

DYNAMIC FRAMEWORK

SCHEDULE 9.1C (FOR USE IN RESPECT OF NEURODIVERSITY SERVICES NORTH WALES, DYFED-POWYS, AND GWENT)

STAFF TRANSFER

This Schedule relates to the MoJ re-procurement of Neurodiversity services in North Wales, Dyfed-Powys, and Gwent only.

VERSION	DATE	COMMENT
1.0		Initial Release

SCHEDULE 9.1

STAFF TRANSFER

1. DEFINITIONS

In this Schedule, the following definitions shall apply:-

"Former Authority Supplier"	means a supplier supplying services to the Authority before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services)
"Former Authority Supplier Sub-contractor"	means a sub-contractor (or any sub-contractor of any such sub-contractor or any other sub-contractor within the Former Authority Supplier's supply chain) of a Former Authority Supplier supplying services or discharging grant obligations to the Authority before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services)
"Former Supplier"	means either Former Authority Supplier or Former Authority Supplier Sub-contractor or both as the context requires
"New Fair Deal"	means the revised Fair Deal position set out in the HM Treasury guidance: <i>"Fair Deal for staff pensions: staff transfer from central government"</i> issued in October 2013 including any amendments to that document immediately prior to the Relevant Transfer Date
"Notified Sub-contractor"	means a Sub-contractor identified in Schedule 9.1 (Call-Off Staff Transfer) to whom Transferring Former Supplier Employees will transfer on a Relevant Transfer Date
"Relevant Transfer Date"	means in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place or the Call-Off Commencement Date where the incumbent Former Supplier becomes the Supplier or a Sub-contractor of the Supplier under the Call-Off Contract
"Relevant Transfer"	means a transfer of employment to which the Employment Regulations apply
"Replacement Sub-contractor"	means a Sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any sub-contractor of any such Sub-contractor)
"Service Transfer Date"	means the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires
"Service Transfer"	means any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-contractor to a Replacement Supplier or a Replacement Sub-contractor

OFFICIAL SUBJECT TO CONTRACT

"Staffing Information"

means 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 Customer may reasonably request (subject to all applicable provisions of the DPA), but including in an anonymised format if required:-

- (a) their ages, job title, dates of commencement of employment or engagement, gender and place of work;
- (b) details of whether they are employed, self-employed contractors or consultants, workers, agency workers or otherwise;
- (c) the % of time they spend engaged in the provision of the Service (or part thereof) transferring;
- (d) the identity of the employer or relevant contracting Party;
- (e) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (f) their wages, salaries, bonuses and profit sharing arrangements as applicable;
- (g) 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;
- (h) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (i) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- (j) 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
- (k) any other "employee liability information" as such term is defined in regulation 11 of the Employment Regulations

"Supplier's Final Supplier Personnel List"

means a list provided by the Supplier of all Supplier Personnel who will transfer via a Relevant Transfer on the Service Transfer Date

OFFICIAL SUBJECT TO CONTRACT

**"Supplier's Provisional
Supplier Personnel List"**

means 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 or any Sub-contractor of the Supplier (or any Sub-contractor of any such Sub-contractor)

**"Transferring Former
Supplier Employees"**

means in relation to a Former Supplier, those employees of the Former Supplier identified by the Customer as Transferring Former Supplier Employees who transfer via a Relevant Transfer on the Relevant Transfer Date

**"Transferring Supplier
Employees"**

means those employees of the Supplier and/or the Supplier's Sub-contractors to whom the Employment Regulations will apply on the Service Transfer Date

2. **INTERPRETATION**

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

OFFICIAL SUBJECT TO CONTRACT

PART A

[NOT USED]

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

1. RELEVANT TRANSFERS

1.1 The Customer and the Supplier agree that:

- (a) the autism and neurodiversity services to be procured within North Wales, Dyfed-Powys, and Gwent are new services, which have not been provided previously to the Authority, and it is therefore not expected that the Employment Regulations will apply. Should this prove incorrect, and should a Relevant Transfer occur, the Supplier agrees to comply with the Employment Regulations and this Schedule 9.1C Staff Transfer;
- (b) should a Relevant Transfer occur, the contracts of employment between each Former Supplier and the Transferring Former Supplier Employees shall have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or Notified Sub-contractor and each such Transferring Former Supplier Employee;
- (c) the Supplier shall not, and shall procure that any Notified Sub-contractor shall not, at any time during the Call-Off Term of the Call-Off Contract sub-contract the provision of the Services, whether in whole or in part, without complying with the provisions of Clause 17 of the Framework Agreement.

2. FORMER SUPPLIER INDEMNITIES

The Customer is unable to procure that the Former Authority Supplier or the Former Authority Supplier Sub-contractors shall indemnify the Supplier against any Employee Liabilities in relation to any of their employees.

3. SUPPLIER INDEMNITIES AND OBLIGATIONS

The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations and/or as required by law and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Former Supplier Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date).

4. INFORMATION

The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to the Customer and/or at the Customer's direction, the Former Supplier, in writing such information as is necessary to enable the Customer and/or the Former Supplier to carry out such consultation as the Customer deems necessary and the Supplier shall, and shall procure that each Sub-contractor shall take such steps to ensure a smooth and timely transfer from the Former Supplier.

5. PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

5.1 The Supplier shall, and shall procure that each Sub-contractor shall, comply with any requirement notified to it by the Customer relating to pensions in respect of any Transferring Former Supplier Employee as set down in:

- (a) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
- (b) HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999";

OFFICIAL SUBJECT TO CONTRACT

- (c) HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
- (d) 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 shall be agreed in accordance with the Change Control Procedure.

6. PENSIONS

The Supplier shall, and shall procure that each Sub-contractor shall comply with the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff.

OFFICIAL SUBJECT TO CONTRACT

PART C: NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES

[NOT USED]

OFFICIAL SUBJECT TO CONTRACT

PART D: PENSIONS

[NOT USED]

PART E: EMPLOYMENT EXIT PROVISIONS

1. PRE-SERVICE TRANSFER OBLIGATIONS

1.1 The Supplier agrees that:

- (a) within twenty (20) Working Days of receipt of a written request of the Customer at any time; and/or
- (b) within twenty (20) Working Days of the earliest of:
 - (i) receipt of a notification from the Customer of a Service Transfer or intended Service Transfer; or
 - (ii) receipt of the giving of notice of early termination or any Partial Termination of the Call-Off Contract; or
 - (iii) the date which is twelve (12) months before the end of the Call-Off Term or, if the Call-Off Term is less than 12 months the date which is six (6) months before the end of the Call-Off Term,

it shall provide in a suitably anonymised format so as to comply with the DPA 2018, 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 and/or updated Staffing Information at such intervals as are reasonably requested by the Customer.

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

- (a) the Supplier's Final Supplier Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and
- (b) 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 Customer shall be permitted to use and disclose information provided by the Supplier under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-contractor.

1.4 The Supplier warrants, for the benefit of the Customer, any Replacement Supplier, and any Replacement Sub-contractor 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(b) the Supplier agrees, that it shall not, and agrees to procure that each Sub-contractor shall not, assign any person to the provision of the Services who is not listed on the Supplier's Provisional Supplier Personnel List and shall not without the approval of the Customer (not to be unreasonably withheld or delayed):

- (a) 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 they replace;
- (b) make, promise, propose, permit or implement any material changes to the terms and conditions of employment of the Supplier Personnel (including pensions and any payments connected with the termination of employment);

OFFICIAL SUBJECT TO CONTRACT

- (c) 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;
- (d) 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;
- (e) increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
- (f) terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Personnel List save by due disciplinary process,

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

1.6 During the Call-Off Term, the Supplier shall provide, and shall procure that each Sub-contractor shall provide, to the Customer any information the Customer may reasonably require relating to the manner in which the Services are organised, which shall include:

- (a) the numbers of individuals (which includes but is not limited to employees, workers, contractors, agents, agency workers) engaged in providing the Services;
- (b) the percentage of time spent by each individual engaged in providing the Services; and
- (c) a description of the nature of the work undertaken by each individual by location.

1.7 The Supplier shall provide, and shall procure that each Sub-contractor shall provide, all reasonable cooperation and assistance to the Customer, any Replacement Supplier and/or any Replacement Sub-contractor to support a future procurement process, timely and full provision of Staffing Information and consultation between employers and 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 five (5) Working Days following the Service Transfer Date, the Supplier shall provide, and shall procure that each Sub-contractor shall provide, to the Customer or, at the direction of the Customer, to any Replacement Supplier and/or any Replacement Sub-contractor (as appropriate), in respect of each person on the Supplier's Final Supplier Personnel List who is a Transferring Supplier Employee:

- (a) the most recent month's copy pay slip data;
- (b) details of cumulative pay for tax and pension purposes;
- (c) details of cumulative tax paid;
- (d) tax code;
- (e) details of any voluntary deductions from pay;
- (f) a copy of any personnel file and/or any other records regarding the service of the Transferring Supplier Employee;
- (g) a complete copy of the information required to meet the minimum record keeping requirements under the Working Time Regulations 1998 and the National Minimum Wage Regulations 1998; and

- (h) bank/building society account details for payroll purposes.

2. EMPLOYMENT EXIT PROVISIONS

- 2.1 The Customer and the Supplier acknowledge that the Employment Regulations may apply on termination or part termination of the Call-Off Contract for whatever reason and this Paragraph 2 shall be read accordingly. The identity of the provider of the Services (or any part of the Services) may therefore change (whether as a result of termination or Partial Termination of the Call-Off Contract or otherwise) resulting in the Services or part thereof being undertaken by the Customer, a Replacement Supplier and/or a Replacement Sub-contractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Customer and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and/or any Sub-contractor and the Transferring Supplier Employees will have effect on and from the Service Transfer Date as if originally made between the Customer, a Replacement Supplier and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Supplier Employee.
- 2.2 The Supplier shall, and shall procure that each Sub-contractor shall, comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and all such sums due in relation to any Fair Deal Employee(s) which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Sub-contractor (as appropriate); and (ii) the Customer, a Replacement Supplier and/or Replacement Sub-contractor.
- 2.3 Subject to Paragraph 2.4, the Supplier shall indemnify the Customer and/or the Replacement Supplier and/or any Replacement Sub-contractor against any Employee Liabilities arising from or as a result of:
- (a) any act or omission of the Supplier or any Sub-contractor 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;
 - (b) the breach or non-observance by the Supplier or any Sub-contractor occurring on or before the Service Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Supplier Employees; and/or
 - (ii) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Sub-contractor is contractually bound to honour;
 - (c) any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
 - (d) any failure by the Supplier or any Sub-contractor to comply with its obligations (including its obligations to maintain records) under the Working Time Regulations 1998, National Minimum Wage Act 1998 and any/all associated National Minimum Wage Regulations in the period prior to the Service Transfer Date in respect of any Transferring Supplier Employees or workers (current or past) including, but not limited to any failure to maintain

OFFICIAL SUBJECT TO CONTRACT

adequate records which meet the minimum requirements for record-keeping and/or failure to deliver the same to the Customer, a Replacement Supplier and/or Replacement Sub-contractor on request;

- (e) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
 - (ii) in relation to any employee who is not identified in the Supplier's Final Supplier Personnel list, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer their employment from the Supplier or any Sub-contractor to the Customer and/or Replacement Supplier and/or any Replacement Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
- (f) a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (and including) the Service Transfer Date;
- (g) any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-contractor other than a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel list for whom it is alleged the Customer and/or the Replacement Supplier and/or any Replacement Sub-contractor may be liable by virtue of the Call-Off Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
- (h) any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Customer and/or Replacement Supplier and/or any Replacement Sub-contractor to comply with regulation 13(4) of the Employment Regulations.

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

- (a) arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to their working conditions proposed by the Customer, a Replacement Supplier and/or any Replacement Sub-contractor to occur in the period on or after the Service Transfer Date; or
- (b) arising from the Customer's failure, a Replacement Supplier's failure, and/or Replacement Sub-contractor's failure, to comply with its obligations under the Employment Regulations.

2.5 If any person who is not identified in the Supplier's Final Supplier Personnel list claims, or it is determined in relation to any person who is not identified in the Supplier's Final Supplier Personnel list, that their contract of employment has been transferred from the Supplier or any Sub-contractor

OFFICIAL SUBJECT TO CONTRACT

to the Customer, a Replacement Supplier and/or Replacement Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:

- (a) the Customer shall, or shall procure that the Replacement Supplier shall, or any Replacement Sub-contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Supplier; and
- (b) the Supplier may offer (or may procure that a Sub-contractor may offer) employment to such person within fifteen (15) Working Days of the notification by the Customer, a Replacement Supplier and/or any and/or Replacement Sub-contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

2.6 If such offer is accepted, or if the situation has otherwise been resolved by the Supplier or a Sub-contractor, the Customer shall, or shall procure that the Replacement Supplier shall, or procure that the Replacement Sub-contractor shall, immediately release or procure the release of the person from their employment or alleged employment.

2.7 If after the fifteen (15) Working Day period specified in Paragraph 2.5(b) has elapsed:

- (a) no such offer of employment has been made;
- (b) such offer has been made but not accepted; or
- (c) the situation has not otherwise been resolved,

the Customer may, or shall advise the Replacement Supplier and/or Replacement Sub-contractor, as appropriate that it may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

2.8 Subject to the Customer, a Replacement Supplier and/or Replacement Sub-contractor acting in accordance with the provisions of Paragraphs 2.5 to 2.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Supplier shall indemnify the Customer, a Replacement Supplier and/or Replacement Sub-contractor against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.7 provided that the Customer takes, a Replacement Supplier takes, or shall procure that the Replacement Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.9 The indemnity in Paragraph 2.8:

- (a) shall not apply to:
 - (i) any claim for:
 - (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,in any case in relation to any alleged act or omission of the Customer, a Replacement Supplier and/or Replacement Sub-contractor; or
 - (ii) any claim that the termination of employment was unfair because the Customer, a Replacement Supplier and/or Replacement Sub-contractor neglected to follow a fair dismissal procedure; and

OFFICIAL SUBJECT TO CONTRACT

- (b) shall apply only where the notification referred to in Paragraph 2.5(a) is made by the Customer, a Replacement Supplier and/or Replacement Sub-contractor to the Supplier within six (6) months of the Service Transfer Date.
- 2.10 If any such person as is described in Paragraph 2.5 is neither re-employed by the Supplier or any Sub-contractor nor dismissed by the Customer, a Replacement Supplier and/or Replacement Sub-contractor within the time scales set out in Paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Supplier Employee.
- 2.11 The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of any person identified in the Supplier's Final Supplier Personnel list before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and such sums due as a result of any Fair Deal Employees' participation in the Statutory Schemes and any requirement to set up a broadly comparable pension scheme which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:
- (a) the Supplier and/or any Sub-contractor; and
- (b) the Customer and/or the Replacement Supplier and/or the Replacement Sub-contractor.
- 2.12 The Supplier shall, and shall procure that each Sub-contractor shall, support a smooth and timely transfer and promptly provide to the Customer and any Replacement Supplier and/or Replacement Sub-contractor, in writing such information as is necessary to enable the Customer, the Replacement Supplier and/or Replacement Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations and/or such consultation as the Customer deems necessary. The Customer shall, or shall procure that the Replacement Supplier and/or Replacement Sub-contractor, shall promptly provide to the Supplier and each Sub-contractor in writing such information as is necessary to enable the Supplier and each Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.
- 2.13 The Supplier shall, and shall procure that each Sub-contractor shall, provide all reasonable assistance and documentation required by the Customer, a Replacement Supplier and/or a Replacement Sub-contractor required by them in connection with any query, claim, dispute or proceedings arising after a Service Transfer Date but relating to a Transferring Supplier Employee.
- 2.14 Subject to Paragraph 2.15, the Customer shall, or shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-contractor and its sub-contractors against any Employee Liabilities arising from or as a result of:
- (a) any act or omission of the Customer, a Replacement Supplier and/or Replacement Sub-contractor in respect of any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee arising on or after the Service Transfer Date;
- (b) the breach or non-observance by the Customer and/or a Replacement Supplier and/or Replacement Sub-contractor on or after the Service Transfer Date of:
- (i) any collective agreement applicable to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List; and/or
- (ii) any custom or practice in respect of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List which the Customer and/or Replacement Supplier and/or Replacement Sub-contractor is contractually bound to honour;

OFFICIAL SUBJECT TO CONTRACT

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

2.15 The indemnities in Paragraph 2.14 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 Sub-contractor (as applicable) to comply with its obligations under the Employment Regulations.