Schedule 9.1 – Staff Transfer

1 Definitions

1.1 In this Schedule, the following definitions shall apply:

Administering Authority means the administering authority of the LGPS Fund;

Admission Agreement The agreement to be entered into by which the supplier agrees to participate in the Schemes as amended from time to time;

Commencement Redundancy Payment means any of the following payments:

(a) statutory redundancy payments made in accordance with section 162 of the Employment Rights Act 1996;

(b) contractual redundancy payments (which for this purpose shall mean redundancy payments made in accordance with the terms and conditions of employment to which the relevant employee was entitled at the Operational Service Commencement Date and for the avoidance of doubt, in each employee's case, shall not include any ex gratia payment (that is, for the avoidance of doubt, any payment for which the employee does not have a contractual entitlement), payment for accrued holiday or any other payment made as compensation for the termination of employment);

(c) in respect of each relevant employee, either:

(i) payment of damages for breach of the applicable statutory notice entitlement or, if higher, the notice entitlement under the terms and conditions of employment to which the relevant employee was entitled at the Reference Date; or

(ii) payment in lieu of any such notice entitlement, made pursuant to such terms and conditions of employment,

but for the avoidance of doubt, shall not include any payment of salary or wages or of any benefit in respect of any period of continuing employment (whether during a notice period or otherwise); and

(d) any payment made in satisfaction of any Early Retirement Right to which the relevant employee was entitled under his or her terms and conditions of employment on the Reference Date;

Early Retirement Right any right to pension benefit arising on dismissal for redundancy, whether such benefit is reduced or otherwise and whether such right arises on retirement or

	otherwise;
Eligible Employee	any Fair Deal Employee or LGPS Employee who at the relevant time is an eligible employee as defined in the Admission Agreement or any relevant LGPS regulations (as the case may be);
Fair Deal Employees	those Transferring Authority Employees who are on the Relevant Transfer Date entitled to the protection of New Fair Deal and any Transferring Former Supplier Employees who originally transferred pursuant to a Relevant Transfer under the Employment Regulations (or the predecessor legislation to the Employment Regulations), from employment with a public sector employer and who were once eligible to participate in the Schemes and who at the Relevant Transfer Date become entitled to the protection of New Fair Deal;
Former Supplier	a supplier supplying services to the Authority before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor);
In-scope Employee	has the meaning provided in Schedule 7.6 (Savings Payments);
LGPS	means the Local Government Pension Scheme;
LGPS Admission Agreement	means a closed admission agreement to be entered into between the Supplier, the Authority and the Administering Authority;
LGPS Employees	means those of the Transferring Supplier Employees who immediately prior to the transfer of their employment to the Supplier on the Relevant Transfer Date are active members of the LGPS Fund and who originally transferred to the Former Supplier pursuant to a Relevant Transfer under the Employment Regulations (or the predecessor legislation to the Employment Regulations), from employment with a public sector employer and who were once eligible to participate in the LGPS;
LGPS Fund	means the relevant LGPS fund (or funds) of which the LGPS Employees were active members immediately prior to the Relevant Transfer Date;
New Fair Deal	the revised Fair Deal position set out in the HM Treasury guidance: "*Fair Deal for staff pensions: staff transfer from central government*" issued in October 2013;
Notified Sub-contractor	a Sub-contractor identified in the Annex to this Schedule (as updated by written agreement between the Parties from time to time) to whom Transferring Authority Employees and/or Transferring Former Supplier

	Employees will transfer on a Relevant Transfer Date;
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;
Relevant Transfer Date	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
Schemes	the Principal Civil Service Pension Scheme available to employees of the civil service and employees of bodies under the Superannuation Act 1972, as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Scheme and (ii) Death Benefits Scheme; the Civil Service Additional Voluntary Contribution Scheme; and the 2015 New Scheme (with effect from a date to be notified to the Supplier by the Minister for the Cabinet Office);
Service Transfer	any transfer of the Services (or any part of the 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;
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, such information as the Authority 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 and gender; (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 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

(ii) any other "employee liability information" as such term is defined in regulation 11 of the Employment Regulations;

Supplier's Final Supplier Personnel List	a list prepared and updated by the Supplier of all Supplier Personnel who are engaged in or wholly or mainly assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier;
Supplier's Provisional Supplier Personnel List	a list prepared and updated by the Supplier of all Supplier Personnel who are engaged in or wholly or mainly assigned to the provision of the Services or any relevant part of the 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

2.1 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 Sub-contractor 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 Services

1 Relevant Transfers

1.1 The Authority and the Supplier agree that:

1.1.1 the commencement of the provision of the Services or of each relevant part of the Services will be a Relevant Transfer in relation to the Transferring Authority Employees; and

1.1.2 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 dis-applied 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 in respect of any Transferring Authority Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

2.1.1 any act or omission by the Authority occurring before the Relevant Transfer Date;

2.1.2 the breach or non-observance by the Authority before the Relevant Transfer Date of:

(a) any collective agreement applicable to the Transferring Authority Employees; and/or

(b) any custom or practice in respect of any Transferring Authority Employees which the Authority is contractually bound to honour;

2.1.3 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;

2.1.4 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 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

(b) 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.

2.1.5 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;

2.1.6 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

2.1.7 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:

2.2.1 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 Sub-contractor to occur in the period from (and including) the Relevant Transfer Date; or

2.2.2 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:

2.3.1 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

2.3.2 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 2.3.2 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 2.3.2:

2.5.1 no such offer of employment has been made;

2.5.2 such offer has been made but not accepted; or

2.5.3 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 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:

2.7.1 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 Supplier and/or any Sub-contractor; or

(b) 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

2.7.2 shall apply only where the notification referred to in Paragraph 2.3.1 is made by the Supplier and/or any Notified Sub-contractor (as appropriate) to the Authority within 6 months of the Effective Date.

2.8 If any such person as is referred to in Paragraph 4.3 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 4.5 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 in respect of any Transferring Authority Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

3.1.1 any act or omission by the Supplier or any Sub-contractor whether occurring before, on or after the Relevant Transfer Date;

3.1.2 the breach or non-observance by the Supplier or any Sub-contractor on or after the Relevant Transfer Date of:

(a) any collective agreement applicable to the Transferring Authority Employees; and/or

(b) any custom or practice in respect of any Transferring Authority Employees which the Supplier or any Sub-contractor is contractually bound to honour;

3.1.3 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;

3.1.4 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;

3.1.5 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;

3.1.6 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 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;

(b) 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;

(c) 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; and

(d) 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.

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 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 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:

5.2.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2013;

5.2.2 HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999";

5.2.3 HM Treasury's guidance "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or

5.2.4 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

The Supplier shall, and shall procure that each Sub-contractor shall, comply with the pensions provisions in the following Annex.

Annex to Part A: Pensions

1 Participation

1.1 The Supplier undertakes to enter into the Admission Agreement.

1.2 The Supplier and the Authority:

1.2.1 undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Supplier to participate in the Schemes in respect of the Fair Deal Employees;

1.2.2 agree that the Authority is entitled to make arrangements with the body responsible for the Schemes for the Authority to be notified if the Supplier breaches the Admission Agreement; and

1.2.3 agree that, notwithstanding sub-paragraph 1.2.2 above, the Supplier shall notify the Authority in the event that it breaches the Admission Agreement.

1.3 The Supplier shall bear its own costs and all costs that the Authority reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Supplier participating in the Schemes.

2 Future Service Benefits

2.1 The Supplier shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Supplier shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of Schemes for service from (and including) the Relevant Transfer Date.

2.2 The Supplier undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the Authority, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the Authority in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes at the relevant date.

2.3 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

3 Funding

3.1 The Supplier undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.

3.2 The Supplier shall indemnify and keep indemnified the Authority on demand against any claim by, payment to, or loss incurred by, the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Supplier to or in respect of the Schemes.

4 Provision of Information

4.1 The Supplier and the Authority respectively undertake to each other:

4.1.1 to provide all information which the other Party may reasonably request concerning matters: (i) referred to in this Annex; and (ii) set out in the Admission Agreement, and to supply the information as expeditiously as possible; and

4.1.2 not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

5 Indemnity

5.1 The Supplier undertakes to the Authority to indemnify and keep indemnified the Authority on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

6 Employer Obligation

6.1 The Supplier shall comply with the requirements of the Pensions Act 2008 and the Transfer of Employment (Pension Protection) Regulations 2005.

7 Subsequent Transfers

7.1 The Supplier shall:

7.1.1 not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the date of the relevant future transfer;

7.1.2 provide all such co-operation and assistance as the Schemes and the Replacement Supplier and/or the Authority may reasonably require to enable the Replacement Supplier to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal; and

7.1.3 for the period either:

(a) after notice (for whatever reason) is given, in accordance with the other provisions of this Agreement, to terminate the Agreement or any part of the Services; or

(b) after the date which is two (2) years prior to the date of expiry of this Agreement,

ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Supplier or the Authority, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of the Authority (such approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

Part B: Transferring Former Supplier Employees at Commencement of Services

1 Relevant Transfers

1.1 The Authority and the Supplier agree that:

1.1.1 the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Supplier Employees; and

1.1.2 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 dis-applied 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.

2 Indemnities

2.1 The Authority shall procure that the Former Supplier shall indemnify and keep indemnified the Supplier against all losses, costs, liabilities, expenses, actions, proceedings, claims and demands arising out of or in connection with any employment claim by a Transferring Former Supplier Employee in relation to the Transferring Former Supplier Employee's employment prior to the Relevant Transfer Date.

2.2 Where any Transferring Former Supplier Employee is due to be paid remuneration (such as salary, holiday pay, commission and all other payments made to the employee) after the Relevant Transfer Date in respect of the period before the Relevant Transfer Date, the same shall be paid by the Supplier. The Authority shall procure that the Supplier shall, within 30 days of making any demand and providing any supporting information or documentation which may reasonably be required by the Former Supplier, be indemnified by the Former Supplier, pro rated in respect of the period before the Relevant Transfer Date.

2.3 Where any Transferring Former Supplier Employee is due to be paid remuneration (such as salary, holiday pay, commission and all other payments made to the employee) before the Relevant Transfer Date in respect of the period after the Relevant Transfer Date, the same shall be paid by the Former Supplier who may within 30 days of making any demand and providing any supporting information and documentation which may reasonably be required by the Authority, be reimbursed by the Authority. The Supplier shall indemnify the Former Supplier pro rated in respect of the period after the Relevant Transfer Date and the Authority in respect to any such reimbursements it may make to the Former Supplier in accordance with this Paragraph.

2.4 Subject to Paragraphs 2.2 and 2.3, the Supplier shall indemnify and keep indemnified the Authority and the Former Supplier against all losses, costs, liabilities, expenses, actions, proceedings, claims and demands arising out of or in connection with any employment claim by a Transferring Former Supplier Employee in relation to the Transferring Former Supplier Employee's employment after the Relevant Transfer Date or arising before the Relevant Transfer Date as a result of the Authority or the Supplier proposing to employ the Transferring Former Supplier Employees on less favourable terms and conditions of employment or to take any other measure in relation to their employment.

3 Information

3.1 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.

4 Principles of Good Employment Practice

4.1 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:

4.1.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2013;

4.1.2 HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999";

4.1.3 HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or

4.1.4 the New Fair Deal.

4.2 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 4.1 shall be agreed in accordance with the Change Control Procedure.

5 Procurement Obligations

5.1 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.

6 Pensions

6.1 The Supplier shall, and shall procure that each Sub-contractor shall, comply with the pensions provisions in the following Annex in respect of any Transferring Former Supplier Employees who transfer from the Former Supplier to the Supplier.

Annex to Part B Pensions

1 Participation

1.1 The Supplier undertakes to enter into the Admission Agreement and/or the LGPS Admission Agreement.

1.2 The Supplier and the Authority:

1.2.1 undertake to do all such things and execute any documents (including the Admission Agreement and/or the LGPS Admission Agreement and/or bond which may be required by the Administering Authority) as may be required to enable the Supplier to participate in the Schemes in respect of the Fair Deal Employees and/or the LGPS Employees (as applicable);

1.2.2 agree that the Authority is entitled to make arrangements with the body responsible for the Schemes or the LGPS Fund for the Authority to be notified if the Supplier breaches the Admission Agreement and/or the LGPS Admission Agreement (as applicable); and

1.2.3 agree that notwithstanding Paragraph 1.2.2 the Supplier shall notify the Authority in the event that it breaches the Admission Agreement and/or the LGPS Admission Agreement (as applicable).

1.3 The Supplier shall bear its own costs and all costs that the Authority reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Supplier participating in the Schemes and/or the LGPS Fund.

2 Future Service Benefits

2.1 If the Supplier is re-joining the Schemes and/or the LGPS Fund for the first time, the Supplier shall procure that the Fair Deal Employees and/or the LGPS Employees shall be either admitted to or offered continued membership of the relevant section of the Schemes or the LGPS Fund that they became eligible to join on the Relevant Transfer Date and shall continue to accrue or accrue benefits in accordance with the provisions governing the relevant section of the Schemes or the LGPS Fund for service from (and including) the Relevant Transfer Date.

2.2 If staff have already been readmitted to the Schemes and/or the LGPS Fund, the Supplier shall procure that the Fair Deal Employees and/or the LGPS Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes LGPS Fund that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Supplier shall procure that the Fair Deal Employees or the LGPS Employees continue to accrue benefits in accordance with the provisions governing the relevant section of the Schemes LGPS Fund for service from (and including) the Relevant Transfer Date.

2.3 The Supplier undertakes that should it cease to participate in the Schemes and/or the LGPS Fund for whatever reason at a time when it has Eligible Employees and/or LGPS Employees, that it will, at no extra cost to the Authority, provide to any Fair Deal Employee or LGPS Employees who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the Authority in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes or the LGPS at the relevant date.

2.4 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

3 Funding

Funding in relation to the Admission Agreement

3.1 The Supplier undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.

3.2 The Supplier shall indemnify and keep indemnified the Authority on demand against any claim by, payment to, or loss incurred by the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Supplier to or in respect of the Schemes.

Funding in relation to the LGPS Admission Agreement

3.3 The Supplier undertakes to pay to the LGPS Fund all such amounts as are due under the LGPS Admission Agreement and shall deduct and pay to the LGPS Fund such employee contributions as are required by the LGPS Admission Agreement.

3.4 The Supplier shall indemnify and keep indemnified the Authority on demand against any claim by, payment to, or loss incurred by the LGPS Fund in respect of the failure to account to the LGPS Fund for payments received and the non-payment or the late payment of any sum payable by the Supplier to or in respect of the LGPS Admission Agreement.

3.5 The Authority shall procure that for the purposes of the LGPS Admission Agreement that the LGPS Employees' benefits accrued under the LGPS Fund prior to the Relevant Transfer Date are fully funded as at that date, as determined by the actuary to the LGPS Fund

3.6 Subject to Paragraph 3.7 below, the Authority shall be responsible for any deficiency in funding in respect of the LGPS Employees calculated on termination of the Admission Agreement in accordance with the terms of all applicable Local Government Pension Scheme regulations from time to time in force.

3.7 Where the Supplier:

3.7.1 grants an early retirement request in relation to an LGPS Employee;

3.7.2 grants an augmentation of benefits in relation to an LGPS Employee which is in addition to any augmentation which an LGPS Employee is entitled to as of right under all applicable LGPS regulations;

3.7.3 reduces or waives any contributions due from an LGPS Employee;

3.7.4 awards pay increases to an LGPS Employee which in aggregate exceed the rate allowed for pay increases in the last valuation of the LGPS prior to the award of the pay increase in question;

3.7.5 terminates the employment contract of an LGPS Employee who is aged fifty-five (55) years or over at the time by reason of redundancy or in the interests of efficiency (or otherwise allows such employee to retire on those grounds);

3.7.6 fails to act reasonably in certifying matters in respect of an LGPS Employee listed in accordance with the LGPS Admission Agreement in accordance with a procedure agreed with the Administering Authority; or

3.7.7 takes any action specified in the LGPS Admission Agreement and/or any applicable Local Government Pension Scheme regulations from time to time in force which has the effect of increasing the liabilities attributable to

the LGPS Employees without having first obtained the prior written consent of the Authority,

the cost of such action shall be assessed by the actuary to the LGPS Fund and shall be payable by the Supplier on such basis as is agreed between the Supplier, the Authority and the Administering Authority (and in the absence of agreement, as determined by the Administering Authority). For the avoidance of doubt, the cost of any action described in this Paragraph 3.7 shall be met in full by the Supplier, and shall not form part of the on-going employer contribution rate payable in accordance with the LGPS Admission Agreement and/or any applicable Local Government Pension Scheme regulations from time to time in force.

4 Provision of Information

4.1 The Supplier and the Authority respectively undertake to each other:

4.1.1 to provide all information which the other Party may reasonably request concerning matters: (i) referred to in this Annex; and (ii) set out in the Admission Agreement and/or the LGPS Admission Agreement, and to supply the information as expeditiously as possible; and

4.1.2 not to issue any announcements to the Fair Deal Employees or the LGPS Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

5 Indemnity

5.1 The Supplier undertakes to the Authority to indemnify and keep indemnified the Authority on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees and/ or the LGPS Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes or the LGPS.

6 Employer Obligation

6.1 The Supplier shall comply with the requirements of the Pensions Act 2008 and the Transfer of Employment (Pension Protection) Regulations 2005.

7 Subsequent Transfers

7.1 The Supplier shall:

7.1.1 not adversely affect pension rights accrued by any Fair Deal Employee and/or any LGPS Employee in the period ending on the date of the relevant future transfer;

7.1.2 provide all such co-operation and assistance as the Schemes, the LGPS Fund and the Replacement Supplier and/or the Authority may reasonably require to enable the Replacement Supplier to participate in the Schemes and/or the LGPS Fund in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under the New Fair Deal; and

7.1.3 for the period either

(a) after notice (for whatever reason) is given, in accordance with the other provisions of this Agreement, to terminate the Agreement or any part of the Services; or

(b) after the date which is two (2) years prior to the date of expiry of this Agreement,

ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Supplier or the Authority, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of the Authority (such approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement or an LGPS Admission Agreement.

Part C: No Transfer of Employees at Commencement of Services

1 Procedure in the Event of Transfer

1.1 The Authority and the Supplier 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 Authority.

1.2 If any employee of the Authority claims, or it is determined in relation to any employee of the Authority, that his/her contract of employment has been transferred from the Authority to the Supplier and/or any Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:

1.2.1 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

1.2.2 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 (as the case may be) 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 Authority), 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 1.2.2:

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 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 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.

2.2 If any such person as is described in Paragraph 1.2 is neither re employed by the Authority 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 shall procure that the Sub-contractor shall indemnify the Authority, 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:

2.4.1 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 Supplier and/or any Sub-contractor; or

(b) 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

(c) shall apply only where the notification referred to in Paragraph 1.2.1 is made by the Supplier and/or any Sub-contractor to the Authority and within 6 months of the Effective Date.

3 Procurement Obligations

3.1 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: Employment Exit Provisions

1 Pre-Service Transfer Obligations

1.1 The Supplier agrees that within 20 Working Days of the earliest of:

1.1.1 receipt of a notification from the Authority 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 this Agreement;

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 Authority at any time (provided that the Authority 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 Supplier's Provisional Supplier Personnel List, together with the Staffing Information in relation to the Supplier's Provisional Supplier Personnel List and it shall provide an updated Supplier's Provisional Supplier Personnel List at such intervals as are reasonably requested by the Authority.

1.2 At least 20 Working Days prior to the Service Transfer Date, the Supplier shall provide to the Authority or at the direction of the Authority to any Replacement Supplier and/or any Replacement Sub-contractor:

1.2.1 the Supplier's Final Supplier Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and

1.2.2 the Staffing Information in relation to the Supplier’s Final Supplier Personnel List (insofar as such information has not previously been provided).

1.3 The Authority shall be permitted to use and disclose information provided by the Supplier under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-contractor.

1.4 The Supplier warrants, for the benefit of the Authority, any Replacement Supplier, and any Replacement Sub-contractor that all information provided pursuant to Paragraphs 1.1 and 1.3 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 Supplier agrees, that it shall not, and agrees to procure that each Sub-contractor shall not, assign any person to the provision of the Services who is not listed on the Supplier’s Provisional Supplier Personnel List and shall not without the approval of the Authority (not to be unreasonably withheld or delayed):

1.5.1 replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Supplier 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 or permit any material changes to the terms and conditions of employment of the Supplier Personnel (including any payments connected with the termination of employment);

1.5.3 increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel 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 Supplier's Provisional Supplier Personnel List;

1.5.5 increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or

1.5.6 terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Personnel List save by due disciplinary process,

and shall promptly notify, and procure that each Sub-contractor shall promptly notify, the Authority or, at the direction of the Authority, any Replacement Supplier and any Replacement Sub-contractor of any notice to terminate employment given by the Supplier or relevant Sub-contractor or received from any persons listed on the Supplier's Provisional Supplier Personnel List regardless of when such notice takes effect.

1.6 During the Term, the Supplier shall provide, and shall procure that each Sub-contractor shall provide, to the Authority any information the Authority 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 Services;

1.6.2 the percentage of time spent by each employee engaged in providing the Services; and

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

1.7 The Supplier shall provide, and shall procure that each Sub-contractor shall provide, all reasonable cooperation and assistance to the Authority, any Replacement Supplier and/or any Replacement Sub-contractor to ensure the smooth transfer of the Transferring Supplier 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 Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Service Transfer Date, the Supplier shall provide, and shall procure that each Sub-contractor shall provide, to the Authority or, at the direction of the Authority, to any Replacement Supplier and/or any Replacement Sub-contractor (as appropriate), in respect of each person on the Supplier's Final Supplier Personnel List who is a Transferring Supplier 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 Employment Regulations Exit Provisions

2.1 The Authority and the Supplier 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 this Agreement or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Sub-contractor. 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 Authority and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms dis-applied 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 Supplier and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Supplier Employee.

2.2 The Supplier shall, and shall procure that each Sub-contractor shall, comply with all its obligations in respect of the Transferring Supplier 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 Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) 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 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 Supplier and/or the Sub-contractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Sub-contractor.

2.3 Subject to Paragraph 2.4, the Supplier shall indemnify the Authority and/or the Replacement Supplier and/or any Replacement Sub-contractor against any Employee Liabilities in respect of any Transferring Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

2.3.1 any act or omission of the Supplier or any Sub-contractor whether occurring before, on or after the Service Transfer Date;

2.3.2 the breach or non-observance by the Supplier or any Sub-contractor occurring on or before the Service Transfer Date of:

(a) any collective agreement applicable to the Transferring Supplier Employees; and/or

(b) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Sub-contractor is contractually bound to honour;

2.3.3 any claim by any trade union or other body or person representing any Transferring 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 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 Supplier 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 a Transferring 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 Supplier to the Authority and/or Replacement Supplier and/or any Replacement Sub-contractor, 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 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 Supplier 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 Supplier or any Sub-contractor other than a Transferring Supplier Employee for whom it is alleged the Authority and/or the Replacement Supplier and/or any Replacement Sub-contractor may be liable by virtue of this Agreement 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 Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Sub-contractor 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 Authority and/or Replacement Supplier 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 Supplier and/or any Replacement Sub-contractor 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 Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or any Replacement Sub-contractor to occur in the period on or after the Service Transfer Date; or

2.4.2 arising from the Replacement Supplier's failure, and/or Replacement Sub-contractor's failure, to comply with its obligations under the Employment Regulations.

2.5 If any person who is not a Transferring Supplier Employee claims, or it is determined in relation to any person who is not a Transferring Supplier Employee, that his/her contract of employment has been transferred from the Supplier or any Sub-contractor to the Replacement Supplier and/or Replacement Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:

2.5.1 the Authority shall procure that the Replacement Supplier shall, or any Replacement Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Supplier; and

2.5.2 the Supplier may offer (or may procure that a Sub-contractor may offer) employment to such person within 15 Working Days of the notification by

the Replacement Supplier and/or any and/or Replacement Sub-contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

2.6 If such offer is accepted, or if the situation has otherwise been resolved by the Supplier or a Sub-contractor, the Authority shall procure that the Replacement Supplier shall, or procure that the Replacement Sub-contractor shall, immediately release or procure the release of 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 of employment 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 Authority shall advise the Replacement Supplier and/or Replacement Sub-contractor, 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 Supplier and/or Replacement Sub-contractor 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, the Supplier shall indemnify the Replacement Supplier and/or Replacement Sub-contractor against all Employee Liabilities arising out of the termination pursuant to the provisions of Paragraph 2.7 provided that the Replacement Supplier takes, or shall procure that the Replacement Sub-contractor 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 Supplier and/or Replacement Sub-contractor; or

(b) any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Sub-contractor neglected to follow a fair dismissal procedure; and

2.9.2 shall apply only where the notification referred to in Paragraph 2.5 is made by the Replacement Supplier and/or Replacement Sub-contractor to the Supplier within 6 months of the Service Transfer Date.

2.10 If any such person as is described in Paragraph 2.5is neither re-employed by the Supplier or any Sub-contractor nor dismissed by the Replacement Supplier and/or Replacement Sub-contractor within the time scales set out in Paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Supplier Employee and the Replacement Supplier and/or Replacement Sub-contractor shall comply with such obligations as may be imposed upon it under applicable Law.

2.11 The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under 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 Supplier Employees 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 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:

2.11.1 the Supplier and/or any Sub-contractor; and

2.11.2 the Replacement Supplier and/or the Replacement Sub-contractor.

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

2.13 Subject to Paragraph 2.14, the Authority shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-contractor and its sub-contractors against any Employee Liabilities in respect of each Transferring Supplier Employee (or, where applicable any employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee) arising from or as a result of:

2.13.1 any act or omission of the Replacement Supplier and/or Replacement Sub-contractor;

2.13.2 the breach or non-observance by the Replacement Supplier and/or Replacement Sub-contractor on or after the Service Transfer Date of:

(a) any collective agreement applicable to the Transferring Supplier Employees; and/or

(b) any custom or practice in respect of any Transferring Supplier Employees which the Replacement Supplier and/or Replacement Sub-contractor is contractually bound to honour;

2.13.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Replacement Supplier and/or Replacement Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;

2.13.4 any proposal by the Replacement Supplier and/or Replacement Sub-contractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees on or after their transfer to the Replacement Supplier or Replacement 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 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;

2.13.5 any statement communicated to or action undertaken by the Replacement Supplier or Replacement Sub-contractor to, or in respect of, any Transferring Supplier Employee on or before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier 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 Supplier Employee, 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 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 Supplier or Sub-contractor, to the Replacement Supplier or Replacement Sub-contractor 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 Supplier or Replacement 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 Supplier Employees 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 Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or Replacement Sub-contractor 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 Supplier and/or any Sub-contractor (as applicable) whether occurring or having its origin before, on or after the Relevant Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Sub-contractor (as applicable) to comply with its obligations under the Employment Regulations.

Part E: Redundancies following the Operational Service Commencement Date

1 Subject to Paragraph 3 of this Part E of Schedule 9.1, the Authority will indemnify and keep indemnified the Supplier and any Supplier Sub-contractor against any Commencement Redundancy Payment made to any In-scope Employee who is given notice of termination on grounds of redundancy provided that:

1.1 subject to Paragraph 3 of this Part E of Schedule 9.1, the In-scope Employee is dismissed or given notice of dismissal within three Months of the Operational Service Commencement Date;

1.2 the Supplier can demonstrate to the satisfaction of the Authority that:

1.2.1 the In-scope Employee is surplus to the Supplier's requirements in its provisions of the Services;

1.2.2 the In-scope Employee is genuinely being dismissed for reasons of redundancy;

1.2.3 the In-scope Employee has been selected for redundancy by the Supplier on objective grounds other than the fact that the Supplier is entitled to reimbursement under this provision in respect of such employees; and

1.2.4 the Supplier and/or any Supplier Sub-contractor has taken/will continue to take all reasonable mitigation action in order to avoid or reduce the Commencement Redundancy Payments, including by redeploying employees, transferring them to alternative roles and requiring them to work their notice;

1.3 the Commencement Redundancy Payments have been Approved by the Authority in advance in accordance with Paragraph 2 of this Part E of Schedule 9.1 and Schedule 12 (Approval) before it has been incurred.

2 Where Approval is sought for any Commencement Redundancy Payments under Paragraph 1 of this Part E of Schedule 9.1, the Supplier shall provide with its Proposal sufficient information for the Authority to understand and verify:

2.1 that the requirements set out in Paragraph 1.2 of this Part E of Schedule 9.1 have been satisfied; and

2.2 the Supplier's calculations of the Commencement Redundancy Payments.

3 Where the Supplier can demonstrate that an In-scope Employee who is subject to a Proposal for a Commencement Redundancy Payment is surplus to requirement in its provisions of the Services, despite the Supplier and/or any Supplier Sub-contractor having taken reasonable steps in order to avoid the redundancy, and accordingly proposes to dismiss the employee as redundant, but redeployment of the employee is possible (for the avoidance of doubt, the Parties agree that redeployment of the employee would not be possible where the Supplier does not have a contractual right to redeploy the employee and, despite reasonable efforts by the Supplier to obtain consent to the redeployment, the employee does not provide such consent) and would offer value for money to the Authority when compared with redundancy, then the Authority may require the Supplier or its Sub-contractor to redeploy that employee. In such circumstances:

3.1 the indemnity in respect to Commencement Redundancy Payments set out in Paragraph 1 of this Part E of Schedule 9.1 shall not apply in respect to that employee; and

3.2 the Authority shall pay the Supplier the actual direct costs incurred by the Supplier or the Supplier Sub-contractor arising out of the redeployment of such person (including

retraining and relocation costs) subject to a maximum amount of £30,000 per employee and appropriate evidence being provided of the costs.

4 The Supplier may make a request for Approval in accordance with Schedule 12 that the period referred to in Paragraph 1.1 of this Part E of Schedule 9.1 be extended on the grounds that it would prevent the Supplier from complying with its legal obligations, the terms of employment of any employee whose redundancy is proposed in accordance with this Part E or an applicable collective agreement. Such requests must be made within one Month of the Operational Service Commencement Date together with sufficient information for the Authority to understand the reason the Supplier feels unable to comply with the three Month time frame and details of the length of the extension which is requested.

5 For the avoidance of doubt, neither the Supplier nor any Supplier Subcontractor shall be entitled to any double recovery from the Authority (whether by way of an indemnity claim or staff cost adjustment under this Agreement). In particular, where Approval is sought for any Commencement Redundancy Payment under this Part E of Schedule 9.1, the indemnities set out in clause 13.6 of the Agreement and Part C of Schedule 7.6 shall not apply.

Annex: List of Notified Sub-Contractors