes to Part D (Pensions) (as appropriate); and

1.6.4 a description of the nature of the work undertaken by each employee by location.

1.7 The *Service Provider* shall provide, and shall procure that each Relevant Subcontractor shall provide, all reasonable cooperation and assistance to the *Client*, any Replacement Service Provider and/or any Replacement Subcontractor to ensure the smooth transfer of the Transferring Service Provider Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Service Provider Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Service Transfer Date, the *Service Provider* shall provide, and shall procure that each Relevant Subcontractor shall provide, to the *Service Manager* or, at the direction of the *Client*, to any Replacement Service Provider and/or any Replacement Subcontractor (as appropriate), in respect of each person on the Service Provider's Final Service Provider Personnel List who is a Transferring Service Provider Employee:

1.7.1 the most recent month's copy pay slip data;

1.7.2 details of cumulative pay for tax and pension purposes;

1.7.3 details of cumulative tax paid;

1.7.4 tax code;

1.7.5 details of any voluntary deductions from pay; and

1.7.6 bank/building society account details for payroll purposes.

## **2. Staff Transfer when the contract ends**

2.1 The *Client* and the *Service Provider* acknowledge that subsequent to the commencement of the provision of the *services*, the identity of the provider of the *services* (or any part of the *services*) may change (whether as a result of termination or Partial Termination of the relevant contract or otherwise) resulting in the *services* being undertaken by a Replacement Service Provider and/or a Replacement Subcontractor. Such change in the identity of the supplier of such *services* may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The *Client* and the *Service Provider* agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the *Service Provider* and the Transferring Service Provider Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Service Provider and/or a Replacement Subcontractor (as the case may be) and each such Transferring Service Provider Employee.

2.2 The *Service Provider* shall, and shall procure that each Relevant Subcontractor shall, comply with all its obligations in respect of the Transferring Service

Provider Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Relevant Subcontractor shall perform and discharge, all its obligations in respect of all the Transferring Service Provider Employees arising in respect of the period up to (and including) the Service Transfer Date (including (without limit) the payment of all remuneration, benefits, entitlements, and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, National Insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Statutory Schemes which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the *Service Provider* and/or the Relevant Subcontractor (as appropriate); and (ii) the Replacement Service Provider and/or Replacement Subcontractor.

- 2.3 Subject to Paragraph 2.4, the *Service Provider* shall indemnify the *Client* and/or the Replacement Service Provider and/or any Replacement Subcontractor against any Employee Liabilities arising from or as a result of:
- 2.3.1 any act or omission of the *Service Provider* or any Relevant Subcontractor in respect of any Transferring Service Provider Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Service Provider Employee whether occurring before, on or after the Service Transfer Date;
  - 2.3.2 the breach or non-observance by the *Service Provider* or any Relevant Subcontractor occurring on or before the Service Transfer Date of:
    - (a) any collective agreement applicable to the Transferring Service Provider Employees; and/or
    - (b) any other custom or practice with a trade union or staff association in respect of any Transferring Service Provider Employees which the *Service Provider* or any Relevant Subcontractor is contractually bound to honour;
  - 2.3.3 any claim by any trade union or other body or person representing any Transferring Service Provider Employees arising from or connected with any failure by the *Service Provider* or a Relevant Subcontractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
  - 2.3.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary National Insurance contributions;

- (a) in relation to any Transferring Service Provider Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
- (b) in relation to any employee who is not identified in the Service Provider's Final Service Provider Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the *Service Provider* to the *Client* and/or Replacement Service Provider and/or any Replacement Subcontractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;

2.3.5 a failure of the *Service Provider* or any Relevant Subcontractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and National Insurance contributions relating to the Transferring Service Provider Employees in respect of the period up to (and including) the Service Transfer Date;

2.3.6 any claim made by or in respect of any person employed or formerly employed by the *Service Provider* or any Relevant Subcontractor other than a Transferring Service Provider Employee identified in the Service Provider's Final Service Provider Personnel List for whom it is alleged the *Client* and/or the Replacement Service Provider and/or any Replacement Subcontractor may be liable by virtue of the relevant contract and/or the Employment Regulations and/or the Acquired Rights Directive; and

2.3.7 any claim made by or in respect of a Transferring Service Provider Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Service Provider Employee relating to any act or omission of the *Service Provider* or any Relevant Subcontractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the *Client* and/or Replacement Service Provider to comply with regulation 13(4) of the Employment Regulations.

2.4 The indemnities in Paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Service Provider and/or any Replacement Subcontractor whether occurring or having its origin before, on or after the Service Transfer Date including any Employee Liabilities:

- 2.4.1 arising out of the resignation of any Transferring Service Provider Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Service Provider and/or any Replacement Subcontractor to occur in the period on or after the Service Transfer Date); or
  - 2.4.2 arising from the Replacement Service Provider's failure, and/or Replacement Subcontractor's failure, to comply with its obligations under the Employment Regulations.
- 2.5 If any person who is not identified in the Service Provider's Final Service Provider Employee List claims, or it is determined in relation to any employees of the *Service Provider*, that his/her contract of employment has been transferred from the *Service Provider* to the Replacement Service Provider and/or Replacement Subcontractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:
- 2.5.1 the *Client* shall procure that the Replacement Service Provider and/or Replacement Subcontractor will, within 5 Working Days of becoming aware of that fact, notify the *Service Manager* and the *Service Provider* in writing; and
  - 2.5.2 the *Service Provider* may offer (or may procure that a Relevant Subcontractor may offer) employment to such person, or take such other reasonable steps as it considered appropriate to deal the matter provided always that such steps are in compliance with Law, within 15 Working Days of receipt of notice from the Replacement Service Provider and/or Replacement Subcontractor.
- 2.6 If such offer of is accepted, or if the situation has otherwise been resolved by the *Service Provider* or a Relevant Subcontractor, *Client* shall procure that the Replacement Service Provider shall, or procure that the and/or Replacement Subcontractor shall, immediately release or procure the release the person from his/her employment or alleged employment;
- 2.7 If after the 15 Working Day period specified in Paragraph 2.5.2 has elapsed:
- 2.7.1 no such offer has been made:
  - 2.7.2 such offer has been made but not accepted; or
  - 2.7.3 the situation has not otherwise been resolved
- the *Service Manager* shall advise the Replacement Service Provider and/or Replacement Subcontractor (as appropriate) that it may within 5 Working Days give notice to terminate the employment or alleged employment of such person;
- 2.8 Subject to the Replacement Service Provider's and/or Replacement Subcontractor acting in accordance with the provisions of Paragraphs 2.5 to 2.7 and in accordance with all applicable proper employment procedures set out in applicable Law and subject to Paragraph 2.9 below, the *Service Provider* will indemnify the Replacement Service Provider and/or Replacement

Subcontractor against all Employee Liabilities arising out of the termination of the employment of any of the *Service Provider's* employees pursuant to the provisions of Paragraph 2.7 provided that the Replacement Service Provider takes, or shall procure that the Replacement Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.9 The indemnity in Paragraph 2.8:

2.9.1 shall not apply to:

(a) any claim for:

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

In any case in relation to any alleged act or omission of the Replacement Service Provider and/or Replacement Subcontractor, or

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

2.9.2 shall apply only where the notification referred to in Paragraph 2.5.1 is made by the Replacement Service Provider and/or Replacement Subcontractor to the *Service Provider* within 6 months of the Service Transfer Date.

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

2.11 The *Service Provider* shall comply, and shall procure that each Relevant Subcontractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Relevant Subcontractor shall perform and discharge, all its obligations in respect of any person identified in the Service Provider's Final Service Provider Personnel List before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, National Insurance contributions and pension contributions and such sums due as a result of any Fair Deal Employees' participation in the Statutory Schemes and any requirement to set up a broadly comparable pension scheme which in any

case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:

- (b) the *Service Provider* and/or any Relevant Subcontractor; and
- (c) the Replacement Service Provider and/or the Replacement Subcontractor.

2.12 The *Service Provider* shall, and shall procure that each Relevant Subcontractor shall, promptly provide the *Service Manager* and any Replacement Service Provider and/or Replacement Subcontractor, in writing such information as is necessary to enable the *Client*, the Replacement Service Provider and/or Replacement Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations. The *Client* shall procure that the Replacement Service Provider and/or Replacement Subcontractor, shall promptly provide to the *Service Provider* and each Relevant Subcontractor in writing such information as is necessary to enable the *Service Provider* and each Relevant Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations.

2.13 Subject to Paragraph 2.14, the *Client* shall procure that the Replacement Service Provider indemnifies the *Service Provider* and its subcontractors against any Employee Liabilities arising from or as a result of:

2.13.1 any act or omission of the Replacement Service Provider and/or Replacement Subcontractor in respect of any Transferring Service Provider Employee in the Service Provider's Final Service Provider Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Service Provider Employee;

2.13.2 the breach or non-observance by the Replacement Service Provider and/or Replacement Subcontractor on or after the Service Transfer Date of:

(a) any collective agreement applicable to the Transferring Service Provider Employees identified in the Service Provider's Final Service Provider Personnel List; and/or

(b) any custom or practice in respect of any Transferring Service Provider Employees identified in the Service Provider's Final Service Provider Personnel List which the Replacement Service Provider and/or Replacement Subcontractor is contractually bound to honour;

2.13.3 any claim by any trade union or other body or person representing any Transferring Service Provider Employees identified in the Service Provider's Final Service Provider

Personnel List arising from or connected with any failure by the Replacement Service Provider and/or Replacement Subcontractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;

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

(b) in relation to any employee who is not a Transferring Service Provider Employee identified in the Service Provider's Final Service Provider Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the *Service Provider* or Relevant Subcontractor, to the Replacement Service Provider or Replacement Subcontractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;

2.13.7 a failure of the Replacement Service Provider or Replacement Subcontractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and National Insurance contributions relating to the Transferring Service Provider Employees identified in the Service Provider's Final Service Provider Personnel List in respect of the period from (and including) the Service Transfer Date; and

2.13.8 any claim made by or in respect of a Transferring Service Provider Employee identified in the Service Provider's Final Service Provider Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Service Provider Employee relating to any act or omission of the Replacement Service Provider or Replacement Subcontractor in relation to obligations under regulation 13 of the Employment Regulations.

2.14 The indemnities in Paragraph 2.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the *Service Provider* and/or any Relevant Subcontractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the *Service Provider* and/or any Subcontractor (as applicable) to comply with its obligations under the Employment Regulations.