

Tender Ref : HSE/3915

To Be Quoted On All Correspondence



CONTRACT

between

THE HEALTH AND SAFETY EXECUTIVE

and

FIELDINGS PORTER SOLICITORS

for

PROVISION OF ENFORCEMENT LEGAL SERVICES TO HSE

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This Contract is made between:

The **HEALTH AND SAFETY EXECUTIVE** (acting as part of the Crown) of Redgrave Court, Merton Road, Bootle, Merseyside, L20 7HS (hereinafter called 'the HSE' of the one part) and

FIELDINGS PORTER SOLICITORS company registration number 145394653 and whose registered office is at 32 Silverwell Street Bolton BL1 1PT (hereinafter 'the Contractor' of the other part), in accordance with the details, terms and conditions stated herein.

WHEREAS

The Contractor was successful as a result of a tender exercise to deliver Provision of Enforcement Legal Services to HSE

1 GENERAL CONDITIONS

- 1.1 This Contract will be subject to the revised HSE Terms and Conditions of Contract for the Provision of Services, attached as Schedule B. However, where any conflict exists between the clauses in this Contract and the Terms and Conditions at Schedule B, then the clauses in this Contract will prevail. The Clauses in this Contract and the Terms and Conditions at Schedule B will also govern all Purchase Orders placed against this Contract.

2 ENTIRE AGREEMENT

- 2.1 This Contract constitutes the entire agreement and understanding between the parties concerning the subject matter hereof and supercedes all prior agreements, both oral and written, representations, statements, negotiations and undertakings.

3 STATEMENT OF SERVICE REQUIREMENTS

- 3.1 The Contractor will carry out on behalf of the HSE a Statement of Services (hereinafter called the "Services") as detailed in Schedule A to this Contract.
- 3.2 The Contractor shall organise and conduct the entire Services in consultation with the HSE where appropriate, and provide all necessary resources of personnel, materials, Services and equipment, except for such resources that may be provided by the HSE at its discretion.
- 3.3 No undertaking shall be deemed to have been made by the HSE in respect of the total quantities or values of the Services to be ordered pursuant to this contract and the Contractor acknowledges and agrees that it has not entered into this contract on the basis of any such undertaking.

4 MANAGEMENT OF THE CONTRACT

- 4.1 The HSE Contract Manager who will be responsible for liaison and certifying completion of the provision and overall management of the Services is identified at Annex 1.
- 4.2 The Services will be monitored by the Contract Manager who will also evaluate the provision on completion.
- 4.3 In all cases, both parties will work within the agreed timescales/constraints and costs outlined at the beginning of the commission.

5 DURATION

- 5.1 The Services shall commence on 1st November 2021 and shall be completed by 31st October 2023 with an option to extend for a further 12 month period if agreed by both parties.

6 COSTS

- 6.1 HSE does not guarantee any volume or value of work. However, if services are requested, the following costs will be charged by the Contractor:

Caseworker Hourly Rate - £ 115.00 per hour

Support Worker Hourly Rate - £90.00 per hour

- 6.2 The contractor will not charge for Support worker Travel Time, or for any Caseworker and/or Support Worker Waiting Time.
- 6.3 Any costs associated with routine correspondence (e-mails, phone calls and letters) will be charged on a time spend basis per the hourly rate

7 IR35 – INTERMEDIARIES LEGISLATION

- 7.1 HSE has undertaken an IR35 assessment of this engagement, and the HMRC online assessment tool determined that IR35 does not apply to this engagement.

8 TAX STATUS

- 8.1 Where the Contractor, or its staff, is liable to be taxed in the UK in respect of consideration received under this contract, it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration.
- 8.2 Where the Contractor, or its staff, is liable to National Insurance Contributions (NICs) in respect of consideration received under this contract, it shall at all

times comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to NICs in respect of that consideration.

- 8.3 HSE may, at any time request that the Contractor provides information which demonstrates how it, or its staff, complies with Clauses 8.1 and 8.2 above or why those Clauses do not apply to it.
- 8.4 A request under Clause 8.3 above may specify the information which the Contractor, or its staff, must provide and the period within which that information must be provided.
- 8.5 HSE may terminate this contract if
- a) in the case of a request mentioned in Clause 8.3 above-
 - (i) The Contractor, or its staff, fails to provide information in response to the request within a reasonable time, or
 - (ii) The Contractor, or its staff, provides information which is inadequate to demonstrate either how it complies with Clauses 8.1 and 8.2 above or why those Clauses do not apply to it;
 - (b) in the case of a request mentioned in Clause 8.4 above, The Contractor, or its staff, fails to provide the specified information within the specified period, or
 - (c) it receives information which demonstrates that, at any time when Clauses 8.1 and 8.2 apply the Contractor, or its staff, is not complying with those Clauses.
- 8.6 HSE may supply any information which it receives under Clause 8.3 to the Commissioners of Her Majesty's Revenue and Customs for the purposes of the collection and management of revenue for which they are responsible.

9 INVOICING AND PAYMENTS

- 9.1 All invoices raised must include the relevant Purchase Order number which will be issued by HSE Procurement Unit. Failure to include the Purchase Order Number may delay payment. Invoices should be submitted electronically in PDF format to APinvoices-HAS-U@gov.sscl.com
- 9.2 Invoices should also include details of work satisfactorily carried out and any VAT properly chargeable.
- 9.3 HSE shall make payment of agreed costs, in arrears, within 30 days of the acceptance of the invoice.
- 9.4 The Contractor shall send a copy invoice along with details of any work satisfactory carried out to the HSE Contract Manager identified at Annex 1.

10 DELIVERABLES

- 10.1 The Contractor shall provide services detailed at Schedule A.

11 INTELLECTUAL PROPERTY

- 11.1 Your attention is drawn to clauses E8 within Schedule B of the attached standard terms and conditions.

12 ACCESS TO HSE PREMISES

- 12.1 It shall be the Contractor's responsibility to ensure that, where access to HSE Premises or HSE confidential information is necessary, personnel engaged in the performance of this Contract shall have undergone pre-employment checks covering identity, the last three years employment history, nationality and immigration status and criminal record for unspent convictions. Such checks shall meet the requirements of HMG Baseline Security Standard.
- 12.2 HSE reserves the right, at its sole discretion, to carry out audits and spot checks at any time during the Contract Period to satisfy itself that the checks have been carried out. Guidance on pre-employment checks may be found at <http://www.cabinetoffice.gov.uk/sites/default/files/resources/hmg-personnel-security-controls.pdf>

13 CONFIDENTIALITY

- 13.1 The Contractor shall not at any time divulge any information or material acquired during the performance of this Contract to any third party without prior permission in writing of the Executive, except where required in the course of any legal proceedings.
- 13.2 The Contractor shall keep documents and other materials produced or acquired in the course of the contract in accordance with The Criminal Procedure and Investigations Act 1996 (CPIA).
- 13.3 HSE may disclose the Confidential Information of the Contractor:
- (a) on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body;
 - (b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - (c) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;

- (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 13.3(a) (including any benchmarking organisation) for any purpose relating to or connected with this Contract;
- (e) on a confidential basis for the purpose of the exercise of its rights under this Contract; or
- (f) on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause.

14 PUBLICATION

- 14.1 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. HSE shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.
- 14.2 Notwithstanding any other term of this Contract, the Contractor hereby gives his consent for HSE to publish the Contract in its entirety, including from time to time agreed changes to the Contract, to the general public.
- 14.3 HSE may consult with the Contractor to inform its decision regarding any redactions but HSE shall have the final decision in its absolute discretion.
- 14.4 The Contractor shall assist and co-operate with HSE to enable HSE to publish this Contract.

15. Transparency

- 15.1 The Government has set out the need for greater transparency across its operations to enable the public to hold public bodies and politicians to account. This includes commitments relating to public expenditure, intended to help achieve better value for money. HSE is obliged to publish documents for contracts with a value over £10,000.
- 15.2 In addition, you should be aware that if you are awarded a new contract with a value of over £10,000, the resulting contract comprising of Specification,

Terms and Conditions and Associated Schedules (including the winning bid) will be published.

- 15.3 By exception, requests for redaction will be subject to the public interest test and redaction will only be agreed where the public interest in withholding the information outweighs the public interest in disclosure. You must identify / reference the relevant text, show clear justification for redaction and detail the appropriate section of the Freedom of Information Act 2000 (for example, Sections 40, 41, 43) on which the redaction request is sought.

16 VARIATION TO CONTRACT

- 16.1 Except where expressly stated in this contract, no change, amendment or modification shall be effective unless in writing and signed by the duly authorised representatives of both parties.
- 16.2 Any agreed changes to the Contract or Schedule A (Statement of Service Requirement) will be in the form of a Contract Change Note (CCN), which will be raised and issued by the HSE Procurement Unit.

17 GOVERNING LAW

- 17.1 This Contract shall be governed by and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the courts of England and Wales.

18 TERMINATION

- 18.1 This Contract may be terminated by either party by giving one months written notice. In the event of termination by HSE, the Contractor shall be provided with any re-imbusement of costs, actually and reasonably incurred, up to the date of termination, subject to the limit specified in Clause 6 above.

As Witnessed at the Hands of the Parties

SIGNATORIES

IN WITNESS WHEREOF THIS CONTRACT HAS BEEN AGREED :

Signature _____

Name in Capitals _____

Position _____

Date _____

Duly authorised to sign on behalf of

FIELDINGS PORTER SOLICITORS
32 Silverwell Street Bolton BL1 1PT

Signature _____

Name in Capitals _____

Position Procurement Manager

Date _____

Duly authorised to sign on behalf of the

HEALTH AND SAFETY EXECUTIVE
Procurement Unit, Building 2.3, Redgrave Court, Merton Road, Bootle,
Merseyside L20 7HS

Schedule A

STATEMENT OF SERVICE REQUIREMENT

The Contractor shall undertake the following Statement of Service titled Schedule A - SSR and referenced Provision Of Enforcement Legal Services.



Schedule A - SSR



1.11.4.3915 -
Fieldings Porter Soli

Schedule B

THE HEALTH AND SAFETY EXECUTIVE (HSE)

TERMS AND CONDITIONS OF CONTRACT FOR THE PROVISION OF SERVICES

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A GENERAL PROVISIONS

A1 Definitions

A1.1 In these Terms and Conditions of Contract the following definitions shall apply:

“Condition” means a condition of this contract;

“Confidential Information” means any information, which has been designated as confidential by either Party in writing or that ought reasonably to be considered as confidential however it is conveyed or on what media it is stored, including information that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the Contractor, including Intellectual Property Rights, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as “confidential”) or which ought reasonably to be considered to be confidential;

“Contract” means the agreement between HSE and the Contractor consisting of the Specification, the HSE Form of Agreement or Purchase Order, these Conditions and any other documents or parts of documents relating to the Contract;

“Contract Manager” means the person for the time being appointed by HSE as being authorised to administer the Contract on behalf of HSE or such person as may be nominated by the Contract Manager to act on its behalf.

“Contractor” means the person, firm or company to whom the Contract is issued;

“Environmental Information Regulations” means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;

“Equipment” means the Contractor’s equipment, plant, materials and such other items supplied and used by the Contractor in the performance of its obligations under the Contract.

“FOIA” means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;

“HSE” means the Health and Safety Executive acting as part of the Crown;

“Information” has the meaning given under section 84 of the FOIA;

“Parties” means HSE and the Contractor;

“Requests for Information” shall have the meaning set out in FOIA or any apparent request for information under the FOIA, the Environmental Information Regulations as relevant (where the meaning set out for the term “request” shall apply);

“Schedule” means a schedule attached to, and forming part of, the Contract.

“Services” means the services to be provided as specified in the specification and shall include any materials, articles and/or goods necessary to provide the Services;

“Specification” means the description of the Services to be supplied under the Contract as set out in Schedule A.

“Staff” means all persons employed by the Contractor to perform the Contract together with the Contractor’s servants, agents and sub-contractors used in the performance of the Contract.

“GDPR Clause Definitions”:

Data Protection Legislation: (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy.

Data Protection Impact Assessment: an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer take the meaning given in the GDPR.

Data Loss Event: any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Contract, and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach.

Data Subject Request: a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

DPA 2018: Data Protection Act 2018.

GDPR: the UK General Data Protection Regulation (2018).

Joint Controllers: where two or more Controllers jointly determine the purposes and means of processing.

LED: Law Enforcement Directive.

Protective Measures: appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.

Sub-processor: any third Party appointed to process Personal Data on behalf of that Processor related to this Contract

A2 Interpretation

A2.1 The interpretation and construction of this Contract shall be subject to the following provisions:

The terms and expressions set out in A1.1 shall have the meanings ascribed therein.

Words importing the singular meaning include where the context so admits the plural meaning and vice versa.

Words importing the masculine include the feminine and the neuter.

Reference to a Condition is a reference to the whole of that Condition unless stated otherwise.

Reference to a Condition is a reference to a paragraph within a Condition unless stated otherwise.

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 enactment, modification, order, regulation or instrument as subsequently amended or re-enacted.

Reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees.

The words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and

Headings are included in this Contract for ease of reference only and shall not affect the interpretation or construction of this Contract.

A3 Contract Period

- A3.1 The Services shall finish on a date agreed between HSE and the Contractor.
- A3.2 If completion of the Services is delayed by reason of any act or default of HSE or any other circumstance which is beyond the control of the Contractor, the time for completion shall be extended by such period as may be reasonable, provided that:
- (a) on being aware of the nature and extent of the delay the Contractor shall forthwith notify HSE of such nature and extent.
 - (b) the delay was unforeseeable when the Contract commenced; the Contractor takes all reasonable steps to minimise the delay.
- A3.3 The Contractor shall not be entitled to an extension of time where such delay is attributable to any negligence, default, acts or omissions on his part.

A4 Contractor's Status

- A4.1 At all times during the contract period the Contractor shall be an independent contractor. Nothing in this Contract shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between HSE and the Contractor. Neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.

A5 Entire Agreement

- A5.1 This Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations, representations, understandings and undertakings, whether written or oral, except that this Condition shall not exclude liability in respect of any fraudulent misrepresentation.
- A5.2 In the event of, and only to the extent of, any conflict between the clauses of the Contract, any document referred to in those clauses and the Schedules, the conflict shall be resolved in accordance with the following order of precedence:
- (a) the clauses of the Contract.
 - (b) The Schedules; and
 - (c) any other document referred to in the clauses of the Contract.

A6 Notices

- A6.1 Any notice given in connection with the Contract may be sent by hand or by post or by registered post or by the recorded delivery service or facsimile transmission, or other agreed telecommunication or electronic means. When it is sent or transmitted to the

address of the party shown in the Contract, or to any other address agreed between the parties, it shall be deemed to have been received:

- (a) if delivered by hand, on the day of delivery if it is the recipient's business day and otherwise on the first business day of the recipient immediately following the day of delivery.
- (b) if sent by first class prepaid post (or airmail if appropriate) on the third business day (or on the tenth business day in the case of airmail) after the day of posting.
- (c) if sent by facsimile or other agreed telecommunication or electronic means:
- (d) if transmitted between 09.00 and 17.00 on a business day (recipient's time) on completion of receipt by the sender of verification of the transmission from the receiving instrument.
- (e) if transmitted at any other time, at 09.00 on the first business day (recipient's time) following the completion of receipt by the sender of verification of the transmission from the receiving instrument.

A7 Conflicts of Interest

- A7.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Staff is placed in a position where, in the reasonable opinion of the HSE, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the HSE under the provisions of the Contract. The Contractor will disclose to the HSE full particulars of any such conflict of interest which may arise.
- A7.2 The HSE reserves the right to terminate the Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the HSE, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the HSE under the provisions of the Contract. The actions of the HSE pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the HSE.

A8 Fraud, Bribery and Corruption

- A8.1 The Contractor shall safeguard HSE against fraud, bribery and corruption generally and, in particular, fraud, bribery and corruption on the part of the staff, or the Contractor's directors and suppliers. The Contractor shall notify HSE Procurement Unit by email, details provided at Annex 1 of this Contract, immediately if it has any reason to suspect that any potential fraud, bribery or corruption has occurred or is occurring or is likely to occur. The Contractor shall not notify any other parties within HSE of the suspected, actual or potential fraud, bribery or corruption.
- A8.2 If the Contractor or its Staff commits Fraud, Bribery or Corruption in relation to this or any other contract with the Crown (including the HSE) the HSE may:
 - (a) terminate the Contract and recover from the Contractor the amount of any loss suffered by the HSE resulting from the termination, including the cost reasonably incurred by the HSE of making other arrangements for the supply of the Services and any additional expenditure incurred by the HSE throughout the remainder of the Contract Period; or
 - (b) recover in full from the Contractor any other loss sustained by the HSE in consequence of any breach of this clause.

B PROVISION OF THE SERVICES

B1 The Services

- B1.1 The Services shall be in accordance with the Contract specification and shall be performed with reasonable skill, care and diligence and to the reasonable satisfaction of HSE or its authorised representative. During the course of the Contract HSE or its authorised representative shall have the power to inspect and examine any work being performed under the Contract at any reasonable time. The Contractor shall give all such facilities as HSE or its authorised representative may reasonably require for such inspection and examination.
- B1.2 Where the Services are to be carried out on HSE premises, on completion of the Services the Contractor shall remove his plant, equipment, unused materials and waste and leave the premises in the condition as found.

B2 Contractor's Personnel

- B2.1 If the Contract relates to the engagement of personnel provided by an agency, the Contractor should provide the relevant details as described in Clauses B2.4.
- B2.2 The Contractor shall provide and maintain an organisation having the necessary facilities and employees of appropriate qualifications and experience to undertake the tasks identified in the specification.
- B2.3 All persons employed on work relating to the Contract must have appropriate qualifications and competencies and be acceptable to HSE in all respects. Where requested full particulars of all personnel to be used shall be forwarded by the Contractor in advance to HSE for confirmation of their acceptability.
- B2.4 Where requested the Contractor shall provide HSE with a list of names and official addresses of all persons who are or may be at any time concerned with the Services or any part of them, specifying the capacities in which they are to be employed and giving such other particulars and evidence of identity and any other supporting information which HSE may reasonably require.
- B2.5 The Contractor shall take all reasonable steps to avoid changes of original personnel assigned to and accepted for the work under the Contract except where changes are unavoidable or of a temporary nature caused by sickness, holidays or any other reasonable absence. The Contractor shall give at least one month's notice to HSE of proposals to change key personnel and Conditions B2.2 to B2.3 and E11.1 shall apply to the replacement personnel.
- B2.6 The Contractor shall take the steps reasonably required by HSE to prevent unauthorised persons being admitted to HSE premises. Where HSE gives the Contractor notice that any person is not to be admitted to or is to be removed from HSE premises or is not to become involved in or is to be removed from involvement in the performance of the Contract, the Contractor shall take all reasonable steps to comply with such notice and if requested by HSE the Contractor shall replace any person removed under this Condition with another suitably qualified person and ensure that any pass issued to the person removed is surrendered.
- B2.7 The decision of HSE as to whether any person is to be admitted to or is to be removed from HSE premises or is not to become involved in or is to be removed from involvement in the performance of the Contract and as to whether the Contractor has furnished the information or taken the steps required in Conditions B2.3 to B2.6 shall be final and conclusive.

B2.8 The Contractor shall bear the cost of any notice, instruction or decision of HSE under Conditions B2.3 to B2.7 and E11.1.

B3 Legitimacy of the Workforce

B3.1 The Contractor shall take all reasonable steps to ensure that any servants, employees or agents of the Contractor and any sub-contractors, their servants or agents, employed in the execution of the Contract are entitled to obtain employment in the United Kingdom and are not claiming Unemployment Benefit or any other benefit payable to persons registered as unemployed.

B4 Inspection of Premises and Nature of Services

B4.1 Where Services are to be carried out on HSE premises the Contractor is deemed to have inspected the premises before tendering so as to have understood the precise nature and extent of the Services to be carried out and satisfied himself in relation to all matters connected with the Services and premises. HSE shall grant such access as may be reasonable for this purpose.

B5 HSE Property

B5.1 Where the Contract requires HSE to issue materials free of charge to the Contractor such materials shall be and shall remain the property of HSE. The Contractor shall maintain all such materials in good order and condition and shall use such materials solely in connection with the Contract. The Contractor shall notify HSE of any surplus materials remaining after completion of the Services and shall dispose of them as HSE may direct. Waste of such materials arising from bad workmanship or negligence of the Contractor or any of his servants, agents or sub-contractors shall be made good at the Contractor's expense. Without prejudice to any other rights and remedies of HSE the Contractor shall deliver up such materials to HSE on demand, whether processed or not.

B6 Purchasing on behalf of HSE

B6.1 In the event that the Contractor procures Goods or Services including equipment from third parties on behalf of HSE then they shall at all times do so in accordance with the provisions of the Public Contracts Regulations 2015 as though the Contractor were a Contracting Authority within the meaning of the said Regulations.

B7 Equipment

B7.1 All equipment, including information technology equipment, used by the Contractor during the performance of the Contract shall be risk assessed, free from defect, and shall be fit for purpose.

C PAYMENT AND CONTRACT PRICE

C1 Contract Price

C1.1 The price of the Services and Equipment shall be as stated in the Contract and shall be exclusive of VAT.

C2 Invoicing and Payment

C2.1 Invoices for the provision of Services shall be submitted at agreed intervals during the Contract period in a format agreed between the parties.

C2.2 Payment shall be made within 30 days of receipt and agreement of invoices for Services provided to the satisfaction of HSE. HSE's usual method of payment is through the Banks Automated Clearing System (BACS). All payments made by HSE

to the Contractor shall be through BACS unless the Contractor provides advance written notice to HSE that this method of payment is not possible or shall cause undue inconvenience.

- C2.3 Any complaints which may arise concerning late payment of invoices should be addressed in the first instance to the Contract Manager. The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate the Contract in accordance with Clause H2.6 (Termination on Default) for failure to pay undisputed sums of money. Interest shall be payable by HSE on the late payment of any undisputed sums of money properly invoiced in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

C3 Value Added Tax (VAT)

- C3.1 Where applicable the prevailing rate and total of Value Added Tax (VAT) shall be shown separately on all invoices.

C4 Tax Status

- C4.1 Where the Contractor, or its staff, is liable to be taxed in the UK in respect of consideration received under this contract, it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration.
- C4.2. Where the Contractor, or its staff, is liable to National Insurance Contributions (NICs) in respect of consideration received under this contract, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to NICs in respect of that consideration.
- C4.3 HSE may, at any time, request that the Contractor provides information which demonstrates how it, or its staff, has complied with Clauses C4.1 and C4.2 above or why those Clauses do not apply to it.
- C4.4 A request under Clause C4.3 above may specify the information which the Contractor, or its staff, must provide and the period within which that information must be provided.
- C4.5 HSE may terminate this contract if-
- (a) in the case of a request mentioned in Clause C4.3 above-
 - (i) The Contractor, or its staff, fails to provide information in response to the request within a reasonable time, or
 - (ii) The Contractor, or its staff, provides information which is inadequate to demonstrate either how it complies with Clauses C4.1 and C4.2 above or why those Clauses do not apply to it;
 - (b) in the case of a request mentioned in Clause C4.4 above, The Contractor, or its staff, fails to provide the specified information within the specified period, or
 - (c) it receives information which demonstrates that, at any time when Clauses C4.1 and C4.2 apply the Contractor, or its staff, is not complying with those Clauses.
- C4.6 HSE may supply any information which it receives under Clause C4.3 to the Commissioners of Her Majesty's Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible.

C5 Prompt Payment to Sub-Contractors

- C5.1 Where the Contractor enters into a sub-contract with a supplier or contractor for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such sub-contract which requires payment to be made of all sums due

by the Contractor to the sub-contractor within a specified period not exceeding 30 days from receipt of a valid invoice.

C6 Recovery of Sums Due

- C6.1 Whenever under the Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to HSE in respect of any breach of this Contract) HSE may unilaterally deduct that sum from any sum then due or which at any later time becomes due to the Contractor under this Contract or under any other contract with HSE.
- C6.2 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- C6.3 The Contractor shall make all payments due to HSE without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by HSE to the Contractor.
- C6.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

D STATUTORY OBLIGATIONS AND REGULATIONS

D1 Prevention of Corruption

- D1.1 The Contractor shall not offer or give, or agree to give, to any employee, agent, servant or representative of HSE any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of this Contract or any other contract with HSE, or for showing or refraining from showing favour or disfavour to any person in relation to this Contract or any such contract. The attention of the Contractor is drawn to the criminal offences under The Bribery Act 2010.
- D1.2 The Contractor shall not enter into this Contract if in connection with it commission has been paid or is agreed to be paid to any employee or representative of HSE by the Contractor or on the Contractor's behalf, unless before this Contract is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to HSE.
- D1.3 Where the Contractor or Contractor's employees, servants, sub-contractors, suppliers or agents or anyone acting on the Contractor's behalf, engages in conduct prohibited by Conditions D1.1 or D1.2 in relation to this or any other contract with HSE, HSE has the right to:
- (a) terminate the Contract and recover from the Contractor the amount of any loss suffered by HSE resulting from the termination; or
 - (b) recover in full from the Contractor any other loss sustained by HSE in consequence of any breach of this Condition, whether or not the Contract has been terminated.
- D1.4 In exercising its rights or remedies under this Condition, HSE shall:
- (a) act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing, the prohibited act.

- (b) give all due consideration, where appropriate, to action other than termination of the Contract.

D2 Equality and Diversity

D2.1 The Supplier shall:

- (a) perform its obligations under this Contract (including those in relation to the provision of the Goods and/or Services) in accordance with:
 - (i) all applicable equality Law (whether in relation to race, sex, gender re assignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise); and
 - (ii) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law.
- (b) take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

D3 The Contracts (Rights of Third Parties) Act 1999

- D3.1 No person who is not a Party to the Contract (including without limitation any employee, officer, agent, representative, or sub-contractor of either HSE or the Contractor) shall have any right to enforce any term of the Contract, which expressly or by implication, confers a benefit on him without the prior agreement in writing of both HSE and the Contractor. This Condition does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown.
- D3.2 The Contractor shall not make any disposition of its rights that would prevent compliance with the conditions of this Contract, nor shall it accept any financial contribution from any third party for any part of the Work without the prior agreement in writing of HSE.

D4 Environmental Requirements

- D4.1 The Contractor shall perform the Services in accordance with the government's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, Volatile Organic Compounds and other substances damaging to health and the environment.
- D4.2 Throughout the term of the Contract the Contractor shall provide information on new or improved environmentally preferable products when they become available and, where reasonably required, promote their use. Samples of such products shall be provided to the Contract Manager for evaluation and for written agreement before wider use within HSE.
- D4.3 The Contractor shall co-operate with HSE, without charge, in Supplier Environmental Audits or Product Audits which the Contractor or his representative may undertake, such audits to be restricted to claims made by the Contractor for products made by the Contractor, for products supplied by the Contractor, or by the Contractor's environmental policy.

- D4.4 The Contractor shall maintain, and provide proof, at reasonable notice by HSE, of carrying out an environmental management system conforming to ISO 14001 or any subsequent or equivalent standards.

D5 Health and Safety

- D5.1 The Contractor shall promptly notify HSE of any health and safety hazards which may arise in connection with the performance of the Contract.
- D5.2 HSE shall promptly notify the Contractor of any health and safety hazards which may exist or arise at HSE's premises and which may affect the Contractor in the performance of the Contract.
- D5.3 Where the Services are to be performed on HSE premises the Contractor and the HSE Contract Manager shall undertake a joint risk assessment and take action to minimise the risk, and such actions shall be recorded in the premises' Health and Safety Manual.
- D5.4 While on HSE premises, the Contractor shall comply with any health and safety measures implemented by HSE in respect of personnel and other persons working on those premises.
- D5.5 The Contractor shall notify HSE immediately in the event of any incident or "near miss" occurring in the performance of the Contract on HSE premises where that incident or "near miss" causes, or may cause, any personal injury or damage to property which could give rise to personal injury.
- D5.6 The Contractor shall take all necessary measures to comply with the requirements of the Health and Safety at Work etc Act 1974 and any other Acts, orders, regulations, and Codes of Practice relating to Health and Safety which may apply to staff in the performance of the Contract.
- D5.7 The Contractor shall ensure that his health and safety policy statement and health and safety management arrangements (as required by the Health and Safety at Work etc Act 1974) are kept up to date and made available to HSE on request.

D6 TUPE

- D6.1 The Contractor shall comply with the Provisions of **Schedule 1** at the end of this document.

D7 Welsh Language Scheme

- D7.1 Where the Services are to be provided to Wales, the service provider shall adhere to HSE's Welsh Language Scheme and the Welsh and English Languages shall be treated on a basis of equality in accordance with the Welsh Language Act 1993.

E PROTECTION OF INFORMATION

E1 Data Protection Act

- E1.1 For the purposes of this Clause E1, the terms "Data Controller", "Data Processor", "Data Subject", "Personal Data", "Process" and "Processing shall have the meaning prescribed under the DPA.
- E1.2 The Contractor shall (and shall ensure that all of its Staff) comply with any notification requirements under the DPA and both Parties will duly observe all their obligations under the DPA which arise in connection with the Contract.

E1.3 Notwithstanding the general obligation in Clause E1.2, where the Contractor is processing Personal Data (as defined by the DPA) as a Data Processor for HSE the Contractor shall:

- (a) process the Personnel Data only in accordance with instructions from HSE (which may be specific instructions or instructions of a general nature) as set out in this Contract or as otherwise notified by HSE.
- (b) comply with all applicable laws.
- (c) process the Personal Data only to the extent; and in such manner as is necessary for the provision of the Provider's obligations under this Contract or as is required by Law or any Regulatory Body.
- (d) implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction, damage, alteration or disclosure to the Personal Data and having regard to the nature of the Personal Data which is to be protected.
- (e) take reasonable steps to ensure the reliability of its staff and agents who may have access to the Personal Data.
- (f) obtain prior written consent from HSE in order to transfer the Personal Data to any third party for the provision of the Services.
- (g) not cause or permit the Personal Data to be transferred outside of the European Economic Area without the prior consent of HSE.
- (h) ensure that all staff and agents required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Clause E1.
- (i) ensure that none of the staff and agents publish disclose or divulge any of the Personal Data to any third parties unless directed in writing to do so by HSE.

not disclose Personnel Data to any third parties in any circumstances other than with the written consent of HSE or in compliance with a legal obligation imposed upon HSE.

E1.4 The Contractor shall notify HSE (within five Working Days) if it receives:

- (a) a request from a Data Subject to have access to that person's Personal Data; or
- (b) a complaint or request relating to HSE's obligations under the DPA.

E1.5 The provision of this Clause E1 shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

E2 Official Secrets Acts 1911, 1989, Section 182 of the Finance Act 1989

E2.1 The Contractor undertakes to abide by, and ensure that its Staff abide by the provisions of:

- (a) the Official Secrets Acts 1911 to 1989; and
- (b) Section 182 of the Finance Act 1989.

E2.2 In the event that the Contractor and its Staff fail to comply with this Condition, HSE reserves the right to terminate the Contract by giving notice in writing to the Contractor.

E2.3 The provisions of Condition E2.1 shall apply during the continuance of the Contract and indefinitely after its expiry or termination.

E3 Confidentiality

E3.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each Party:

- (a) shall treat all Confidential Information belonging to the other Party as confidential and safeguard it; accordingly, and
- (b) shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Contract.

E3.2 Notwithstanding the provisions of clause E3.1 above, HSE may disclose the Confidential Information of the Contractor:

- (g) on a confidential basis to any Central Government Body for any proper purpose of HSE or of the relevant Central Government Body.
- (h) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement.
- (i) to the extent that HSE (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions.
- (j) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause E 3.2(a) (including any benchmarking organisation) for any purpose relating to or connected with this Contract.
- (k) on a confidential basis for the purpose of the exercise of its rights under this Contract; or
- (l) on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on HSE under this Clause E3.

E3.3 The Contractor shall take all necessary precautions to ensure that all Confidential Information obtained from HSE under or in connection with the Contract:

- (a) is given only to such of the Staff and professional advisors or consultants engaged to advise it in connection with the Contract as is strictly necessary for the performance of the Contract and only to the extent necessary for the performance of the Contract.
- (b) is treated as confidential and not disclosed (without prior Approval) or used by any Staff or such professional advisors or consultants' otherwise than for the purposes of the Contract.

E3.4 Where it is considered necessary in the opinion of HSE, the Contractor shall ensure that Staff or such professional advisors or consultants sign a confidentiality undertaking before commencing work in connection with the Contract.

E3.5 The Contractor shall not use any Confidential Information received otherwise than for the purposes of the Contract.

E3.6 The provisions of Conditions E3.1 to E3.5 shall not apply to any Confidential Information received by one Party from the other:

- (a) which is or becomes public knowledge (otherwise than by breach of this Condition).
- (b) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party.
- (c) which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure.
- (d) is independently developed without access to the Confidential Information; or
- (e) which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, or the Environmental Information Regulations pursuant to Clause E5 (Freedom of Information).

E3.7 Nothing in this Condition shall prevent HSE:

- (a) disclosing any Confidential Information for the purpose of:
 - (i) the examination and certification of HSE's accounts; or
 - (ii) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency, and effectiveness with which HSE has used its resources; or
- (b) disclosing any Confidential Information obtained from the Contractor:
 - (i) to any other department, office or agency of the Crown; or
 - (ii) to any person engaged in providing any services to HSE for any purpose relating to or ancillary to the Contract.

provided that in disclosing information under Condition E3.7 HSE discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

E3.8 Nothing in this Condition shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

E3.9 In the event that the Contractor fails to comply with this Condition E3, HSE reserves the right to terminate the Contract by notice in writing with immediate effect.

E3.10 The provisions under this Condition E3 are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.

E4 Publication of the Contract

E4.1 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. HSE shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.

E4.2 Notwithstanding any other term of this Contract, the Contractor hereby gives his consent for HSE to publish the Contract in its entirety, including from time-to-time agreed changes to the Contract, to the general public.

E4.3 HSE may consult with the Contractor to inform its decision regarding any redactions but HSE shall have the final decision in its absolute discretion.

E4.4 The Contractor shall assist and co-operate with HSE to enable HSE to publish this Contract.

E5 Freedom of Information

E5.1 The Contractor acknowledges that HSE is subject to the requirements of the FOIA and the Environmental Information Regulations and shall facilitate HSE's compliance with its Information disclosure requirements pursuant to the same in the manner provided for in Clauses E5.2-6 (inclusive) below.

E5.2 Where HSE receives a Request for Information in relation to Information that the Contractor is holding on its behalf and which the HSE does not hold itself HSE shall refer such Request for Information to the Contractor as soon as practicable and in any event within 5 Working Days of receiving a Request for Information and the Contractor shall:

(a) provide HSE with a copy of all such Information in the form that HSE requires as soon as practicable and in any event within 10 Working Days (or such other period as HSE acting reasonably may specify) of HSE's request; and

(b) provide all necessary assistance as reasonably requested by HSE in connection with any such Information, to enable HSE to respond to a Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information.

E5.3 Following notification under Clause E5.2, and up until such time as the Contractor has provided HSE with all the Information specified in Clause E5.2(a), the Contractor may make representations to HSE as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that HSE shall be responsible for determining at its absolute discretion:

(a) whether Information is exempt from disclosure under the FOIA and the Environmental Information Regulations; and

(b) whether Information is to be disclosed in response to a Request for Information, and

in no event shall the Contractor respond directly, or allow its sub-contractors to respond directly, to a Request for Information unless expressly authorised to do so by HSE.

E5.4 In the event of a request from HSE pursuant to Clause E5.2, the Contractor shall as soon as practicable, and in any event within 5 Working Days of receipt of such request, inform HSE of the Contractor's estimated costs of complying with the request to the extent these would be recoverable if incurred by HSE under Section 12(1) of the FOIA and the Fees Regulations. Where such costs (either on their own or in conjunction with HSE's own such costs in respect of such Request for Information) will exceed the appropriate limit referred to in Section 12(1) of the FOIA and as set out in the Fees Regulations (the "Appropriate Limit") HSE shall inform the Contractor in writing whether or not it still requires the Contractor to comply with the request and where it does require the Contractor to comply with the request the 10 Working Days period for compliance shall be extended by such number of additional days for compliance as HSE is entitled to under Section 10 of the FOIA. In such case, HSE shall

notify the Contractor of such additional days as soon as practicable after becoming aware of them and shall reimburse the Contractor for such costs as the Contractor incurs in complying with the request to the extent it is itself entitled to reimbursement of such costs in accordance with its own FOIA policy from time to time.

- E5.5 The Contractor shall ensure that all Information held on behalf of HSE is retained for disclosure for at least six years (from the date it is acquired) and shall permit HSE to inspect such Information as requested from time to time.
- E5.6 The Contractor shall transfer to HSE any Request for Information received by the Contractor as soon as practicable and in any event within 2 Working Days of receiving it.
- E5.7 The Contractor acknowledges that (notwithstanding the provisions of Clause E4) HSE may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the FOIA (the "Code"), be obliged under the FOIA or the Environmental Information Regulations to disclose Information concerning the Contractor or the Contract:
- (a) in certain circumstances without consulting the Contractor, or
 - (b) following consultation with the Contractor and having taken its views into account,

provided always that where E5.7(a) above applies HSE shall, in accordance with the recommendations of the Code, draw this to the attention of the Contractor prior to any disclosure.

- E5.8 The Contractor acknowledges that any lists provided by him listing or outlining Confidential Information, are of indicative value only and that HSE may nevertheless be obliged to disclose Confidential Information in accordance with the requirements of the FOIA and the Environmental Information Regulations.

E6 Publicity, Media and Official Enquiries

- E6.1 The Contractor shall not make any press announcements or publicise the Contract or any part thereof in any way, except with the written consent of HSE.
- E6.2 The Contractor shall take all reasonable steps to ensure the observance of the provisions of Condition E6.1 by all its servants, employees, agents, professional advisors and consultants. The Contractor shall take all reasonable steps to ensure the observance of the provisions of Condition E6.1 by its sub-contractors.
- E6.3 HSE reserves the right to publish the results of the Services carried out under the Contract with appropriate acknowledgement of the work contributed by the staff of the Contractor.
- E6.4 The provisions of this Condition shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

E7 Security

- E7.1 Where the services are to be carried out on HSE premises the Contractor shall comply with the security requirements of HSE and the premises manager, and shall ensure that all of its employees, agents, servants and sub-contractors shall likewise comply with such requirements.

E8 Intellectual Property Rights

E8.1 All Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material (the "**IP Materials**"):

- (a) furnished to or made available to the Contractor by or on behalf of the HSE shall remain the property of the HSE; and
- (b) prepared by or for the Contractor on behalf of the HSE for use, or intended use, in relation to the performance by the Contractor of its obligations under the Contract shall belong to the HSE.

and the Contractor shall not, and shall ensure that the Staff shall not, (except when necessary for the performance of the Contract) without prior Approval, use or disclose any Intellectual Property Rights in the IP Materials.

E8.2 The Contractor hereby assigns to the HSE, with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with clause E8.1(b). This assignment shall take effect on the date of the Contract or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Contractor. The Contractor shall execute all documentation necessary to execute this assignment.

E8.3 The Contractor shall waive or procure a waiver of any moral rights subsisting in copyright produced by the Contract or the performance of the Contract.

E8.4 The Contractor shall ensure that the third-party owner of any Intellectual Property Rights that are or which may be used to perform the Contract grants to the HSE a non-exclusive licence or, if itself a licensee of those rights, shall grant to the HSE an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable and shall include the right for the HSE to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Contractor or to any other third-party supplying services to the HSE.

E8.5 The Contractor shall not infringe any Intellectual Property Rights of any third party in supplying the Services and the Contractor shall, during and after the Contract Period, indemnify and keep indemnified and hold the HSE and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the HSE or the Crown may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim arises from:

- (a) items or materials based upon designs supplied by the HSE; or
- (b) the use of data supplied by the HSE which is not required to be verified by the Contractor under any provision of the Contract.

E8.6 The HSE shall notify the Contractor in writing of any claim or demand brought against the HSE for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Contractor.

E8.7 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Contractor, provided always that the Contractor:

- (a) shall consult the HSE on all substantive issues which arise during the conduct of such litigation and negotiations.
- (b) shall take due and proper account of the interests of the HSE; and
- (c) shall not settle or compromise any claim without the HSE's prior written consent (not to be unreasonably withheld or delayed).

- E8.8 The HSE shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the HSE or the Contractor by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Contractor's obligations under the Contract and the Contractor shall indemnify the HSE for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Contractor shall not, however, be required to indemnify the HSE in relation to any costs and expenses incurred in relation to or arising out of a claim, demand or action which relates to the matters in clause E8.5(a) or E8.5(b).
- E8.9 The HSE shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the HSE or the Contractor in connection with the performance of its obligations under the Contract.
- E8.10 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the HSE and, at its own expense and subject to the consent of the HSE (not to be unreasonably withheld or delayed), use its best endeavours to:
- (a) modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply mutates mutandis to such modified Services or to the substitute Services; or
 - (b) procure a licence to use and supply the Services, which are the subject of the alleged infringement, on terms which are acceptable to the HSE,
- and in the event that the Contractor is unable to comply with clauses E8.7(a) or E8.7(b) within [20] Working Days of receipt of the Contractor's notification the HSE may terminate the Contract with immediate effect by notice in writing.
- E8.11 The Contractor grants to the HSE a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Intellectual Property Rights that the Contractor owned or developed prior to the Commencement Date and which the HSE reasonably requires in order exercise its rights and take the benefit of this Contract including the Services provided.

E9 Retention of Documentation and Right of Audit

- E9.1 The Contractor shall keep secure and maintain until six years after the final payment of all sums due under the Contract, or such shorter period as may be agreed between HSE and the Contractor, full and accurate records of the Services, all expenditure reimbursed by the Contractor and all payments made by HSE.
- E9.2 The Contractor shall:
- (a) produce such records retained pursuant to Condition E9.1 as HSE may reasonably require.
 - (b) afford such facilities as HSE may reasonably require for its representatives to inspect the records retained pursuant to Condition E9.2 (a) Provided that the Contractor takes all reasonable steps to prevent this exception from applying, the right granted by this Condition E9.2 (b) shall not apply to the extent that the confidentiality of information relating to the Contractor's other clients would be jeopardised by such inspection; and

- (c) provide such explanations of records produced pursuant to Condition E9.2 (a) or inspected pursuant to Condition E9.2 (b) as HSE may reasonably require.

E9.3 For the purpose of:

- (a) the examination and certification of HSE's accounts; or
 - (b) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which HSE has used its resources,
- the Comptroller and Auditor General may examine such records as he may reasonably require which are owned, held or otherwise within the control of the Contractor and may require the Contractor to provide such oral and/or written explanations as he considers necessary. This Condition does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Contractor under Section 6(3)(d) and (5) of the National Audit Act 1983.

E10 Security of Confidential Information

- E10.1 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the performance of the Contract, the Contractor undertakes to maintain security systems and procedures approved by HSE.
- E10.2 The Contractor will immediately notify HSE of any breach of security in relation to Confidential Information and all data obtained in the performance of the Contract and will keep a record of such breaches. The Contractor will use its best endeavours to recover such Confidential Information or data however it may be recorded. This obligation is in addition to the Contractor's obligations under Condition E10.3. The Contractor will co-operate with HSE in any investigation that HSE considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.
- E10.3 HSE may require the Contractor to alter any security systems and procedures at any time during the Contract Period at the Contractor's expense.

E11 Baseline Personnel Security Standard

- E11.1 It shall be the Contractor's responsibility to ensure that all personnel engaged in the performance of this Contract shall have undergone pre-employment checks covering identity, the last three years employment history, nationality and immigration status and criminal record for unspent convictions. Such checks shall meet the requirements of HMG Baseline Personnel Security Standard.
- E11.2 HSE reserves the right, at its sole discretion, to carry out audits and spot checks at any time during the Contract Period to satisfy itself that the checks have been carried out.

E12 GDPR Data Protection

- E12.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller, and the Contractor is the Processor unless otherwise specified in Schedule A. The only processing that the Processor is authorised to do is listed in Schedule A by the Controller and may not be determined by the Processor.
- E12.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- E12.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
- a) a systematic description of the envisaged processing operations and the purpose of the processing.

- b) an assessment of the necessity and proportionality of the processing operations in relation to the Services.
- c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

E12.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:

- a) process that Personal Data only in accordance with Schedule A, unless the Processor is required to do otherwise by Law. If it is so required, the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law.
- b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
 - (i) nature of the data to be protected.
 - (ii) harm that might result from Data Loss Event.
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures.
- c) ensure that:
 - (i) the Processor Personnel do not process Personal Data except in accordance with this Contract (and in particular Schedule A);
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Processor's duties under this clause.
 - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor.
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Contract; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- d) not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller.
 - (ii) the Data Subject has enforceable rights and effective legal remedies.
 - (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and

- (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data.
- e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.

E12.5 Subject to clause E12.6, the Processor shall notify the Controller immediately if it:

- a) receives a Data Subject Access Request (or purported Data Subject Access Request).
- b) receives a request to rectify, block or erase any Personal Data.
- c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation.
- d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract.
- e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- f) becomes aware of a Data Loss Event.

E12.6 The Processor's obligation to notify under clause E12.5 shall include the provision of further information to the Controller in phases, as details become available.

E12.7 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause E12.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:

- a) the Controller with full details and copies of the complaint, communication or request.
- b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation.
- c) the Controller, at its request with any Personal Data it holds in relation to a Data Subject.
- d) assistance as requested by the Controller following any Data Loss Event.
- e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.

E12.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:

- a) the Controller determines that the processing is not occasional.
- b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
- c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

E12.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.

- E12.10 Each Party shall designate its own data protection office if required by the Data Protection Legislation.
- E12.11 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Processor must:
- a) notify the Controller in writing of the intended Sub-processor and processing.
 - b) obtain the written consent of the Controller.
 - c) enter into a written agreement with the Sub-processor which gives effect to the terms set out in this clause E12 such that they apply to the Sub-processor; and
 - d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- E12.12 The Processor shall remain fully liable for all acts or omissions of any Sub-processor.
- E12.13 The Controller may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- E12.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- E12.15 Where the Parties include two or more Joint Controllers as identified in Schedule C in accordance with GDPR Article 26, those Parties shall enter into a Joint Controller Agreement based on the terms outlined in Schedule B in replacement of Clauses 1.1-1.14 for the Personal Data under Joint Control.

F CONTROL OF THE CONTRACT

F1 Assignment and Sub-contracting

- F1.1 Except where F1.4 and 5 applies, the Contractor shall not assign, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval. Sub-contracting any part of the Contract shall not relieve the Contractor of any of its obligations or duties under the Contract.
- F1.2 The Contractor shall be responsible for the acts and omissions of its sub-contractors as though they are its own.
- F1.3 Where HSE has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of HSE, be sent by the Contractor to HSE as soon as reasonably practicable.
- F1.4 Notwithstanding Clause F1.1, the Contractor may assign to a third party ("**the Assignee**") the right to receive payment of the Contract Price or any part thereof due to the Contractor under this Contract (including any interest which HSE incurs under Clause C2.3). Any assignment under this clause F1.4 shall be subject to:
- (a) reduction of any sums in respect of which HSE exercises its right of recovery under Clause C6 (Recovery of Sums Due);
 - (b) all related rights of HSE under the contract in relation to the recovery of sums due but unpaid; and
 - (c) HSE receiving notification under both Clauses F1.5 and F1.6.

- F1.5 In the event that the Contractor assigns the right to receive the Contract price under Clause F1.4, the Contractor or the Assignee shall notify HSE in writing of the assignment and the date upon which the assignment becomes effective.
- F1.6 The Contractor shall ensure that the Assignee notifies HSE of the Assignee's contact information and bank account details to which HSE shall make payment.
- F1.7 The provisions of Clauses C2 and 3 (Invoicing and Payment and VAT) shall continue to apply in all other respects after the assignment and shall not be amended without the Approval of HSE.
- F1.8 Subject to Clause F1.10, HSE may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
- (a) any Contracting Authority; or
 - (b) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by HSE; or
 - (c) any private sector body which substantially performs the functions of HSE,
- provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under the Contract.
- F1.9 Any change in the legal status of HSE such that it ceases to be a Contracting Authority shall not, subject to Clause F1.8, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to HSE.
- F1.10 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to Clause F1.8 to a body which is not a Contracting Authority or if there is a change in the legal status of HSE such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as the **"Transferee"**):
- (a) the rights of termination of HSE in Clauses H1 (Termination on change of control and insolvency) and H2 (Termination on Default) shall be available to the Contractor in the event of respectively, the bankruptcy or insolvency, or Default of the Transferee; and
 - (b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior consent in writing of the Contractor.
- F1.11 HSE may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contractor's obligations under the Contract. In such circumstances HSE shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contractor's obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.
- F1.12 Each Party shall at its own cost and expense carry out or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other party the full benefit of the provisions of the Contract.

F2 Waiver

- F2.1 The failure of either party to enforce any provision of the Contract at any time shall not affect any future right to require complete performance by the other party, nor

shall the waiver of any individual breach of any provision be taken or held to be a waiver of any subsequent breach of that or any other provision.

F3 Variation by HSE

- F3.1 HSE reserves the right to alter the requirements of the Contract, as detailed in the specification, should this at any time become necessary. In any alteration of the contractual requirement, payment under the Contract shall be subject to fair and reasonable adjustment to be agreed between HSE and the Contractor in writing. Failing agreement the matter shall be determined by dispute resolution in accordance with Condition I.1 or by arbitration in accordance with the provisions of Condition I.2.

F4 Variation by the Contractor

- F4.1 The Contractor may request to alter the requirements of the contract, as detailed in the specification, provided that reasonable prior written notice is given and, should an adjustment be required, it is accompanied by detailed proposals.

F5 Severability

- F5.1 If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.
- F5.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Parties shall immediately commence negotiations in good faith to remedy the invalidity.

F6 Remedies Cumulative

- F6.1 Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of this Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

G LIABILITIES

G1 Indemnity and Insurance

- G1.1 Neither Party excludes or limits liability to the other Party for:
- (a) death or personal injury caused by its negligence; or
 - (b) fraud; or
 - (c) fraudulent misrepresentation; or
 - (d) any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.
 - (e) any breach of its obligations under the General Data Protection Regulation (Regulation (EU) 2016/679) (GDPR) and the Data Protection Act (DPA) 2018.
- G1.2 Subject to Clause G1.3, the Contractor shall indemnify HSE and keep HSE indemnified fully against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or the late or purported supply, of the Services or the performance or non-performance by the Contractor of its obligations under the Contract or the presence of the Contractor or any Staff on the premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any

advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor.

- G1.3 The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of HSE or by breach by HSE of its obligations under the Contract.
- G1.4 The Contractor shall not exclude liability for additional operational, administrative costs and/or expenses or wasted expenditure resulting from the direct Default of the Contractor.
- G1.5 The Contractor shall affect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of 6 (six) years following the expiration or earlier termination of the Contract.
- G1.6 The Contractor shall hold employer's liability insurance in respect of Staff in accordance with any legal requirement from time to time in force.
- G1.7 The Contractor shall give HSE, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- G1.8 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the provisions of the Contract HSE may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.
- G1.9 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in Clause G1.2.

G2 Professional Indemnity

- G2.1 The Contractor shall hold and maintain professional indemnity insurance cover and shall ensure that all professional consultants involved in the provision of the Services hold and maintain appropriate cover. Such Insurance to be held by the Contractor or by any agent, sub-contractor or consultant involved in the provision of Services with a limit of indemnity of not less than £1,000,000 for any occurrences arising out of each and every event. Such insurance shall be maintained for a minimum of 6 (six) years following the expiration or earlier termination of this Contract.

G3 Warranties and Representations

- G3.1 The Contractor warrants and represents that:
- (a) it has the 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 perform this Contract and that this Contract is executed by a duly authorised representative of the Contractor;
 - (b) it shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to good industry practice and (without limiting the

generality of this Condition) in accordance with its own established internal procedures.

- (c) all of its obligations pursuant to the Contract shall be performed and rendered by appropriately experienced, qualified and trained Staff with all due skill, care and diligence.
- (d) in entering the Contract it has not committed any Fraud;
- (e) as at the Commencement Date, all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the HSE prior to execution of the Contract;
- (f) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract.
- (g) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract.
- (h) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue.
- (i) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract.
- (j) in the three 3 years prior to the date of the Contract:
 - (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts.
 - (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
 - (iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.

H DEFAULT, DISRUPTION AND TERMINATION

H1 Termination on Insolvency and Change of Control

H1.1 The HSE may terminate the Contract with immediate effect by notice in writing where the Contractor is a company and in respect of the Contractor:

- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
- (b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or

- (c) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or
- (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
- (e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
- (f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
- (g) being a "small company" within the meaning of section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- (h) any event similar to those listed in H1.1(a)-(g) occurs under the law of any other jurisdiction.

H1.2 The HSE may terminate the Contract with immediate effect by notice in writing where the Contractor is an individual and:

- (a) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Contractor's creditors; or
- (b) a petition is presented and not dismissed within 14 days or order made for the Contractor's bankruptcy or
- (c) a receiver, or similar officer is appointed over the whole or any part of the Contractor's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
- (d) the Contractor is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986; or
- (e) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor's assets and such attachment or process is not discharged within 14 days; or
- (f) he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005; or
- (g) he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.

H1.3 The Contractor shall notify the HSE immediately if the Contractor undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988 ("**change of control**"). The HSE may terminate the Contract by notice in writing with immediate effect within six months of:

- (a) being notified that a change of control has occurred; or
- (b) where no notification has been made, the date that the HSE becomes aware of the change of control but shall not be permitted to terminate where an Approval was granted prior to the change of control.

H2 Termination on Default

- H2.1 Where the Services, or any portion of the Services, are not carried out within the time or times specified within the Contract, HSE shall have the option, without prejudice to any of its other rights or remedies, to terminate the Contract by written notice having immediate effect.
- H2.2 Where the Services, or any portion of the Services, are not carried out satisfactorily HSE shall have the option, without prejudice to any of its other rights or remedies, to;
- (a) require the Contractor, at his own expense, to re-perform the services to HSE's reasonable satisfaction.
 - (b) arrange for the Services to be performed by alternative means.
 - (c) terminate the Contract by written notice having immediate effect.
 - (d) require the Contractor, notwithstanding such termination, to co-operate in the transfer of the Services to which the termination relates to any alternative organisation under Condition H2.2 (b) of these Conditions in accordance with arrangements notified to the Contractor by HSE.
- H2.3 Where HSE obtains all or any of the Services by alternative means they shall be able to recover from the Contractor the amount by which the aggregate of the cost of obtaining Services in this way exceeds the amount which would have been payable to the Contractor in respect of all the Services replaced if they had been carried out in accordance with the Contract.
- H2.4 Where the Contract is terminated under clause H2 (Termination on Default), no further payments shall be payable by the HSE to the Contractor (for Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the HSE), until the HSE has established the final cost of making the other arrangements envisaged under this clause.
- H2.5 In the event that through any Default of the Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall reimburse HSE in respect of any charge levied for its transmission and any other costs charged in connection with such Default.
- H2.6 If HSE fails to pay the Contractor undisputed sums of money when due, the Contractor shall notify HSE in writing of such failure to pay. If HSE fails to pay such undisputed sums within 90 Working Days of the date of such written notice, the Contractor may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to HSE exercising its rights under Clauses C6 (Recovery of Sums Due).

H3 Break

- H3.1 In addition to its rights of termination under Condition H1, HSE shall be entitled to terminate the Contract by giving to the Contractor not less than thirty days' notice in writing to that effect. Upon expiry of the notice the Contract shall be terminated without prejudice to the rights of the parties accrued to the date of termination.
- H3.2 Upon such termination the Contractor shall have the right to claim from HSE reimbursement of all reasonable costs necessarily and properly incurred by him in relation to the orderly cessation of the Services, including any commitments, liabilities or expenditure which are reasonably incurred, and would represent an unavoidable loss by the Contractor by reason of the termination of the Contract. Such costs shall be agreed in writing between HSE and the Contractor prior to any commitment by HSE to reimburse the Contractor. For the avoidance of doubt HSE shall not indemnify the

Contractor against loss of profit or any indirect or consequential loss. HSE shall not in any case be liable to pay under the provisions of this Condition any sum which, when taken together with any sums paid or due or becoming due to the Contractor under the Contract, shall exceed the total contract price.

H3.3 Where the Contract is terminated under Condition H3.1 HSE may, during the notice period:

- (a) require the Contractor, where the Services have not been commenced, to refrain from commencing such Services or where the Services have been commenced, to cease work immediately.
- (b) require the Contractor to complete in accordance with the Contract all or any of the Services, or any part or component thereof, which shall be paid at the agreed contract price or, where no agreement exists, at a fair and reasonable price.

H4 Recovery upon Termination

H4.1 On the termination of the Contract for any reason, the Contractor shall:

- (a) immediately return to the HSE all Confidential Information, Personal Data and IP Materials in its possession or in the possession or under the control of any permitted suppliers or sub-contractors, which was obtained or produced in the course of providing the Services.
- (b) immediately deliver to the HSE all Property (including materials, documents, information and access keys) provided to the Contractor under clause B5. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
- (c) assist and co-operate with the HSE to ensure an orderly transition of the provision of the Services to the Replacement Contractor and/or the completion of any work in progress. The transfer shall be arranged so as to reduce to a minimum any interruption in the Services.
- (d) promptly provide all information concerning the provision of the Services which may reasonably be requested by the HSE for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the HSE or the Replacement Contractor to conduct due diligence.

H4.2 If the Contractor fails to comply with clause H4.1 (a) and (b), the HSE may recover possession thereof and the Contractor grants a licence to the HSE or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted suppliers or sub-contractors where any such items may be held.

H4.3 Where the end of the Contract Period arises due to the Contractor's Default, the Contractor shall provide all assistance under clause H4(c) and (d) free of charge. Otherwise, the HSE shall pay the Contractor's reasonable costs of providing the assistance and the Contractor shall take all reasonable steps to mitigate such costs.

H5 Force Majeure

H5.1 Neither HSE nor the Contractor shall be liable to the other by reason of any failure or delay in performing its obligation under the Contract which is due to Force Majeure, where there is no practical means available to the party concerned to avoid such failure or delay.

H5.2 If either HSE or the Contractor becomes aware of any circumstances of Force Majeure which give rise to any such failure or delay, or which appear likely to do so, that party

shall promptly give notice of those circumstances as soon as practicable after becoming aware of them and shall inform the other party of the period for which it estimates that the failure or delay shall continue.

- H5.3 For the purposes of this Condition, "Force Majeure" means any event or occurrence which is outside the control of the party concerned and which is not attributable to any act or failure to take preventative action by the party concerned but shall not include any industrial action occurring within the Contractor's organisation or within any sub-contractor's organisation.
- H5.4 Any failure or delay by the Contractor in performing its obligations under the Contract which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as Force Majeure only if that agent, sub-contractor or supplier is itself impeded in complying with its obligations to the Contractor by Force Majeure.
- H5.5 Where Force Majeure occurs, the party concerned shall take all reasonable steps to minimise the failure or delay.

I DISPUTES AND RESOLUTION

I1 Dispute Resolution

- II.1 The Parties shall attempt in good faith to negotiate a settlement of any dispute between them arising out of or in connection with the Contract.
- II.2 If the dispute cannot be resolved by the Parties pursuant to Condition I1.1 the dispute may, by agreement between the Parties, be referred to mediation.
- II.3 The performance of the services shall not be suspended, cease or be delayed by the reference of a dispute to mediation or adjudication and the Contractor shall fully comply with the requirements of the Contract at all times.
- I1.4 The Parties shall endeavour to choose by agreement a neutral advisor or mediator ("the Mediator") or if they are unable to agree upon a Mediator within 14 days after a request by one party to the other, or if the Mediator is unable or unwilling to act, either party shall within 14 days from the date of the proposal to appoint a Mediator or within 14 days of notice to either party that the Mediator is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution ("CEDR") to appoint a Mediator.
- I1.5 The Parties shall meet the Mediator within 14 days of their appointment to agree procedures concerning the mediation negotiations and exchange of relevant information.
- I1.6 Unless otherwise agreed, all negotiations connected with the dispute and any settlement shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings.
- I1.7 If the parties reach agreement on the resolution of the dispute, the agreement shall be reduced in writing and be binding on the parties once it is signed by their duly authorised representatives.
- I1.8 If the parties fail to reach agreement on the resolution of the dispute, either party may request the Mediator to provide a non-binding but informative opinion in writing. Such opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both parties.
- I1.9 If the parties fail to reach agreement within 60 days of the Mediator being appointed, or such longer period as may be agreed by the parties, then any dispute or difference may be referred to the courts.

I2 Arbitration

- I2.1 Any dispute as to the interpretation or application of the Contract other than a matter as to which the decision of HSE shall be final and conclusive and except as may be otherwise provided in the Contract shall be referred to the arbitration of two persons, one to be appointed by HSE and one by the Contractor, or their Umpire, in accordance with the provisions of the Arbitration Act 1950, 1975, 1979 and 1996 or any statutory modification or re-enactment thereof.
- I2.2 Any costs incurred as a result of enforcing Condition I2.1 above shall be decided at the sole discretion of the agreed arbitrator. Such costs shall be in full and final settlement of all disputes, howsoever arising, whether current or in the future, between HSE and the Contractor.
- I2.3 Where it is considered appropriate, subject to the agreement of both parties, alternative methods of dispute resolution shall be considered including adjudication and mediation.

I3 Governing Law

- I3.1 This Contract shall be governed by and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the courts of England and Wales.

Call-Off Schedule 1 (Staff Transfer)

If there is a staff transfer from the Buyer on entry (1st generation) then Part A shall apply.

If there is a staff transfer from former/incumbent supplier on entry (2nd generation), Part B shall apply.

If there is both a 1st and 2nd generation staff transfer on entry, then both Part A and Part B shall apply.

If either Part A and/or Part B apply, then consider whether Part D (Pensions) shall apply and the Buyer shall indicate on the Order Form which Annex shall apply (either D1 (CSPS), D2 (NHSPS), D3 (LGPS) or D4 (Other Schemes)). Part D pensions may also apply where there is not a TUPE transfer for example where the incumbent provider is successful.

If there is no staff transfer (either 1st generation or 2nd generation) at the Start Date then Part C shall apply and Part D pensions may also apply where there is not a TUPE transfer for example where the incumbent provider is successful.

If the position on staff transfers is not known at the bid stage, include Parts A, B, C and D at the bid stage and then update the Buyer Order Form before signing to specify whether Parts A and/or B, or C and D apply to the Contract.

Part E (dealing with staff transfer on exit) shall apply to every Contract.]

1 Definitions

1.1 In this Schedule, the following words have the following meanings and they shall supplement Joint Schedule 1(Definitions):

Term	Definition
Employee Liability	all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following: (a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments; (b) unfair, wrongful or constructive dismissal compensation; (c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay; (d) compensation for less favourable treatment of part-time workers or fixed term employees; (e) outstanding debts and unlawful deduction of wages

	including any PAYE and National Insurance Contributions in relation to payments made by the Buyer or the Replacement Supplier to a Transferring Supplier Employee which would have been payable by the Supplier or the Subcontractor if such payment should have been made prior to the Service Transfer Date and also including any payments arising in respect of pensions; (f) claims whether in tort, contract or statute or otherwise; any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;
Former Supplier	a supplier supplying the Deliverables to the Buyer before the Relevant Transfer Date that are the same as or substantially similar to the Deliverables (or any Part of the Deliverables) and shall include any Subcontractor of such supplier (or any Subcontractor of any such Subcontractor);
Partial Termination	the partial termination of the relevant Contract to the extent that it relates to the provision of any Part of the Services as further provided for in Clause 10.4 (When CCS or the Buyer can end this contract) or 10.6 (When the Supplier can end the contract);
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, and for the purposes of Part D: Pensions, shall include the Commencement Date, where appropriate;
Supplier's Final Supplier Personnel List	a list provided by the Supplier of all Supplier Personnel whose 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 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;
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 Buyer may reasonably request (subject to all applicable provisions of the Data Protection Laws), but including in an anonymised format: (a) their ages, dates of commencement of employment or engagement, gender and place of work; (b) details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise; (c) the identity of the employer or relevant contracting Party; (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy

	procedures, and redundancy payments; (e) their wages, salaries, bonuses and profit sharing arrangements as applicable; (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them; (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims); (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence; (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and (j) any other "employee liability information" as such term is defined in regulation 11 of the Employment Regulations;
Term	the period commencing on the Start Date and ending on the expiry of the Initial Period or any Extension Period or on earlier termination of the relevant Contract;
Transferring Buyer Employees	those employees of the Buyer to whom the Employment Regulations will apply on the Relevant Transfer Date and whose names are provided to the Supplier on or prior to the Relevant Transfer Date; and
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 whose names are provided to the Supplier on or prior to the Relevant Transfer Date.

2 Interpretation

Where a provision in this Schedule imposes any obligation on the Supplier including (without limit) to comply with a requirement or provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Subcontractors shall comply with such obligation and provide such indemnity, undertaking or warranty to CCS, the Buyer, Former Supplier, Replacement Supplier or Replacement Subcontractor, as the case may be and where the Subcontractor fails to satisfy any claims under such indemnities the Supplier will be liable for satisfying any such claim as if it had provided the indemnity itself.

3 Which parts of this Schedule apply

Only the:

- 3.1 parts of this Schedule identified in the Order Form shall apply to this Call-Off Contract;
or
- 3.2 following parts of this Schedule shall apply to this Call-Off Contract:

[Delete if not applicable to the Call-Off Contract]

- [Part C (No Staff Transfer On Start Date)]
- [Part D (Pensions)]
 - [Annex D1 (CSPS)]
 - [Annex D2 (NHSPS)]
 - [Annex D3 (LGPS)]
 - [Annex D4 (Other Schemes)]
- [Part E (Staff Transfer on Exit)]

Part A: Staff Transfer at the Start Date

Outsourcing from the Buyer

1 What is a relevant transfer

1.1 The Buyer 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 Buyer Employees; and
- 1.1.2 as a result of the operation of the Employment Regulations, the contracts of employment between the Buyer and the Transferring Buyer 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 Subcontractor and each such Transferring Buyer Employee.
- 1.1.3 The Buyer shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Buyer Employees in respect of the period arising up to (but not including) the Relevant Transfer Date including (without limit) the payment of all remuneration, benefits, entitlements, PAYE, national insurance contributions and pension contributions.

2 Indemnities the Buyer must give

- 2.1 Subject to Paragraph 2.2, the Buyer shall indemnify the Supplier and any Subcontractor against any Employee Liabilities arising from or as a result of any act or omission by the indemnifying party in respect of any Transferring Buyer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Buyer Employee occurring before the Relevant Transfer Date.
- 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 Subcontractor whether occurring or having its origin before, on or after the Relevant Transfer Date.
- 2.3 Subject to Paragraphs 2.4 and 2.5, if any employee of the Buyer who is not identified as a Transferring Buyer Employee claims, or it is determined in relation to any employees of the Buyer, that his/her contract of employment has been transferred from the Buyer to the Supplier and/or any Subcontractor pursuant to the Employment Regulations then -
 - 2.3.1 the Supplier will, within 5 Working Days of becoming aware of that fact, notify the Buyer in writing;
 - 2.3.2 the Buyer may offer employment to such person, or take such other steps as it considers appropriate to resolve the matter, within 10 Working Days of receipt of notice from the Supplier;
 - 2.3.3 if such offer of employment is accepted, the Supplier shall immediately release the person from its employment;
 - 2.3.4 if after the period referred to in Paragraph 2.3.2 no such offer has been made, or such offer has been made but not accepted, the Supplier may within 5 Working Days give notice to terminate the employment of such person;

and subject to the Supplier's compliance with Paragraphs 2.3.1 to 2.3.4 the Buyer will indemnify the Supplier and/or the relevant Subcontractor against all Employee Liabilities arising out of the termination of the employment of any of the Buyer's employees referred to in this Paragraph 2.3.

2.4 The indemnity in Paragraph 2.3 shall not apply to any claim:

2.4.1 for 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 equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees in relation to any alleged act or omission of the Supplier and/or any Subcontractor; or

2.4.2 any claim that the termination of employment was unfair because the Supplier and/or any Subcontractor neglected to follow a fair dismissal procedure.

2.5 The indemnity in Paragraph 2.3 shall not apply to any termination of employment occurring later than 3 Months from the Relevant Transfer Date.

2.6 If the Supplier and/or any Subcontractor at any point accept the employment of any person as is described in Paragraph 2.3, such person shall be treated as having transferred to the Supplier and/or any Subcontractor and the Supplier shall comply with such obligations as may be imposed upon it under applicable Law.

3 Indemnities the Supplier must give and its obligations

3.1 Subject to Paragraph 3.2, the Supplier shall indemnify the Buyer against any Employee Liabilities arising from or as a result of any act or omission by the Supplier or any Subcontractor in respect of any Transferring Buyer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Buyer Employee whether occurring before, on or after the Relevant Transfer Date.

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 Buyer whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Buyer's failure to comply with its obligations under the Employment Regulations.

3.3 The Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Buyer Employees, from (and including) the Relevant Transfer Date including (without limit) the payment of all remuneration, benefits, entitlements, PAYE, national insurance contributions and pension contributions and any other sums due under Part D: Pensions.

4 Information the Supplier must provide

The Supplier shall promptly provide to the Buyer in writing such information as is necessary to enable the Buyer to carry out its duties under regulation 13 of the Employment Regulations. The Buyer shall promptly provide to the Supplier in writing such information as is necessary to enable the Supplier and any Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations.

5 Cabinet Office requirements

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 comply with any requirement notified to it by the Buyer relating to pensions in respect of any Transferring Buyer Employee as set down in (i) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007; (ii) HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999; (iii) HM Treasury's guidance "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or (iv) 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 Variation Procedure.

6 Pensions

- 6.1 The Supplier shall comply with:
 - 6.1.1 all statutory pension obligations in respect of all Transferring Buyer Employees; and
 - 6.1.2 the provisions in Part D: Pensions.

Part B: Staff transfer at the Start Date

Transfer from a former Supplier on Re-procurement

1 What is a relevant transfer

- 1.1 The Buyer 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 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 any Subcontractor and each such Transferring Former Supplier Employee.
- 1.2 The Buyer 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 (without limit) the payment of all remuneration, benefits, entitlements, PAYE, national insurance contributions and pension contributions.

2 Indemnities given by the Former Supplier

- 2.1 Subject to Paragraph 2.2, the Buyer shall procure that each Former Supplier shall indemnify the Supplier and any Subcontractor against any Employee Liabilities arising from or as a result of any act or omission by the Former Supplier 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 arising before the Relevant Transfer Date;
- 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 Subcontractor whether occurring or having its origin before, on or after the Relevant Transfer Date.
- 2.3 Subject to Paragraphs 2.4 and 2.5, if any employee of a Former Supplier who is not identified as a Transferring Former Supplier Employee and claims, and/or it is determined, in relation to such person that his/her contract of employment has been transferred from a Former Supplier to the Supplier and/or any Notified Subcontractor pursuant to the Employment Regulations then:
 - 2.3.1 the Supplier will within 5 Working Days of becoming aware of that fact notify the Buyer and the relevant Former Supplier in writing;
 - 2.3.2 the Former Supplier may offer employment to such person, or take such other steps as it considers appropriate to resolve the matter, within 10 Working Days of receipt of notice from the Supplier;
 - 2.3.3 if such offer of employment is accepted, the Supplier shall immediately release the person from its employment;
 - 2.3.4 if after the period referred to in Paragraph 2.3.2 no such offer has been made, or such offer has been made but not accepted, the Supplier may within 5 Working Days give notice to terminate the employment of such person;

and subject to the Supplier's compliance with Paragraphs 2.3.1 to 2.3.4 the Buyer shall procure that the Former Supplier will indemnify the Supplier and/or the relevant Subcontractor against all Employee Liabilities arising out of the termination of the employment of any of the Former Supplier's employees referred to in paragraph 2.3.

2.4 The indemnity in Paragraph 2.3 shall not apply to any claim:

2.4.1 for 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 equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees, arising as a result of any alleged act or omission of the Supplier and/or any Subcontractor; or

2.4.2 that the termination of employment was unfair because the Supplier and/or Subcontractor neglected to follow a fair dismissal procedure.

2.5 The indemnity in Paragraph 2.3 shall not apply to any termination of employment occurring later than 3 Months from the Relevant Transfer Date.

2.6 If the Supplier and/or any Subcontractor at any point accept the employment of any person as is described in Paragraph 2.3, such person shall be treated as having transferred to the Supplier and/or any Subcontractor and the Supplier shall comply with such obligations as may be imposed upon it under applicable Law.

3 Indemnities the Supplier must give and its obligations

3.1 Subject to Paragraph 3.1, the Supplier shall indemnify the Buyer, and the Former Supplier against any Employee Liabilities arising from or as a result of any act or omission by the Supplier or any Subcontractor 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.

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 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, on and from the Relevant Transfer Date including (without limit) the payment of all remuneration, benefits, entitlements, PAYE, national insurance contributions and pension contributions and all such sums due under Part D: Pensions.

4 Information the Supplier must give

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

5 Cabinet Office requirements

- 5.1 The Supplier shall comply with any requirement notified to it by the Buyer relating to pensions in respect of any Transferring Former Supplier Employee as set down in (i) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007; (ii) HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999; (iii) HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or (iv) 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 Limits on the Former Supplier's obligations

Notwithstanding any other provisions of this Part B, where in this Part B the Buyer 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 Buyer's contract with the Former Supplier contains a contractual right in that regard which the Buyer may enforce, or otherwise so that it requires only that the Buyer's must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

7 Pensions

- 7.1 The Supplier shall comply with:
- 7.1.1 all statutory pension obligations in respect of all Transferring Former Supplier Employees; and
- 7.1.2 the provisions in Part D: Pensions.

Part C: No Staff Transfer on the Start Date

1 What happens if there is a staff transfer

- 1.1 The Buyer 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 Buyer and/or any Former Supplier.
- 1.2 Subject to Paragraphs 1.3, 1.4 and 1.5, if any employee of the Buyer and/or a Former Supplier claims, or it is determined in relation to any employee of the Buyer and/or a Former Supplier, that his/her contract of employment has been transferred from the Buyer and/or the Former Supplier to the Supplier and/or any Subcontractor pursuant to the Employment Regulations then:
 - 1.2.1 the Supplier will, within 5 Working Days of becoming aware of that fact, notify the Buyer in writing;
 - 1.2.2 the Buyer may offer employment to such person, or take such other steps as it considered appropriate to resolve the matter, within 10 Working Days of receipt of notice from the Supplier;
 - 1.2.3 if such offer of employment is accepted, the Supplier shall immediately release the person from its employment;
 - 1.2.4 if after the period referred to in paragraph 1.2.2 no such offer has been made, or such offer has been made but not accepted, the Supplier may within 5 Working Days give notice to terminate the employment of such person;and subject to the Supplier's compliance with Paragraphs 1.2.1 to 1.2.4:
 - (a) the Buyer will indemnify the Supplier and/or the relevant Subcontractor against all Employee Liabilities arising out of the termination of the employment of any of the Buyer's employees referred to in Paragraph 1.2; and
 - (b) the Buyer will procure that the Former Supplier indemnifies the Supplier and/or any Subcontractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier referred to in Paragraph 1.2.
- 1.3 The indemnities in Paragraph 1.2 shall not apply to any claim:
 - 1.3.1 for 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 equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees in relation to any alleged act or omission of the Supplier and/or Subcontractor; or
 - 1.3.2 any claim that the termination of employment was unfair because the Supplier and/or any Subcontractor neglected to follow a fair dismissal procedure
- 1.4 The indemnities in Paragraph 1.2 shall not apply to any termination of employment occurring later than 3 Months from the Commencement Date.
- 1.5 If the Supplier and/or the Subcontractor does not comply with Paragraph 1.2, all Employee Liabilities in relation to such employees shall remain with the Supplier and/or the Subcontractor and the Supplier shall (i) comply with the provisions of Part D: Pensions of this Schedule, and (ii) indemnify the Buyer 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 Subcontractor.

2 Limits on the Former Supplier's obligations

Where in this Part C the Buyer 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 Buyer's contract with the Former Supplier contains a contractual right in that regard which the Buyer may enforce, or otherwise so that it requires only that the Buyer must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

Part D: Pensions

1 Definitions

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

Term	Definition
Actuary	a Fellow of the Institute and Faculty of Actuaries;
Admission Agreement	means 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;
Broadly Comparable	(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 (b) in respect of benefits provided for or in respect of a member under a pension scheme, benefits that are consistent with that pension scheme's certificate of broad comparability issued by the Government Actuary's Department, and " Broad Comparability " shall be construed accordingly;
CSPA	the schemes as defined in Annex D1 to this Part D;
Fair Deal Employees	those: (a) Transferring Buyer Employees; and/or (b) Transferring Former Supplier Employees; and/or (c) employees who are not Transferring Buyer 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 Subcontractor, and whose employment is not terminated in accordance with the provisions of Paragraphs 2.3.4 of Parts A or B or Paragraph 1.2.4 of Part C; (d) where the Former Supplier becomes the Supplier those employees; who at the Commencement Date or Relevant Transfer Date (as appropriate) are or become entitled to New Fair Deal protection in respect of any of the Statutory Schemes as notified by the Buyer;
Fair Deal Schemes	means the relevant Statutory Scheme or a Broadly Comparable pension scheme;
Fund Actuary	means Fund Actuary as defined in Annex D3 to this Part D;
LGPS	the schemes as defined in Annex D3 to this Part D;
NHSPA	the schemes as defined in Annex D2 to this Part D;
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 including: (a) any amendments to that document immediately prior to the Relevant Transfer Date; and (b) any similar pension protection in accordance with the subsequent Annex D1-D3 inclusive as notified to the Supplier by the CCS or Buyer; and
Statutory Schemes	means the CSPA, NHSPS or LGPS.

2 Supplier obligations to participate in the pension schemes

- 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, 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:
- 2.3.1 to pay to the Statutory Schemes all such amounts as are due under the relevant Admission Agreement and/or Direction Letter or otherwise and shall deduct and pay to the Statutory Schemes such employee contributions as are required; and
- 2.3.2 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.

3 Supplier obligation to provide information

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

4 Indemnities the Supplier must give

- 4.1 The Supplier undertakes to the Buyer to indemnify and keep indemnified CCS, NHS Pensions the Buyer and/or any Replacement Supplier and/or any Replacement Subcontractor on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards all and any Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which arise from any breach by the Supplier of this Part D, and/or the CSPA Admission Agreement and/or the Direction Letter and/or the LGPS Admission Agreement or relates to the payment of benefits under and/or participation in an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Fair Deal Schemes.
- 4.2 The Supplier hereby indemnifies the CCS, NHS Pensions, the Buyer and/or any Replacement Supplier and/or Replacement Subcontractor from and against all Losses suffered or incurred by it or them which arise from claims by Fair Deal Employees of

the Supplier and/or of any Subcontractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such Fair Deal Employees which Losses:

- 4.2.1 relate to pension rights in respect of periods of employment on and after the Relevant Transfer Date until the date of termination or expiry of this Contract; or
- 4.2.2 arise out of the failure of the Supplier and/or any relevant Subcontractor to comply with the provisions of this Part D before the date of termination or expiry of this Contract.
- 4.3 The indemnities in this Part D and its Annexes:
 - 4.3.1 shall survive termination of this Contract; and
 - 4.3.2 shall not be affected by the caps on liability contained in Clause 11 (How much you can be held responsible for).

5 What happens if there is a dispute

- 5.1 The Dispute Resolution Procedure will not apply to this Part D and any dispute between the CCS and/or the Buyer and/or the Supplier or between their respective actuaries or the Fund Actuary about any of the actuarial matters referred to in this Part D and its Annexes shall in the absence of agreement between the CCS and/or the Buyer and/or the Supplier be referred to an independent Actuary:
 - 5.1.1 who will act as an expert and not as an arbitrator;
 - 5.1.2 whose decision will be final and binding on the CCS and/or the Buyer and/or the Supplier; and
 - 5.1.3 whose expenses shall be borne equally by the CCS and/or the Buyer and/or the Supplier unless the independent Actuary shall otherwise direct.

6 Other people's rights

- 6.1 The Parties agree Clause 19 (Other people's rights in this contract) does not apply and that the CRTPA applies to this Part D to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to him or her or it by the 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 Subcontractor in his or her or its own right under section 1(1) of the CRTPA.

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

- 7.1 The Supplier agrees to notify the Buyer should it breach any obligations it has under this Part D and agrees that the Buyer shall be entitled to terminate its Contract for material Default in the event that the Supplier:
 - 7.1.1 commits an irremediable breach of any provision or obligation it has under this Part D; or
 - 7.1.2 commits a breach of any provision or obligation it has under this Part D which, where capable of remedy, it fails to remedy within a reasonable time and in any event within 28 days of the date of a notice from the Buyer giving particulars of the breach and requiring the Supplier to remedy it.

8 Transferring New Fair Deal Employees

- 8.1 Save on expiry or termination of this Contract, if the employment of any Fair Deal Employee transfers to another employer (by way of a transfer under the Employment Regulations) the Supplier shall and shall procure that any relevant Subcontractor shall:
- 8.1.1 consult with and inform those Fair Deal Employees of the pension provisions relating to that transfer; and
 - 8.1.2 procure that the employer to which the Fair Deal 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 Employees so transferred to the New Employer.

9 What happens to pensions if this Contract ends

The provisions of Part E: Staff Transfer On Exit (Mandatory) apply in relation to pension issues on expiry or termination of this Contract.

10 Broadly Comparable Pension Schemes

10.1 If either:

10.1.1 the terms of any of Paragraphs 2.2 of Annex D1: CSPA, 5.2 of Annex D2: NHSPA and or 4 of Annex D3: LGPS apply; and/or

10.1.2 the Buyer agrees, having considered the exceptional cases provided for in New Fair Deal, (such agreement not to be unreasonably withheld) that the Supplier (and/or its Subcontractors, if any) need not continue to provide the Fair Deal Employees, who continue to qualify for Fair Deal Protection, with access to the appropriate Statutory Scheme;

the Supplier must (and must, where relevant, procure that each of its Subcontractors will) ensure that, with effect from the Relevant Transfer Date or if later cessation of participation in the Statutory Scheme 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 Buyer.

10.2 Where the Supplier has set up a Broadly Comparable pension scheme or schemes pursuant to the provisions of Paragraph 10.1, the Supplier shall (and shall procure that any of its Subcontractors shall):

10.2.1 supply to the Buyer details of its (or its Subcontractor's) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability covering all relevant Fair Deal Employees, as soon as it is able to do so and in any event no later than 28 days before the Relevant Transfer Date;

10.2.2 fully fund any such Broadly Comparable pension scheme in accordance with the funding requirements set by that Broadly Comparable pension scheme's Actuary or by the Government Actuary's Department for the period ending on the Service Transfer Date;

10.2.3 instruct any such Broadly Comparable pension scheme's Actuary to, and to provide all such co-operation and assistance in respect of any such Broadly Comparable pension scheme as the Replacement Supplier and/or CCS and/or NHS Pension and/or CSPA and/or the relevant Administering Authority and/or the Buyer may reasonably require, to enable the Replacement Supplier to participate in the

appropriate Statutory Scheme in respect of any Fair Deal Employee that remain eligible for New Fair Deal protection following a Service Transfer;

- 10.2.4 provide a replacement Broadly Comparable pension scheme with immediate effect for those Fair Deal Employees who are still employed by the Supplier and/or relevant Subcontractor and are still eligible for New Fair Deal protection in the event that the Supplier and/or Subcontractor's Broadly Comparable pension scheme is terminated;
- 10.2.5 allow and make all necessary arrangements to effect, in respect of any Fair Deal Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the relevant Statutory Scheme and as is relevant on a day for day service basis and to give effect to any transfer of accrued rights required as Part of participation under New Fair Deal. For the avoidance of doubt, should the amount offered by the Broadly Comparable pension scheme be less than the amount required by the appropriate Statutory Scheme to fund day for day service (**"Shortfall"**), the Supplier or the Subcontractor (as agreed between them) must pay the Statutory Scheme, as required, provided that in the absence of any agreement between the Supplier and any Subcontractor, the Shortfall shall be paid by the Supplier; and
- 10.2.6 indemnify CCS and/or the Buyer and/or NHS Pension and/or CSPA and/or the relevant Administering Authority and/or on demand for any failure to pay the Shortfall as required under Paragraph 10.2.5 above.

Annex D1: Civil Service Pensions Schemes (CSPS)

1 Definitions

In this Annex D1: CSPS to Part D: Pensions, the following words have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

Term	Definition
CSPS Admission Agreement	an admission agreement in the form available on the Civil Service Pensions website immediately prior to the Relevant Transfer Date to be entered into for the CSPS in respect of the Services;
CSPS Eligible Employee	any Fair Deal Employee who at the relevant time is an eligible employee as defined in the CSPS Admission Agreement; and
CSPS	the Principal Civil Service Pension Scheme available to Civil Servants and employees of bodies under Schedule 1 of the Superannuation Act 1972 (and eligible employees of other bodies admitted to participate under a determination under section 25 of the Public Service Pensions Act 2013), as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Arrangements and (ii) Death Benefits Arrangements; the Civil Service Additional Voluntary Contribution Scheme; [Delete after 30 September 2018: the Designated Stakeholder Pension Scheme which is scheduled to close to new members in September 2018] and "alpha" introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014.

2 Access to equivalent pension schemes after transfer

- 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 CSPS that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date or became eligible to join on the Relevant Transfer Date and the Supplier shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of the CSPS for service from (and including) the Relevant Transfer Date.
- 2.2 The Supplier undertakes that should it cease to participate in the CSPS for whatever reason at a time when it has CSPS Eligible Employees, that it will, at no extra cost to the Buyer, provide to any Fair Deal Employee who immediately prior to such cessation of participation remained a CSPS Eligible Employee with access to a pension scheme which is Broadly Comparable to the CSPS on the date the CSPS Eligible Employees ceased to participate in the CSPS.

Annex D2: NHS Pension Schemes

1 Definitions

In this Annex D2: NHSPS to Part D: Pensions, the following words have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

Term	Definition
Direction Letter	an NHS Pensions Direction or Determination (as appropriate) issued by the Secretary of State in exercise of the powers conferred by section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 or by section 25 of the Public Service Pensions Act 2013 (as appropriate) and issued to the Supplier or a Subcontractor of the Supplier (as appropriate) relating to the terms of participation of the Supplier or Subcontractor in the NHSPS in respect of the NHSPS Eligible Employees;
NHSPS Eligible Employees	each of the Fair Deal Employees who at a Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the NHSPS as a result of either: (a) their employment with the Buyer, an NHS Body or other employer which participates automatically in the NHSPS; or (b) their employment with a Former Supplier who provides access to the NHSPS pursuant to an NHS Pensions Direction or Determination (as appropriate) issued by the Secretary of State in exercise of the powers conferred by section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 or by section 25 of the Public Service Pensions Act 2013 (as appropriate) in respect of their employment with that Former Supplier (on the basis that they are entitled to protection under New Fair Deal and were permitted to re-join the NHSPS, having been formerly in employment with the Buyer, an NHS Body or other employer who participated automatically in the NHSPS in connection with the Services, prior to being employed by the Former Supplier), and, in each case, being continuously engaged for more than fifty per cent (50%) of their employed time in the delivery of services (the same as or similar to the Services). For the avoidance of doubt, an individual who is in or entitled to become a member of the NHSPS as a result of being engaged in the Services and being covered by an "open" Direction Letter or other NHSPS "access" facility but who has never been employed directly by an NHS Body (or other body which participates automatically in the NHSPS) is not an NHSPS Eligible Employee;
NHS Body	has the meaning given to it in section 275 of the National Health Service Act 2006 as amended by section 138(2)(c) of Schedule 4 to the Health and Social Care Act 2012;
NHS Pensions	NHS Pensions as the administrators of the NHSPS or such other body as may from time to time be responsible for relevant administrative functions of the NHSPS;

NHSPS	the National Health Service Pension Scheme for England and Wales, established pursuant to the Superannuation Act 1972 and governed by subsequent regulations under that Act including the NHS Pension Scheme Regulations;
NHS Pension Scheme Arrears	any failure on the Part of the Supplier or its Subcontractors (if any) to pay employer's contributions or deduct and pay across employee's contributions to the NHSPS or meet any other financial obligations under the NHSPS or any Direction Letter in respect of the NHSPS Eligible Employees;
NHS Pension Scheme Regulations	as appropriate, any or all of the National Health Service Pension Scheme Regulations 1995 (SI 1995/300), the National Health Service Pension Scheme Regulations 2008 (SI 2008/653), the National Health Service Pension Scheme Regulations 2015 (2015/94) and any subsequent regulations made in respect of the NHSPS, each as amended from time to time;
NHS Premature Retirement Rights	rights to which any Fair Deal Employee (had they remained in the employment of the Buyer, an NHS Body or other employer which participates automatically in the NHSPS) would have been or are entitled under the NHS Pension Scheme Regulations, the NHS Compensation for Premature Retirement Regulations 2002 (SI 2002/1311), the NHS (Injury Benefits) Regulations 1995 (SI 1995/866) and section 45 of the General Whitley Council conditions of service, or any other legislative or contractual provision which replaces, amends, extends or consolidates the same from time to time;
Pension Benefits	any benefits payable in respect of an individual (including but not limited to pensions related allowances and lump sums) relating to old age, invalidity or survivor's benefits provided under an occupational pension scheme; and
Retirement Benefits Scheme	a pension scheme registered under Chapter 2 of Part 4 of the Finance Act 2004.

2 Membership of the NHS Pension Scheme

- 2.1 In accordance with New Fair Deal, the Supplier and/or any of its Subcontractors to which the employment of any NHSPS Eligible Employee compulsorily transfers as a result of the award of this Contract, if not an NHS Body or other employer which participates automatically in the NHSPS, must by or as soon as reasonably practicable after the Relevant Transfer Date, each secure a Direction Letter to enable the NHSPS Eligible Employees to retain either continuous active membership of or eligibility for, the NHSPS for so long as they remain employed in connection with the delivery of the Services under this Contract, and have a right to membership or eligibility of that scheme under the terms of the Direction Letter.
- 2.2 The Supplier must supply to the Buyer by or as soon as reasonably practicable after the Relevant Transfer Date a complete copy of each Direction Letter.
- 2.3 The Supplier must ensure (and procure that each of its Sub-Contracts (if any) ensures) that all of its NHSPS Eligible Employees have a contractual right to continuous active membership of or eligibility for the NHSPS for so long as they have a right to membership or eligibility of that scheme under the terms of the Direction Letter.
- 2.4 The Supplier will (and will procure that its Subcontractors (if any) will) comply with the terms of the Direction Letter, the NHS Pension Scheme Regulations (including any

terms which change as a result of changes in Law) and any relevant policy issued by the Department of Health in respect of the NHSPS Eligible Employees for so long as it remains bound by the terms of any such Direction Letter.

- 2.5 Where any employee omitted from the Direction Letter supplied in accordance with Paragraph 2 of this Annex are subsequently found to be an NHSPS Eligible Employee, the Supplier will (and will procure that its Sub-contractors (if any) will) treat that person as if they had been an NHSPS Eligible Employee from the Relevant Transfer Date so that their Pension Benefits and NHS Premature Retirement Rights are not adversely affected.
- 2.6 The Supplier will (and will procure that its Subcontractors (if any) will) as soon as reasonably practicable and at its (or its Subcontractor's) cost, obtain any guarantee, bond or indemnity that may from time to time be required by the Secretary of State for Health.

3 Access to NHS Pension Schemes after transfer

The Supplier will procure that with effect from the Relevant Transfer Date the NHSPS Eligible Employees shall be either eligible for or remain in continuous active membership of (as the case may be) the NHSPS for employment from (and including) the Relevant Transfer Date.

4 Continuation of early retirement rights after transfer

From the Relevant Transfer Date until the Service Transfer Date, the Supplier must provide (and/or must ensure that its Subcontractors (if any) provide) NHS Premature Retirement Rights in respect of the NHSPS Eligible Employees that are identical to the benefits they would have received had they remained employees of the Buyer, an NHS Body or other employer which participates automatically in the NHSPS.

5 What the buyer do if the Supplier breaches its pension obligations

- 5.1 The Supplier agrees that the Buyer is entitled to make arrangements with NHS Pensions for the Buyer to be notified if the Supplier (or its Subcontractor) breaches the terms of its Direction Letter. Notwithstanding the provisions of the foregoing, the Supplier shall notify the Buyer in the event that it (or its Subcontractor) breaches the terms of its Direction Letter.
- 5.2 If the Buyer is entitled to terminate the Contract or the Supplier (or its Subcontractor, if relevant) ceases to participate in the NHSPS for whatever other reason, the Buyer may in its sole discretion, and instead of exercising its right to terminate this Contract where relevant, permit the Supplier (or any such Subcontractor, as appropriate) to offer Broadly Comparable Pension Benefits, on such terms as decided by the Buyer. The provisions of Paragraph 10 (Bulk Transfer Obligations in relation to any Broadly Comparable pension scheme) of Part D: Pensions shall apply in relation to any Broadly Comparable pension scheme established by the Supplier or its Subcontractors.
- 5.3 In addition to the Buyer's right to terminate the Contract, if the Buyer is notified by NHS Pensions of any NHS Pension Scheme Arrears, the Buyer will be entitled to deduct all or Part of those arrears from any amount due to be paid under this Contract or otherwise.

6 Compensation when pension scheme access can't be provided

- 6.1 If the Supplier (or its Subcontractor, if relevant) is unable to provide the NHSPS Eligible Employees with either:

- 6.1.1 membership of the NHSPS (having used its best endeavours to secure a Direction Letter); or
- 6.1.2 access to a Broadly Comparable pension scheme,
the Buyer may in its sole discretion permit the Supplier (or any of its Subcontractors) to compensate the NHSPS Eligible Employees in a manner that is Broadly Comparable or equivalent in cash terms, the Supplier (or Subcontractor as relevant) having consulted with a view to reaching agreement with any recognised trade union or, in the absence of such body, the NHSPS Eligible Employees. The Supplier must meet (or must procure that the relevant Subcontractor meets) the costs of the Buyer determining whether the level of compensation offered is reasonable in the circumstances.
- 6.2 This flexibility for the Buyer to allow compensation in place of Pension Benefits is in addition to and not instead of the Buyer's right to terminate the Contract.

7 Indemnities that a Supplier must give

- 7.1 The Supplier must indemnify and keep indemnified the CCS, the Buyer and any Replacement Supplier against all Losses arising out of any claim by any NHSPS Eligible Employee that the provision of (or failure to provide) Pension Benefits and NHS Premature Retirement Rights from the Relevant Transfer Date, or the level of such benefit provided, constitutes a breach of his or her employment rights.
- 7.2 The Supplier must indemnify and keep indemnified the Buyer, NHS Pensions and any Replacement Supplier against all Losses arising out of the Supplier (or its Subcontractor) allowing anyone who is not an NHSPS Eligible Employee to join or claim membership of the NHSPS at any time during the Contract Period.

8 Subcontractors

- 8.1 If the Supplier enters into a Sub-Contract for the delivery of all or Part or any component of the Services which will involve the transfer of employment of any NHSPS Eligible Employee it will impose obligations on its Subcontractor in identical terms as those imposed on the Supplier in relation to Pension Benefits and NHS Premature Retirement Rights by this Annex, including requiring that:
 - 8.1.1 if the Supplier has secured a Direction Letter, the Subcontractor also secures a Direction Letter in respect of the NHSPS Eligible Employees for their future service with the Subcontractor as a condition of being awarded the Sub-Contract and the Supplier shall be responsible for ensuring that the Buyer receives a complete copy of each such Subcontractor direction letter as soon as reasonably practicable; or
 - 8.1.2 if, in accordance with Paragraph 4 of this Annex, the Supplier has offered the NHSPS Eligible Employees access to a pension scheme under which the benefits are Broadly Comparable to those provided under the NHSPS, the Subcontractor either secures a Direction Letter in respect of the NHSPS Eligible Employees or (with the prior consent of the Buyer) provides NHSPS Eligible Employees with access to a scheme with Pension Benefits which are Broadly Comparable to those provided under the NHSPS whereupon the provisions of Paragraph 10 below (Bulk Transfer Obligations in relation to any Broadly Comparable Scheme) shall apply.
- 8.2 The Supplier shall procure that each Subcontractor provides indemnities to the Buyer, NHS Pensions and/or any Replacement Supplier and/or Replacement Subcontractor that are identical to the indemnities set out in Paragraph 7 of this Annex D2. Where a Subcontractor fails to satisfy any claim made under such one or more indemnities, the Supplier will be liable for satisfying any such claim as if it had provided the indemnity itself.

Annex D3: Local Government Pension Schemes (LGPS)

[Guidance: Note the LGPS unlike the CSPA & NHSPA is a funded scheme which has associated cost implications as follows:

There is not 1 LGPS but approx. 90 different Funds, each with their own separate Scheme Employer and Administering Authority, it is important to identify the correct one(s) and amend the definition of "Fund" accordingly.

It is important to check whether CCS and or the Buyer can actually participate in the LGPS. Where a government department is taking on services which were formerly the responsibility of a Local Authority it may be necessary to obtain secretary of state approval for participation in the LGPS, this is because the services are being provided to Gov. Dept. and not to a Local Authority.

Unlike New Fair Deal the 2007 Best Value pension direction does not provide a right to bulk transfer past service. Whilst typically before the 2007 direction LA did provide such a right, it is a significant additional cost and therefore bulk transfer wording has been excluded. If required take legal advice due to the exceptionally high costs which can result from a requirement to provide bulk transfers.]

1 Definitions

1.1 In this Annex D3: LGPS to Part D: Pensions, the following words have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

Term	Definition
Administering Authority	in relation to the Fund [insert name] , the relevant Administering Authority of that Fund for the purposes of the Local Government Pension Scheme Regulations 2013;
Fund Actuary	the actuary to a Fund appointed by the Administering Authority of that Fund;
Fund	[insert name] , a pension fund within the LGPS;
LGPS	the Local Government Pension Scheme as governed by the LGPS Regulations, and any other regulations (in each case as amended from time to time) which are from time to time applicable to the Local Government Pension Scheme;
LGPS Admission Agreement	an admission agreement within the meaning in Schedule 1 of the Local Government Pension Scheme Regulations 2013;
LGPS Admission Body	an admission body (within the meaning of Part 3 of Schedule 2 of the Local Government Pension Scheme Regulations 2013);
LGPS Eligible Employees	any Fair Deal Employee who at the relevant time is an eligible employee as defined in the LGPS Admission Agreement or otherwise any Fair Deal Employees who immediately before the Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the LGPS or of a scheme Broadly Comparable to the

	LGPS; and
LGPS Regulations	the Local Government Pension Scheme Regulations 2013 (SI 2013/2356) and The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014, and any other regulations (in each case as amended from time to time) which are from time to time applicable to the LGPS.

2 Supplier must become a LGPS admission body

- 2.1 Where the Supplier employs any LGPS Eligible Employees from a Relevant Transfer Date, the Supplier shall become an LGPS Admission Body and shall on or before the Relevant Transfer Date enter into a LGPS Admission Agreement with the Administering Authority which will have effect from and including the Relevant Transfer Date.
- 2.2 The LGPS Admission Agreement must ensure that all LGPS Eligible Employees covered by that Agreement who were active LGPS members immediately before the Relevant Transfer Date are admitted to the LGPS with effect on and from the Relevant Transfer Date. Any LGPS Eligible Employees who were eligible to join the LGPS but were not active LGPS members immediately before the Relevant Transfer Date must retain the ability to join the LGPS after the Relevant Transfer Date if they wish to do so.
- 2.3 The Supplier shall provide any indemnity, bond or guarantee required by an Administering Authority in relation to an LGPS Admission Agreement.
- 2.4 The Supplier shall not automatically enrol or re-enrol for the purposes of the Pensions Act 2008 any LGPS Eligible Employees in any pension scheme other than the LGPS.

3 Right of set-off

The Buyer shall have a right to set off against any payments due to the Supplier under the Contract an amount equal to any overdue employer and employee contributions and other payments (and interest payable under the LGPS Regulations) due from the Supplier (or from any relevant Subcontractor) under an LGPS Admission Agreement and shall pay such amount to the relevant Fund.

4 Supplier ceases to be an LGPS Admission Body

If the Supplier employs any LGPS Eligible Employees from a Relevant Transfer Date and the Supplier either cannot or does not participate in the LGPS, the Supplier shall offer such LGPS Eligible Employee membership of a pension scheme Broadly Comparable to the LGPS.

5 Discretionary benefits

Where the Supplier is an LGPS Admission Body, the Supplier shall award benefits to the LGPS Eligible Employees under the LGPS in circumstances where the LGPS Eligible Employees would have received such benefits had they still been employed by their previous employer. Where such benefits are of a discretionary nature, they shall be awarded on the basis of the previous employer's written policy in relation to such benefits at the time of the Relevant Transfer Date.

Annex D4: Other Schemes

[Guidance: Placeholder for Pension Schemes other than LGPS, CSPA & NHSPA]

Part E: Staff Transfer on Exit

Obligations before a Staff Transfer

1 Obligations before a Staff Transfer

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

- 1.1.1 receipt of a notification from the Buyer of a Service Transfer or intended Service Transfer;
- 1.1.2 receipt of the giving of notice of early termination or any Partial Termination of the relevant Contract;
- 1.1.3 the date which is 12 Months before the end of the Term; and
- 1.1.4 receipt of a written request of the Buyer at any time (provided that the Buyer 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 Laws, 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 Buyer.

- 1.2 At least 20 Working Days prior to the Service Transfer Date, the Supplier shall provide to the Buyer or at the direction of the Buyer to any Replacement Supplier and/or any Replacement Subcontractor (i) the Supplier's Final Supplier Personnel List, which shall identify the basis upon which they are Transferring Supplier Employees and (ii) 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 Buyer 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 Subcontractor.
- 1.4 The Supplier warrants, for the benefit of The Buyer, any Replacement Supplier, and any Replacement Subcontractor that all information provided pursuant to paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.
- 1.5 From the date of the earliest event referred to in Paragraph 1.1.1, 1.1.2 and 1.1.3, the Supplier agrees that it 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, unless otherwise instructed by the Buyer (acting reasonably):
 - 1.5.1 not 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, permit or implement any material changes to the terms and conditions of (i) employment and/or (ii) pensions, retirement and death benefits (including not to make pensionable any category of earnings which were not previously pensionable or reduce the pension contributions payable) of the Supplier Personnel (including any payments connected with the termination of employment);
 - 1.5.3 not 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 not 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 not 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);
- 1.5.6 not 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;
- 1.5.7 not dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Buyer and/or the Replacement Supplier and/or Replacement Subcontractor;
- 1.5.8 give the Buyer and/or the Replacement Supplier and/or Replacement Subcontractor reasonable access to Supplier Personnel and/or their consultation representatives to inform them of the intended transfer and consult any measures envisaged by the Buyer, Replacement Supplier and/or Replacement Subcontractor in respect of persons expected to be Transferring Supplier Employees;
- 1.5.9 co-operate with the Buyer and the Replacement Supplier to ensure an effective consultation process and smooth transfer in respect of Transferring Supplier Employees in line with good employee relations and the effective continuity of the Services, and to allow for participation in any pension arrangements to be put in place to comply with New Fair Deal;
- 1.5.10 promptly notify the Buyer or, at the direction of the Buyer, any Replacement Supplier and any Replacement Subcontractor of any notice to terminate employment given by the Supplier or received from any persons listed on the Supplier's Provisional Supplier Personnel List regardless of when such notice takes effect;
- 1.5.11 not for a period of 12 Months from the Service Transfer Date re-employ or re-engage or entice any employees, suppliers or Subcontractors whose employment or engagement is transferred to the Buyer and/or the Replacement Supplier (unless otherwise instructed by the Buyer (acting reasonably));
- 1.5.12 not to adversely affect pension rights accrued by all and any Fair Deal Employees in the period ending on the Service Transfer Date;
- 1.5.13 fully fund any Broadly Comparable pension schemes set up by the Supplier;
- 1.5.14 maintain such documents and information as will be reasonably required to manage the pension aspects of any onward transfer of any person engaged or employed by the Supplier or any Subcontractor in the provision of the Services on the expiry or termination of this Contract (including without limitation identification of the Fair Deal Employees);
- 1.5.15 promptly provide to the Buyer such documents and information mentioned in Paragraph 3.1.1 of Part D: Pensions which the Buyer may reasonably request in advance of the expiry or termination of this Contract; and
- 1.5.16 fully co-operate (and procure that the trustees of any Broadly Comparable pension scheme shall fully co-operate) with the reasonable requests of the Supplier relating to any administrative tasks necessary to deal with the pension aspects of any onward transfer of any person engaged or employed by the Supplier or any Subcontractor in the provision of the Services on the expiry or termination of this Contract.
- 1.6 On or around each anniversary of the Effective Date and up to four times during the last 12 Months of the Term, the Buyer may make written requests to the Supplier for information relating to the manner in which the Services are organised. Within 20

Working Days of receipt of a written request the Supplier shall provide such information as the Buyer may reasonably require 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;
- 1.6.3 the extent to which each employee qualifies for membership of any of the Fair Deal Schemes (as defined in Part D: Pensions); and
- 1.6.4 a description of the nature of the work undertaken by each employee by location.
- 1.7 The Supplier shall provide all reasonable cooperation and assistance to the Buyer, any Replacement Supplier and/or any Replacement Subcontractor 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 to the Buyer or, at the direction of the Buyer, to any Replacement Supplier and/or any Replacement Subcontractor (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 Staff Transfer when the contract ends

- 2.1 A change in the identity of the supplier of the Services (or Part of the Services), howsoever arising, may constitute a Relevant Transfer to which the Employment Regulations will apply.

- 2.2 The Buyer and the Supplier agree that where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Subcontractor (as the case may be) and each such Transferring Supplier Employee.
- 2.3 The Supplier 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 including (without limit) the payment of all remuneration, benefits, entitlements, PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Fair Deal Schemes (as defined in Part D: Pensions).
- 2.4 Subject to Paragraph 2.4, the Supplier shall indemnify the Buyer and/or the Replacement Supplier and/or any Replacement Subcontractor against any Employee Liabilities arising from or as a result of any act or omission of the Supplier or any Subcontractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee whether occurring before, on or after the Service Transfer Date.
- 2.5 The indemnity 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 Subcontractor whether occurring or having its origin before, on or after the Service Transfer Date.
- 2.6 Subject to Paragraphs 2.6 and 2.7, if any employee of the Supplier who is not identified in the Supplier's Final Transferring Supplier Employee List claims, or it is determined in relation to any employees of the Supplier, that his/her contract of employment has been transferred from the Supplier to the Replacement Supplier and/or Replacement Subcontractor pursuant to the Employment Regulations then.
- 2.6.1 the Replacement Supplier and/or Replacement Subcontractor will, within 5 Working Days of becoming aware of that fact, notify the Buyer and the Supplier in writing;
- 2.6.2 the Supplier may offer employment to such person, or take such other steps as it considered appropriate to resolve the matter, within 10 Working Days of receipt of notice from the Replacement Supplier and/or Replacement Subcontractor;
- 2.6.3 if such offer of employment is accepted, the Replacement Supplier and/or Replacement Subcontractor shall immediately release the person from its employment;
- 2.6.4 if after the period referred to in Paragraph 2.5.2 no such offer has been made, or such offer has been made but not accepted, the Replacement Supplier and/or Replacement Subcontractor may within 5 Working Days give notice to terminate the employment of such person;
- and subject to the Replacement Supplier's and/or Replacement Subcontractor's compliance with Paragraphs 2.5.1 to 2.5.4 the Supplier will indemnify the Replacement Supplier and/or Replacement Subcontractor against all Employee Liabilities arising out of the termination of the employment of any of the Supplier's employees referred to in Paragraph 2.5.
- 2.7 The indemnity in Paragraph 2.5 shall not apply to:

- 2.7.1 any claim for 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 equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees, arising as a result of any alleged act or omission of the Replacement Supplier and/or Replacement Subcontractor, or
- 2.7.2 any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Subcontractor neglected to follow a fair dismissal procedure.
- 2.8 The indemnity in Paragraph 2.5 shall not apply to any termination of employment occurring later than 3 Months from the Service Transfer Date.
- 2.9 If at any point the Replacement Supplier and/or Replacement Sub-contract accepts the employment of any such person as is described in Paragraph 2.5, such person shall be treated as a Transferring Supplier Employee and Paragraph 2.5 shall cease to apply to such person.
- 2.10 The Supplier shall promptly provide the Buyer and any Replacement Supplier and/or Replacement Subcontractor, in writing such information as is necessary to enable the Buyer, the Replacement Supplier and/or Replacement Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Buyer shall procure that the Replacement Supplier and/or Replacement Subcontractor, shall promptly provide to the Supplier and each Subcontractor in writing such information as is necessary to enable the Supplier and each Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations.
- 2.11 Subject to Paragraph 2.9, the Buyer shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Subcontractor and its Subcontractors against any Employee Liabilities arising from or as a result of any act or omission, whether occurring before, on or after the Service Transfer Date, of the Replacement Supplier and/or Replacement Subcontractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee.

The indemnity in Paragraph 2.10 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 Service Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Subcontractor (as applicable) to comply with its obligations under the Employment Regulations, or to the extent the Employee Liabilities arise out of the termination of employment of any person who is not identified in the Supplier's Final Supplier Personnel List in accordance with Paragraph 2.5 (and subject to the limitations set out in Paragraphs 2.6 and 2.7 above)