

CONTRACT FOR THE PROVISION OF
IMS4 SERVICES

SCHEDULE 8.8
COLLABORATION AGREEMENT

THIS COLLABORATION AGREEMENT IS MADE ON

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BETWEEN:

- (1) The Secretary of State for Health and Social Care acting as part of the Crown through the Department of Health and Social Care of 39 Victoria Street, Westminster, London, SW1H 0EU (the **"Authority"**);
- (2) [] a company incorporated in [] under registration number [], whose registered office is at [];
- (3) [] a company incorporated in [] under registration number [], whose registered office is at [];
- (4) [] a company incorporated in [] under registration number [], whose registered office is at [];
- (5) [] a company incorporated in [] under registration number [], whose registered office is at [];
- (6) [] a company incorporated in [] under registration number [], whose registered office is at [];

WHEREAS:

- A) the Authority and the Collaboration Suppliers have entered into their respective Other Supplier Agreements (defined below) for the provision of the Goods and Services as defined in the IMS4 Agreement (defined below); and
- B) the Collaboration Suppliers now wish to provide for the ongoing cooperation of the Collaboration Suppliers in the provision of the Goods and/or Services (as applicable) under their respective Other Supplier Agreement.

In consideration of the mutual covenants contained in the Other Supplier Agreements and this Collaboration Agreement and intending to be legally bound, the parties agree as follows:

1. DEFINITIONS AND INTERPRETATION

- 1.1 As used in this Collaboration Agreement, the capitalised expressions shall have the meaning given to it in the IMS4 Agreement for the Provision of Information Management Services between the Secretary of State for Health and Entserv UK Limited dated on or around 17 December 2021, (the **"IMS4 Agreement"**) and the following capitalised terms shall have the meanings outlined below the context requires otherwise:

"Authority Confidential Information" has the meaning set out in the Other Supplier Agreement;

"Collaboration Agreement" means this collaboration agreement, comprised of the Clauses and Schedules;

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“Collaboration Suppliers”	means the parties that have executed this Collaboration Agreement;
“Confidential Information”	means the Authority Confidential Information and/or any Collaboration Supplier's Confidential Information;
“Collaboration Activities”	means the activities set out in this Collaboration Agreement;
“Default”	means any breach of the obligations of any Collaboration Supplier or any default, act, omission, negligence or statement of any Collaboration Supplier, its employees, servants, agents or sub-contractor in connection with or in relation to the subject matter of this Collaboration Agreement and in respect of which such Collaboration Supplier is liable (by way of indemnity or otherwise) to the other parties;
“Detailed Collaboration Plan”	has the meaning given to it in Clause 3.2;
“Dispute Resolution Procedure”	means the procedure described in Clause 9;
“Effective Date”	means [DATE];
“Force Majeure Event”	has the meaning given to it in Clause 11.1.1;
“Mediator”	has the meaning given to it in Clause 9.3.1;
“Other Supplier Agreement”	means each contract that is let by the Authority to one of the Collaboration Suppliers, which are listed in Annex 1 below;
“Outline Collaboration Plan”	has the meaning given to it in Clause 3.1;
“Prompt Payment Code”	the code to deal with prompt payments as provided by the Office of the Small Business Commissioner from time to time;
“Supplier’s Confidential Information”	has the meaning set out in the Other Supplier Agreements;
“Term”	has the meaning given to it in Clause 2.1; and
“Working Day”	means any day other than a Saturday, Sunday or public holiday in England and Wales.

1.2 General

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- 1.2.1 As used in this Collaboration Agreement:
- 1.2.1.1 the masculine includes the feminine and the neuter; and
- 1.2.1.2 the singular includes the plural and vice versa.
- 1.2.2 A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof.
- 1.2.3 Headings are included in this Collaboration Agreement for ease of reference only and shall not affect the interpretation or construction of this Collaboration Agreement.
- 1.2.4 References to Clauses and Schedules are, unless otherwise provided, references to clauses of and schedules to this Collaboration Agreement.
- 1.2.5 Except as otherwise expressly provided in this Collaboration Agreement, all remedies available to any party under this Collaboration Agreement are cumulative and may be exercised concurrently or separately and the exercise of any one remedy shall not exclude the exercise of any other remedy.
- 1.2.6 The party receiving the benefit of an indemnity under this Collaboration Agreement shall use its reasonable endeavours to mitigate its Loss covered by the indemnity.

2. TERM OF THE COLLABORATION AGREEMENT

- 2.1 This Collaboration Agreement shall come into force on the Effective Date and, unless earlier terminated in accordance with Clause 10, shall expire six (6) months after the expiry or termination (however arising) of the exit period of the last Other Supplier Agreement (the “**Term**”).
- 2.2 A Collaboration Supplier’s duty to perform the Collaboration Activities shall continue until the end of the exit period of its last relevant Other Supplier Agreement.

3. PROVISION OF THE COLLABORATION PLAN

- 3.1 The Collaboration Suppliers shall, within two (2) weeks (or such longer period as notified by the Authority in writing) of the Effective Date, provide to the Authority detailed proposals for the Collaboration Activities they require from each other (the “**Outline Collaboration Plan**”), which shall be incorporated into Annex 2 below.
- 3.2 Within ten (10) Working Days (or such other period as agreed in writing by the Authority and the Collaboration Suppliers) of receipt of the Outline Collaboration Plan, the Authority shall, with the Support of the Supplier prepare a plan for the Collaboration Activities (the “**Detailed Collaboration Plan**”). The Detailed Collaboration Plan shall include full details of the activities and interfaces that involve all of the Collaboration Suppliers to ensure the receipt of the Goods and Services under each Collaboration Supplier’s respective Other Supplier Agreement. The Detailed Collaboration Plan shall be based on the Outline Collaboration Plan and shall be submitted to the Collaboration Suppliers for approval.
- 3.3 The Collaboration Suppliers shall provide such assistance as is required by the Authority in the preparation of the Detailed Collaboration Plan.
- 3.4 The Collaboration Suppliers shall, within ten (10) Working Days of receipt of the Detailed Collaboration Plan, either:
- 3.4.1 approve the Detailed Collaboration Plan; or

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3.4.2 reject the Detailed Collaboration Plan, giving reasons in writing for such rejection.

3.5 The Collaboration Suppliers may reject the Detailed Collaboration Plan pursuant to Clause 3.4.2 only if it is not consistent with their Outline Collaboration Plan in that it imposes additional, more onerous, obligations on them.

3.6 If the parties fail to agree the Detailed Collaboration Plan in accordance with Clause 3.4, such dispute shall be resolved in accordance with the Dispute Resolution Procedure.

4. COLLABORATION ACTIVITIES

4.1 The Collaboration Suppliers shall perform the Collaboration Activities and all other obligations of this Collaboration Agreement in accordance with the Detailed Collaboration Plan.

4.2 The Collaboration Suppliers shall provide all additional cooperation and assistance as is reasonably required by the Authority to ensure the continuous delivery of the Goods and Services under the relevant Other Supplier Agreement.

4.3 The Collaboration Suppliers shall procure that their respective Sub-contractors provide all cooperation and assistance as set out in the Detailed Collaboration Plan.

5. INVOICING

5.1 In the event that any sums are due under this Collaboration Agreement, the Collaboration Supplier responsible for paying such sum shall pay within thirty (30) Working Days of receipt of a valid invoice.

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

5.3 Each Collaboration Supplier shall ensure they meet, or exceed the objectives contained within the Prompt Payment Code, as contained in the Authority's due diligence data room.

6. CONFIDENTIALITY

6.1 Without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information, the Collaboration Suppliers acknowledge that any Confidential Information obtained from or relating to the Crown, its servants or agents is the property of the Crown.

6.2 Each Collaboration Supplier warrants that:

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

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

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

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

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- 6.3 The provisions of Clauses 6.1 and 6.2 shall not apply to any information which:
- 6.3.1 is or becomes public knowledge other than by breach of this Clause 6; or
 - 6.3.2 is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party; or
 - 6.3.3 is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or
 - 6.3.4 is independently developed without access to the Confidential Information; or
 - 6.3.5 is required to be disclosed by law or by any judicial, arbitral, regulatory or other authority of competent jurisdiction.
- 6.4 The Authority's right, obligations and liabilities in relation to using and disclosing a Collaboration Supplier's Confidential Information provided under this Collaboration Agreement and such Collaboration Supplier's right, obligations and liabilities in relation to using and disclosing any of the Authority's Confidential Information provided under this Collaboration Agreement, shall be as set out in the relevant Other Supplier Agreement.

7. WARRANTIES

- 7.1 Each Collaboration Supplier warrants and represents that:
- 7.1.1 it has full capacity and authority and all necessary consents (including but not limited to, where its procedures so require, the consent of its parent company) to enter into and to perform this Collaboration Agreement and that this Collaboration Agreement is executed by a duly authorised representative of the Collaboration Supplier; and
 - 7.1.2 its obligations hereunder shall be performed by appropriately experienced, qualified and trained personnel with all due skill, care and diligence including but not limited to Good Industry Practice and (without limiting the generality of this Clause 7) in accordance with its own established internal procedures.
- 7.2 Except as expressly stated in this Collaboration Agreement, all warranties and conditions, whether express or implied by statute, common law or otherwise (including but not limited to fitness for purpose) are hereby excluded to the extent permitted by law.

8. LIMITATION OF LIABILITY

- 8.1 None of the parties exclude or limit their liability for death or personal injury resulting from negligence, or for any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.
- 8.2 Nothing in this Collaboration Agreement shall exclude or limit the liability of any party in respect of fraud or fraudulent misrepresentation.
- 8.3 Subject always to Clauses 8.1 and 8.2, the total aggregate liability of the Authority to any and all Collaboration Suppliers for all claims (by way of indemnity or otherwise) arising whether in contract, tort (including negligence), misrepresentation (other than where made fraudulently), breach of statutory duty or otherwise under this Collaboration Agreement (excluding Clause 6.4, which shall be subject to the limitations of liability set out in the relevant Other Supplier Agreement) shall be limited to five hundred thousand pounds (£500,000 GBP).
- 8.4 Subject always to Clauses 8.1 and 8.2, the total aggregate liability of each Collaboration Supplier for all claims to any and all Collaboration Suppliers and the Authority (by way of indemnity or otherwise) arising whether in contract, tort (including negligence), misrepresentation (other than where made fraudulently), breach of statutory duty or otherwise under this Collaboration Agreement shall be limited to five hundred thousand pounds

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(£500,000 GBP).

- 8.5 Subject always to Clauses 8.1, 8.2 and 8.6 and except in respect of liability under Clause 6 (excluding Clause 6.4, which shall be subject to the limitations of liability set out in the relevant Other Supplier Agreement), in no event shall any party be liable to any other for:

- 8.5.1 indirect loss or damage;
- 8.5.2 special loss or damage;
- 8.5.3 consequential loss or damage;
- 8.5.4 loss of profits (whether direct or indirect);
- 8.5.5 loss of turnover (whether direct or indirect);
- 8.5.6 loss of business opportunities (whether direct or indirect); and/or
- 8.5.7 damage to goodwill (whether direct or indirect).

- 8.6 Subject always to Clauses 8.1 and 8.2, the provisions of Clause 8.5 shall not be taken as limiting the right of the Authority to amongst other things, recover as a direct loss any:

- 8.6.1 additional operational and/or administrative costs and expenses arising from a Collaboration Supplier's Default; and/or
- 8.6.2 wasted expenditure or charges rendered unnecessary and/or incurred by the Authority arising from a Collaboration Supplier's Default.

9. DISPUTE RESOLUTION PROCEDURE

- 9.1 All Disputes between any of the parties arising out of or relating to this Collaboration Agreement shall be referred, by any party involved in the dispute, to the representatives of the parties specified in the Detailed Collaboration Plan.

- 9.2 If the Dispute cannot be resolved by the parties' representatives nominated under Clause 9.1 within a maximum of five (5) Working Days (or such other time as otherwise agreed in writing by the parties) after it has been referred to them under Clause 9.1, then except where a party seeks urgent injunctive relief, the parties shall refer it to mediation pursuant to the procedure set out in Clause 9.3 unless the Authority considers (acting reasonably and considering any objections to mediation raised by the other parties) that the dispute is not suitable for resolution by mediation.

- 9.3 The procedure for mediation and consequential provisions relating to mediation are as follows:

- 9.3.1 a neutral adviser or mediator (the "**Mediator**") shall be chosen by agreement between the parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one party to the other parties to appoint a Mediator or if the Mediator agreed upon is unable or unwilling to act, any party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to the parties that he is unable or unwilling to act, apply to the Chairman of the Law Society to appoint a Mediator;

- 9.3.2 the parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held;

- 9.3.3 unless otherwise agreed by the parties in writing, all negotiations connected with the

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dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings;

9.3.4 if the parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the parties once it is signed by their duly authorised representatives;

9.3.5 failing agreement, any of the parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to this Collaboration Agreement without the prior written consent of all the parties; and

9.3.6 if the parties fail to reach agreement in the structured negotiations within twenty (20) Working Days of the Mediator being appointed, or such longer period as may be agreed by the parties, then any dispute or difference between them may be referred to the courts.

9.4 The parties must continue to perform their respective obligations under this Collaboration Agreement and under their respective Other Supplier Agreements pending the resolution of a Dispute.

10. TERMINATION AND CONSEQUENCES OF TERMINATION

10.1 Termination

10.1.1 The Authority has the right to terminate this Collaboration Agreement at any time by notice in writing to the Collaboration Suppliers whenever the Authority has the right to terminate a Collaboration Supplier's respective Other Supplier Agreement.

10.1.2 Failure by any of the Collaboration Suppliers to comply with their obligations under this Collaboration Agreement shall constitute a default under their relevant Other Supplier Agreement. In this case, the Authority also has the right to terminate by notice in writing the participation of any Collaboration Supplier to this Collaboration Agreement and sever its name from the list of Collaboration Suppliers, so that this Collaboration Agreement will continue to operate between the Authority and the remaining Collaboration Suppliers.

10.2 Consequences of Termination

10.2.1 Subject to any other right or remedy of the parties, the Collaboration Suppliers and the Authority shall continue to comply with their respective obligations under the relevant Other Supplier Agreement following the termination (however arising) of this Collaboration Agreement:

10.2.2 Except as expressly provided in this Collaboration Agreement, termination of this Collaboration Agreement shall be without prejudice to any accrued rights and obligations under this Collaboration Agreement.

11. GENERAL PROVISIONS

11.1 Force Majeure

11.1.1 For the purposes of this Collaboration Agreement, the expression "**Force Majeure Event**" shall mean any cause affecting the performance by a party of its obligations under this Collaboration Agreement arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to any party, the party's personnel or any other failure of a sub-contractor.

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- 11.1.2 Subject to the remaining provisions of this Clause 11.1, any party to this Collaboration Agreement may claim relief from liability for non-performance of its obligations to the extent this is due to a Force Majeure Event.
- 11.1.3 A party cannot claim relief if the Force Majeure Event or its level of exposure to such event is attributable to its wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
- 11.1.4 The Affected Party shall immediately give the other parties written notice of the Force Majeure Event. The notification shall include details of the Force Majeure Event together with evidence of its effect on the obligations of the Affected Party, and any action the affected party proposes to take to mitigate its effect.
- 11.1.5 The Affected Party shall notify the other parties in writing as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Collaboration Agreement. Following such notification, this Collaboration Agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise in writing by the parties.
- 11.2 Assignment and Sub-contracting
- 11.2.1 Subject to Clause 11.2.2, the Collaboration Suppliers shall not assign, transfer, novate, sub-license or declare a trust in respect of its rights under all or a part of this Collaboration Agreement or the benefit or advantage hereof without the consent of the Authority first being obtained in writing.
- 11.2.2 Any Sub-contractors identified in the Detailed Collaboration Plan are permitted to perform those elements identified in the Detailed Collaboration Plan to be performed by such sub-contractors.
- 11.3 Notices
- 11.3.1 Any notices given under or in relation to this Collaboration Agreement shall be deemed to have been properly delivered if sent by recorded or registered post or by fax and shall be deemed for the purposes of this Collaboration Agreement to have been given or made at the time the letter would, in the ordinary course of post, be delivered or at the time shown on the sender's fax transmission report.
- 11.3.2 For the purposes of Clause 11.3.1, the address of each of the parties shall be those specified in the Detailed Collaboration Plan.
- 11.4 Entire Agreement
- 11.4.1 This Collaboration Agreement, together with the documents and agreements referred to in it, constitutes the entire agreement and understanding between the parties in respect of the matters dealt with in it and supersedes any previous agreement between the parties in relation to such matters.
- 11.4.2 Each of the parties acknowledges and agrees that in entering into this Collaboration Agreement and the documents and agreements referred to in it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Collaboration Agreement. The only remedy available to each party in respect of any such statements, representation, warranty or understanding shall be for breach of contract under the terms of this Collaboration Agreement.
- 11.4.3 Nothing in this Clause 11.4 shall operate to exclude any liability for fraud.
- 11.5 Rights of Third Parties

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11.5.1 Nothing in this Collaboration Agreement shall be deemed to grant any right or benefit to any person other than the parties or their respective successors in title or assignees, or entitle a third party to enforce any provision hereof and the parties do not intend that any term of this Collaboration Agreement should be enforceable by a third party by virtue of the Contracts (Rights of Third Parties) Act 1999.

11.6 Severability

11.6.1 If any provision of this Collaboration Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed without effect to the remaining provisions. If a provision of this Collaboration Agreement that is fundamental to the accomplishment of the purpose of this Collaboration Agreement is held to any extent to be invalid, the parties shall immediately commence good faith negotiations to remedy that invalidity.

11.7 Variations

11.7.1 No purported amendment or variation of this Collaboration Agreement or any provision of this Collaboration Agreement shall be effective unless it is made in writing by the parties.

11.8 No waiver

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

11.9 Governing Law and Jurisdiction

11.9.1 This Collaboration Agreement shall be governed by and construed in accordance with English law and without prejudice to the Dispute Resolution Procedure, each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

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EXECUTED AND DELIVERED as an agreement by the parties or their duly authorised attorneys the day and year first above written.

FOR AND ON BEHALF OF THE AUTHORITY

Signed by:

Full name (capitals):

Position:

Date:

FOR AND ON BEHALF OF []

Signed by:

Full name (capitals):

Position:

Date:

FOR AND ON BEHALF OF []

Signed by:

Full name (capitals):

Position:

Date:

FOR AND ON BEHALF OF []

Signed by:

Full name (capitals):

Position:

Date:

FOR AND ON BEHALF OF []

Signed by:

Full name (capitals):

Position:

Date:

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FOR AND ON BEHALF OF []

Signed by:

Full name (capitals):

Position:

Date:

FOR AND ON BEHALF OF []

Signed by:

Full name (capitals):

Position:

Date:

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ANNEX 1

LIST OF OTHER SUPPLIER AGREEMENTS

COLLABORATION SUPPLIER	NAME / REFERENCE OF OTHER SUPPLIER AGREEMENT	EFFECTIVE DATE OF OTHER SUPPLIER AGREEMENT

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ANNEX 2

OUTLINE COLLABORATION PLAN

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SCHEDULE 9.1

STAFF TRANSFER

SCHEDULE 9.1

STAFF TRANSFER

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

“Former Supplier”	a supplier supplying goods and services to the Authority before the Relevant Transfer Date that are the same as or substantially similar to the Goods and Services (or any part of the Goods and Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor);
“New Fair Deal”	<p>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:</p> <p>(a) any amendments to that document immediately prior to the Relevant Transfer Date;</p> <p>(b) any similar pension protection in accordance with the Annexes Annex D1- Annex D3 inclusive to Part D of this Schedule as notified to the Supplier by the Authority;</p>
“Notified Sub-contractor”	a Sub-contractor identified in the Annex to this Schedule to whom Transferring Authority Employees and/or Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;
“Old Fair Deal”	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;
“Replacement Sub-contractor”	a sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);
“Relevant Transfer”	a transfer of employment to which the Employment Regulations applies;

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“Relevant Transfer Date”	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place. For the purposes of Part D and its Annexes, where the Supplier or a Sub-contractor was the Former Supplier and there is no Relevant Transfer of the Fair Deal Employees because they remain continuously employed by the Supplier (or Sub-contractor), references to the Relevant Transfer Date shall become references to the relevant Operational Service Commencement Date;
“Service Transfer”	any transfer of the provision of the Goods and Services (or any part of the Goods and Services), for whatever reason, from the Supplier or any Sub-contractor to a Replacement Supplier or a Replacement Sub-contractor;
“Service Transfer Date”	the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires;
“Staffing Information”	in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, all information required in Annex E2 (<i>Table of Staffing Information</i>) in the format specified and with the identities of Data Subjects anonymised where possible. The Authority may acting reasonably make changes to the format or information requested in Annex E2 from time to time.
“Statutory Schemes”	means the CSPS, NHSPS or LGPS as defined in the Annexes to Part D of this Schedule;
“Supplier’s Final Supplier Personnel List”	a list provided by the Supplier of all Supplier Personnel who will transfer under the Employment Regulations on the Service Transfer Date;
“Supplier's Provisional Supplier Personnel List”	a list prepared and updated by the Supplier of all Supplier Personnel who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Goods and Services or any relevant part of the Goods and Services which it is envisaged as at the date of such list will no longer be provided by the Supplier;
“Transferring Authority Employees”	those employees of the Authority to whom the Employment Regulations will apply on the Relevant Transfer Date;
“Transferring Former Supplier Employees”	in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date; and
“Transferring Supplier Employees”	those employees of the Supplier and/or the Supplier's Sub-contractors to whom the Employment Regulations will apply on the Service Transfer Date.

2 INTERPRETATION

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

**PART A: TRANSFERRING AUTHORITY EMPLOYEES AT COMMENCEMENT OF THE
SERVICES – NOT USED**

1 RELEVANT TRANSFERS

1.1 The Authority and the Supplier agree that:

- (a) the commencement of the provision of the Goods and Services or of each relevant part of the Goods and Services will be a Relevant Transfer in relation to the Transferring Authority Employees; and
- (b) as a result of the operation of the Employment Regulations, the contracts of employment between the Authority and the Transferring Authority Employees (except in relation to any terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or any Notified Sub-contractor and each such Transferring Authority Employee.

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

2 AUTHORITY INDEMNITIES

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

- (a) any act or omission by the Authority in respect of any Transferring Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Authority Employee occurring before the Relevant Transfer Date;
- (b) the breach or non-observance by the Authority before the Relevant Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Authority Employees; and/or
 - (ii) any custom or practice in respect of any Transferring Authority Employees which the Authority is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing the Transferring Authority Employees arising from or connected with any failure by the Authority to comply with any legal obligation to such trade union, body or person arising before the Relevant Transfer Date;
- (d) 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:
 - (i) in relation to any Transferring Authority Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and

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- (ii) in relation to any employee who is not a Transferring Authority Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Authority to the Supplier and/or any Notified Sub-contractor as appropriate, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date.
 - (e) a failure of the Authority 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 Authority Employees arising before the Relevant Transfer Date;
 - (f) any claim made by or in respect of any person employed or formerly employed by the Authority other than a Transferring Authority Employee for whom it is alleged the Supplier and/or any Notified Sub-contractor as appropriate may be liable by virtue of the Employment Regulations and/or the Acquired Rights Directive; and
 - (g) any claim made by or in respect of a Transferring Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Authority Employee relating to any act or omission of the Authority 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 Supplier or any Sub-contractor to comply with regulation 13(4) of the Employment Regulations.
- 2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-contractor (whether or not a Notified Sub-contractor) whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities:
- (a) arising out of the resignation of any Transferring Authority Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier and/or any Sub-contractor to occur in the period from (and including) the Relevant Transfer Date; or
 - (b) arising from the failure by the Supplier or any Sub-contractor to comply with its obligations under the Employment Regulations.
- 2.3 If any person who is not identified by the Authority as a Transferring Authority Employee claims, or it is determined in relation to any person who is not identified by the Authority as a Transferring Authority Employee, that his/her contract of employment has been transferred from the Authority to the Supplier and/or any Notified Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- (a) the Supplier shall, or shall procure that the Notified Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Authority; and
 - (b) the Authority may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of receipt of the notification by the Supplier and/or any Notified Sub-contractor, or take such other reasonable steps as the Authority considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
- 2.4 If an offer referred to in Paragraph 2.3(b) is accepted, or if the situation has otherwise been resolved by the Authority, the Supplier shall, or shall procure that the Notified Sub-contractor shall, immediately release the person from his/her employment or alleged employment.
- 2.5 If by the end of the 15 Working Day period specified in Paragraph 2.3(b):
- (a) no such offer of employment has been made;

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- (b) such offer has been made but not accepted; or
- (c) the situation has not otherwise been resolved,

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

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

2.7 The indemnity in Paragraph 2.6:

- (a) shall not apply to:
 - (i) any claim for:
 - (A) 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
 - (B) 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
Supplier and/or any Sub-contractor; or
 - (ii) any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-contractor neglected to follow a fair dismissal procedure; and
- (b) shall apply only where the notification referred to in Paragraph 2.3(a) is made by the Supplier and/or any Notified Sub-contractor (as appropriate) to the Authority within 6 months of the Relevant Transfer Date.

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

3 SUPPLIER INDEMNITIES AND OBLIGATIONS

3.1 Subject to Paragraph 3.2, the Supplier shall indemnify the Authority against any Employee Liabilities arising from or as a result of:

- (a) any act or omission by the Supplier or any Sub-contractor in respect of any Transferring Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Authority Employee whether occurring before, on or after the Relevant Transfer Date;
- (b) the breach or non-observance by the Supplier or any Sub-contractor on or after the Relevant Transfer Date of:

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- (i) any collective agreement applicable to the Transferring Authority Employees; and/or
 - (ii) any custom or practice in respect of any Transferring Authority Employees which the Supplier or any Sub-contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Authority Employees arising from or connected with any failure by the Supplier or any Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- (d) any proposal by the Supplier or a Sub-contractor made before the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Authority Employees to their material detriment on or after their transfer to the Supplier or the relevant Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Authority Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- (e) any statement communicated to or action undertaken by the Supplier or any Sub-contractor to, or in respect of, any Transferring Authority Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Authority in writing;
- (f) 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:
 - (i) in relation to any Transferring Authority Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Authority Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Authority to the Supplier or a Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- (g) a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Authority Employees in respect of the period from (and including) the Relevant Transfer Date;
- (h) any claim made by or in respect of a Transferring Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Authority Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to their obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Authority's failure to comply with its obligations under regulation 13 of the Employment Regulations; and
- (i) a failure by the Supplier or any Sub-Contractor to comply with its obligations under Paragraph 2.8 above.

3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Authority whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any

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Employee Liabilities arising from the Authority's failure to comply with its obligations under the Employment Regulations.

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

4 INFORMATION

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

5 PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

- 5.1 The Parties agree that the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the Supplier of employees whose employment begins after the Relevant Transfer Date, and the Supplier undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.
- 5.2 The Supplier shall, and shall procure that each Sub-contractor shall, comply with any requirement notified to it by the Authority relating to pensions in respect of any Transferring Authority Employee as set down in:
- (a) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised December 2013;
 - (b) Old Fair Deal; and/or
 - (c) the New Fair Deal.
- 5.3 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraphs 5.1 or 5.2 shall be agreed in accordance with the Change Control Procedure.

6 PENSIONS

- 6.1 The Supplier shall, and/or shall procure that each of its Sub-contractors shall, comply with:
- (a) the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff; and
 - (b) Part D (and its Annexes) to this Schedule 9.1 (*Staff Transfer*).

**PART B: TRANSFERRING FORMER SUPPLIER EMPLOYEES AT
COMMENCEMENT OF SERVICES**

1 RELEVANT TRANSFERS

1.1 The Authority and the Supplier agree that:

- (a) the commencement of the provision of the Goods and Services (or of any relevant part of the Goods and Services) will be a Relevant Transfer in relation to the Transferring Former Supplier Employees; and
- (b) as a result of the operation of the Employment Regulations, the contracts of employment between each Former Supplier and the Transferring Former Supplier Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or Notified Sub-contractor and each such Transferring Former Supplier Employee.

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

2 FORMER SUPPLIER INDEMNITIES

2.1 The Authority shall procure that each Former Supplier shall indemnify the Supplier against all and any Employee Liabilities arising from or as a result of:

- (a) any act or omission by the Former Supplier in respect of any Transferring Former Supplier Employee occurring before the Relevant Transfer Date or any other matter, event or circumstance occurring or having its origin before the Relevant Transfer Date save simply for accrual of service before the date;
- (b) all and any Employee Liabilities in respect of all emoluments and outgoings in relation to the Transferring Former Supplier Employees (including all wages, bonuses, PAYE, national insurance contributions, pension contributions and otherwise) payable in respect of any period before the Relevant Transfer Date;
- (c) any claim arising out of the provision of, or proposal by the Former Supplier to offer any change to any benefit, term or condition or working condition of any Transferring Former Supplier Employee arising before the Relevant Transfer Date.
- (d) any failure of the Former Supplier to comply with its obligations under Regulation 13 and 14 of the Employment Regulations, or in respect of an award of compensation under Regulation 15 of the Employment Regulations, except to the extent that the liability arises from the Supplier's or any Notified Sub-contractor's failure to comply with Regulation 13(4) of the Employment Regulations; and
- (e) any statement communicated to or action done by the Former Supplier to, or in respect of, any Transferring Employee before the Relevant Transfer Date which has not been agreed in advance with the Authority in writing.
- (f) any claim by an employee of the Former Supplier who is not a Transferring Employee.

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- 2.2 The Authority shall procure that the Former Supplier indemnifies the Supplier in respect of any Employee Liabilities arising from any act or omission of the Former Supplier in relation to any other employees of the Former Supplier who are not a Transferring Former Supplier Employee during any period whether before, on or after the Relevant Transfer Date.
- 2.3 If any person who is not a Transferring Former Supplier Employee claims, or it is determined, that his/her contract of employment has been transferred from the Former Supplier to the Supplier and/or any Notified Sub-contractor pursuant to the Employment Regulations, or claims that their employment would have transferred had they not resigned, then:
- (a) the Supplier shall, or shall procure that the Notified Sub-contractor shall, within seven (7) days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, to the Former Supplier; and
 - (b) the Former Supplier may offer (or may procure that a third party may offer) employment to such person within twenty-one (21) days of the notification by the Authority, Supplier and/or the Notified Sub-contractor or take such other reasonable steps as the Former Supplier considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 2.4 If an offer referred to in Paragraph 2.3(b) is accepted, or if the situation has otherwise been resolved by the Former Supplier and/or the Authority, the Supplier shall, or shall procure that the Notified Sub-contractor shall, immediately release the person from his/her employment or alleged employment.
- 2.5 If by the end of the twenty-one (21) day period specified in Paragraph 2.3(b):
- (a) no such offer of employment has been made;
 - (b) such offer has been made but not accepted; or
 - (c) the situation has not otherwise been resolved,
- the Supplier and/or any Notified Sub-contractor may within seven (7) days give notice to terminate the employment or alleged employment of such person.
- 2.6 Subject to the Supplier and/or any Notified Sub-contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 or in such other way as may be agreed between the Former Supplier and the Authority or the Supplier, and in accordance with all applicable proper employment procedures set out in Law, the Authority shall procure that the Former Supplier indemnifies the Supplier against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.7 If any such person as is described in Paragraph 2.3 is neither re-employed by the Former Supplier nor dismissed by the Supplier and/or any Notified Sub-contractor within the time scales set out in Paragraph 2.5, such person shall be treated as having transferred to the Supplier or Notified Sub-contractor and the Supplier shall, or shall procure that the Notified Sub-contractor shall, comply with such obligations as may be imposed upon it under the Law.

3 SUPPLIER INDEMNITIES AND OBLIGATIONS

- 3.1 Subject to Paragraph 3.2, the Supplier shall indemnify the Authority and/or the Former Supplier against any Employee Liabilities arising from or as a result of:
- (a) any act or omission by the Supplier or any Sub-contractor in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee whether occurring before, on or after the Relevant Transfer Date;

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- (b) the breach or non-observance by the Supplier or any Sub-contractor on or after the Relevant Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Former Supplier Employee; and/or
 - (ii) any custom or practice in respect of any Transferring Former Supplier Employees which the Supplier or any Sub-contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Former Supplier Employees arising from or connected with any failure by the Supplier or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- (d) any proposal by the Supplier or a Sub-contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Supplier Employees on or after their transfer to the Supplier or a Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- (e) any statement communicated to or action undertaken by the Supplier or a Sub-contractor to, or in respect of, any Transferring Former Supplier Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Authority and/or the Former Supplier in writing;
- (f) 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:
 - (i) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Former Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier or a Sub-contractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- (g) a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period from (and including) the Relevant Transfer Date;
- (h) any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Supplier's failure to comply with its obligations under regulation 13 of the Employment Regulations; and
- (i) a failure by the Supplier or any Sub-Contractor to comply with its obligations under Paragraph 2.7 above

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

4 INFORMATION

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

5 PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

- 5.1 The Supplier shall, and shall procure that each Sub-contractor shall, comply with any requirement notified to it by the Authority relating to pensions in respect of any Transferring Former Supplier Employee as set down in:
- (a) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised December 2013;
 - (b) Old Fair Deal; and/or
 - (c) the New Fair Deal.
- 5.2 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 5.1 shall be agreed in accordance with the Change Control Procedure.

6 PROCUREMENT OBLIGATIONS

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

7 PENSIONS

- 7.1 The Supplier shall, and shall procure that each Sub-contractor shall, comply with:

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- (a) the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff; and
- (b) Part D (and its Annexes) to this Schedule 9.1 (*Staff Transfer*).

**PART C: NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES – NOT
USED**

1 PROCEDURE IN THE EVENT OF TRANSFER

- 1.1 The Authority and the Supplier agree that the commencement of the provision of the Goods and Services or of any part of the provision of the Goods and Services will not be a Relevant Transfer in relation to any employees of the Authority and/or any Former Supplier.
- 1.2 If any employee of the Authority and/or a Former Supplier claims, or it is determined in relation to any employee of the Authority and/or a Former Supplier, that his/her contract of employment has been transferred from the Authority and/or the Former Supplier to the Supplier and/or any Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- (a) the Supplier shall, and shall procure that the relevant Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, give notice to the Former Supplier; and
 - (b) the Authority may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Supplier or the Sub-contractor (as appropriate) or take such other reasonable steps as the Authority (or any third party) 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(b) is accepted (or if the situation has otherwise been resolved by the Authority and/or the Former Supplier), the Supplier shall, or shall procure that the Sub-contractor shall, immediately release the person from his/her employment or alleged employment.
- 1.4 If by the end of the 15 Working Day period specified in Paragraph 1.2(b):
- (a) no such offer of employment has been made;
 - (b) such offer has been made but not accepted; or
 - (c) the situation has not otherwise been resolved,
- the Supplier and/or the Sub-contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

2 INDEMNITIES

- 2.1 Subject to the Supplier and/or the relevant Sub-contractor acting in accordance with the provisions of Paragraphs 1.2 to 1.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 2.4, the Authority shall:
- (a) indemnify the Supplier and/or the relevant Sub-contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Authority referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities; and
 - (b) procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the relevant Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

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- 2.2 If any such person as is described in Paragraph 1.2 is neither re employed by the Authority and/or the Former Supplier as appropriate nor dismissed by the Supplier and/or any Sub-contractor within the 15 Working Day period referred to in Paragraph 1.4 such person shall be treated as having transferred to the Supplier and/or the Sub-contractor (as appropriate) and the Supplier shall, or shall procure that the Sub-contractor shall, comply with such obligations as may be imposed upon it under Law.
- 2.3 Where any person remains employed by the Supplier and/or any Sub-contractor pursuant to Paragraph 2.2, all Employee Liabilities in relation to such employee shall remain with the Supplier and/or the Sub-contractor and the Supplier shall indemnify the Authority and any Former Supplier, and shall procure that the Sub-contractor shall indemnify the Authority and any Former Supplier, against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Sub-contractor.
- 2.4 The indemnities in Paragraph 2.1 of Part C of this Schedule:
- (a) shall not apply to:
 - (i) any claim for:
 - (A) 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
 - (B) 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 Supplier and/or any Sub-contractor; or
 - (ii) any claim that the termination of employment was unfair because the Supplier and/or any Sub-contractor neglected to follow a fair dismissal procedure; and
 - (b) shall apply only where the notification referred to in Paragraph 1.2(a) of Part C of this Schedule is made by the Supplier and/or any Sub-contractor to the Authority and, if applicable, Former Supplier within 6 months of the Relevant Transfer Date.

3 PROCUREMENT OBLIGATIONS

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

PART D: PENSIONS

1 DEFINITIONS

1.1 In this Part D and Part E, the following words have the following meanings and they shall supplement Schedule 1: Definitions, and shall be deemed to include the definitions set out in the Annexes to this Part D:

"Actuary"	a Fellow of the Institute and Faculty of Actuaries;
"Admission Agreement"	either or both of the CSPA Admission Agreement (as defined in Annex D1: CSPA) or the LGPS Admission Agreement) as defined in Annex D3: LGPS), as the context requires;
"Best Value Direction"	the Best Value Authorities Staff Transfers (Pensions) Direction 2007 or the Welsh Authorities Staff Transfers (Pensions) Direction 2012 (as appropriate);
"Broadly Comparable"	<p>(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</p> <p>(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,</p> <p>and "Broad Comparability" shall be construed accordingly;</p>
"CSPA"	the schemes as defined in Annex D1 to this Part D;
"Direction Letter/Determination"	has the meaning in Annex D2 to this Part D;
"Fair Deal Eligible Employees"	means each of the CSPA Eligible Employees, the NHSPA 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);

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"Fair Deal Employees"

any of:

- (a) Transferring Authority Employees;
- (b) Transferring Former Supplier Employees; and/or
- (c) employees who are not Transferring Authority Employees or Transferring Former Supplier Employees but to whom the Employment Regulations apply on the Relevant Transfer Date to transfer their employment to the Supplier or a Sub-Contractor, and whose employment is not terminated in accordance with the provisions of Paragraphs 2.5 of Parts A or B or Paragraph 1.4 of Part C;
- (d) where the Supplier or a Sub-contractor was the Former Supplier, the employees of the Supplier (or Sub-contractor)
- (e) who at the Relevant Transfer Date are or become entitled to New Fair Deal or Best Value Direction 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 Authority;

"Fund Actuary"

a Fund Actuary as defined in Annex D3 to this Part D;

"LGPS"

the scheme as defined in Annex D3 to this Part D; and

"NHSPS"

the schemes as defined in Annex D2 to this Part D.

2 PARTICIPATION

- 2.1 In respect of all or any Fair Deal Employees each of Annex D1: CSPA, Annex D2: NHSPS and/or Annex D3: LGPS shall apply, as appropriate.
- 2.2 The Supplier 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 Supplier 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 Supplier undertakes:
 - (a) 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
 - (b) 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.

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- 2.4 Where the Supplier is the Former Supplier (or a Sub-contractor is a sub-contractor of the Former Supplier) and there is no Relevant Transfer of the Fair Deal Employees because they remain continuously employed by the Supplier (or Sub-contractor) at the relevant Operational Service Commencement Date, this Part D and its Annexes shall be modified accordingly so that the Supplier (or Sub-contractor) shall comply with its requirements from the relevant Operational Service Commencement 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 Supplier (or Sub-contractor) 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 Authority.

3 PROVISION OF INFORMATION

- 3.1 The Supplier undertakes to the Authority:
- (a) to provide all information which the Authority may reasonably request concerning matters referred to in this Part D as expeditiously as possible;
 - (b) 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 Authority (such consent not to be unreasonably withheld or delayed); and
 - (c) 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 this Agreement.

4 INDEMNITIES

- 4.1 The Supplier shall indemnify and keep indemnified the Authority, NHS Pensions, any Replacement Supplier and/or any Replacement Sub-contractor on demand from and against all and any Losses whatsoever suffered or incurred by it or them which:
- (a) arise out of or in connection with any liability towards all and any Fair Deal Employees in respect of service on or after the Relevant Transfer Date which arises from any breach by the Supplier of this Part D, and/or the CSPA Admission Agreement and/or the Direction Letter/Determination and/or the LGPS Admission Agreement;
 - (b) 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 Supplier or a Sub-contractor on and after the Relevant Transfer Date until the date of termination or expiry of this Agreement, including the Statutory Schemes or any Broadly Comparable pension scheme provided in accordance with Paragraphs 10 or 11 of this Part D;
 - (c) relate to claims by Fair Deal Employees of the Supplier and/or of any Sub-contractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such Fair Deal Employees which Losses:
 - (i) 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 this Agreement;
 - (ii) arise out of the failure of the Supplier and/or any relevant Sub-contractor to comply with the provisions of this Part D before the date of termination or expiry of this Agreement; and/or
 - (d) arise out of or in connection with the Supplier (or its Sub-contractor) allowing anyone who is not an NHSPS Fair Deal Employee to join or claim membership of the NHSPS

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at any time during the Term.

4.2 The indemnities in this Part D and its Annexes:

- (a) shall survive termination of this Agreement; and
- (b) shall not be affected by the caps on liability contained in Clause 26 (*Limitation of Liability*).

5 DISPUTES

5.1 The Dispute Resolution Procedure will not apply to any dispute (i) between the Authority and/or the Supplier 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 Authority and/or the Supplier be referred to an independent Actuary:

- (a) who will act as an expert and not as an arbitrator;
- (b) whose decision will be final and binding on the Authority and/or the Supplier; and
- (c) whose expenses shall be borne equally by the Authority and/or the Supplier unless the independent Actuary shall otherwise direct.

5.2 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 THIRD PARTY RIGHTS

6.1 The Parties agree Clause 44 (*Third Party Rights*) 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 in respect of to him or her by the Supplier under this Part D, in his or her or its own right under section 1(1) of the CRTPA.

6.2 Further, the Supplier must ensure that the CRTPA will apply to any Sub-contract to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to them by the Sub-contractor in his or her own right under section 1(1) of the CRTPA.

7 BREACH

7.1 The Supplier agrees to notify the Authority should it breach any obligations it has under this Part D and agrees that the Authority shall be entitled to terminate its Agreement for material Default in the event that the Supplier:

- (a) commits an irremediable breach of any provision or obligation it has under this Part D; or
- (b) 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 Authority giving particulars of the breach and requiring the Supplier to remedy it.

8 TRANSFER TO ANOTHER EMPLOYER/SUB-CONTRACTORS

8.1 Save on expiry or termination of this Agreement, 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 Supplier shall or shall procure that any relevant Sub-contractor shall:

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- (a) notify the Authority as far as reasonably practicable in advance of the transfer to allow the Authority to make the necessary arrangements for participation with the relevant Statutory Scheme(s);
- (b) consult with about, and inform those Fair Deal Eligible Employees of, the pension provisions relating to that transfer; and
- (c) 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 "Supplier" 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 PENSION ISSUES ON EXPIRY OR TERMINATION

- 9.1 The provisions of Part E: Employment Exit Provisions (mandatory) apply in relation to pension issues on expiry or termination of this Agreement.
- 9.2 The Supplier shall (and shall procure that any of its Sub-contractors shall) prior to the termination of this Agreement provide all such co-operation and assistance (including co-operation and assistance from the Broadly Comparable pension scheme's Actuary) as the Replacement Supplier and/or NHS Pension and/or CSPA and/or the relevant Administering Authority and/or the Authority may reasonably require, to enable the Replacement Supplier 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 SCHEME ON 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 Supplier must (and must, where relevant, procure that each of its Sub-contractors 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 Authority.
- 10.2 Such Broadly Comparable pension scheme must be:
 - (a) established by the Relevant Transfer Date;
 - (b) a registered pension scheme for the purposes of Part 4 of the Finance Act 2004;
 - (c) capable of receiving a bulk transfer payment from the relevant Statutory Scheme or from a Former Supplier's Broadly Comparable pension scheme (unless otherwise instructed by the Authority);
 - (d) capable of paying a bulk transfer payment to the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (unless otherwise instructed by the Authority); and
 - (e) maintained until such bulk transfer payments have been received or paid (unless otherwise instructed by the Authority).
- 10.3 Where the Supplier has provided a Broadly Comparable pension scheme pursuant to the provisions of this Paragraph 10, the Supplier shall (and shall procure that any of its Sub-contractors shall):
 - (a) supply to the Authority details of its (or its Sub-contractor's) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability