



Defence  
Infrastructure  
Organisation

## **Call-Off Schedule 2**

### **Staff Transfer**

### **Built Estate**

**REF: RM6089**

Version: 1.0 dated 01 Jun 21

**CALL-OFF SCHEDULE 2**  
**STAFF TRANSFER**

**1. 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 the 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.

**2. APPLICATION OF THIS SCHEDULE**

The Parts of this Schedule which shall apply to the Contract are specified in the Buyer Contract Details.

**PART A: STAFF TRANSFER AT START DATE – OUTSOURCING FROM THE BUYER (OPTIONAL)**

**1. RELEVANT TRANSFERS**

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of regulation 10(2) of the Employment Regulations) will have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or any Subcontractor and each such Transferring Buyer Employee.
- 1.2. 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. BUYER INDEMNITIES**

- 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 Buyer 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 6 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. SUPPLIER INDEMNITIES AND 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**

- 4.1. 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. PRINCIPLES OF GOOD EMPLOYMENT PRACTICE**

- 5.1. The Parties agree that the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the Supplier of employees whose employment begins after the Relevant Transfer Date, and the Supplier undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.
- 5.2. The Supplier shall 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 START DATE – TRANSFER FROM  
FORMER SUPPLIER ON REPROCUREMENT (OPTIONAL)**

**7. RELEVANT TRANSFERS**

7.1. The Buyer and the Supplier agree that:

- 7.1.1. 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
- 7.1.2. 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 disappplied 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.

7.2. 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.

**8. FORMER SUPPLIER INDEMNITIES**

- 8.1. 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;
- 8.2. 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.
- 8.3. 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:

- 8.3.1. the Supplier will within 5 Working Days of becoming aware of that fact notify the Buyer and the relevant Former Supplier in writing;
- 8.3.2. 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;
- 8.3.3. if such offer of employment is accepted, the Supplier shall immediately release the person from its employment;
- 8.3.4. 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.

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

- 8.4.1. 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
- 8.4.2. that the termination of employment was unfair because the Supplier and/or Subcontractor neglected to follow a fair dismissal procedure.

8.5. The indemnity in Paragraph 2.3 shall not apply to any termination of employment occurring later than 6 Months from the Relevant Transfer Date.

8.6. 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.

## **9. SUPPLIER INDEMNITIES AND OBLIGATIONS**

9.1. 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.

9.2. 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.

9.3. 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.

## **10. INFORMATION**

10.1. 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.

## **11. PRINCIPLES OF GOOD EMPLOYMENT PRACTICE**

11.1. 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.

11.2. 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.

## **12. PROCUREMENT OBLIGATIONS**

12.1. 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 endeavors to procure that the Former Supplier does or does not act accordingly.

### **13. PENSIONS**

13.1. The Supplier shall comply with:

13.1.1. all statutory pension obligations in respect of all Transferring Former Supplier Employees; and

13.1.2. the provisions in Part D: Pensions.

**PART C: NO STAFF TRANSFER ON START DATE (OPTIONAL)**

**14. PROCEDURE IN THE EVENT OF TRANSFER**

14.1. 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.

14.2. 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:

14.2.1. the Supplier will, within 5 Working Days of becoming aware of that fact, notify the Buyer in writing;

14.2.2. the Buyer or the Former 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 Supplier;

14.2.3. if such offer of employment is accepted, the Supplier shall immediately release the person from its employment;

14.2.4. 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:

14.2.4.1. 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

14.2.4.2. 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.

14.3. The indemnities in Paragraph 1.2 shall not apply to any claim:

14.3.1. 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

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

14.4. The indemnities in Paragraph 1.2 shall not apply to any termination of employment occurring later than 6 Months from the date of commencement of the Services.

14.5. 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.

## **15. PROCUREMENT OBLIGATIONS**

15.1. 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****16. DEFINITIONS**

In this Part D, the following words have the following meanings and they shall supplement Schedule J1: Definitions, and shall be deemed to include the definitions set out in the Annexes:

<b>"Actuary"</b>	a Fellow of the Institute and Faculty of Actuaries;
<b>"Admission Agreement"</b>	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;
<b>"Broadly Comparable"</b>	(a) in respect of a pension scheme, a status satisfying the condition that there are no identifiable employees who will suffer material detriment overall in terms of future accrual of pension benefits as assessed in accordance with Annex A of New Fair Deal and demonstrated by the issue by the Government Actuary's Department of a broad comparability certificate; and
	(b) in respect of benefits provided for or in respect of a member under a pension scheme, benefits that are consistent with that pension scheme's certificate of broad comparability issued by the Government Actuary's Department, and <b>"Broad Comparability"</b> shall be construed accordingly;
<b>"CSPA"</b>	the schemes as defined in Annex D1 to this Part D;
<b>"Fair Deal Employees"</b>	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;
<b>"Fair Deal Schemes"</b>	means the relevant Statutory Scheme or a Broadly Comparable pension scheme;

<b>"Fund Actuary"</b>	means Fund Actuary as defined in Annex D3 to this Part D;
<b>"LGPS"</b>	the schemes as defined in Annex D3 to this Part D;
<b>"NHSPS"</b>	the schemes as defined in Annex D2 to this Part D;
<b>"New Fair Deal"</b>	the revised Fair Deal position set out in the HM Treasury guidance: " <i>Fair Deal for Staff Pensions: Staff Transfer from Central Government</i> " issued in October 2013 including: (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
<b>"Statutory Schemes"</b>	means the CSPA, NHSPS or LGPS.
<b>"Term"</b>	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;

## 17. PARTICIPATION

17.1. In respect of all or any Fair Deal Employees each of Annex D1A: CSPA and D1B MOD, Annex D2: NHSPS and/or Annex D3: LGPS shall apply, as appropriate.

17.2. 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.

17.3. The Supplier undertakes:

17.3.1. 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

17.3.2. subject to paragraph 2.1.4 of Annex D1B: MOD, paragraph 6 of Annex D3 LGPS of this Part D and Schedule 6 the TUPE Surcharge, 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.

## **18. PROVISION OF INFORMATION**

18.1. The Supplier undertakes to the Buyer:

- 18.1.1. to provide all information which the Buyer may reasonably request concerning matters referred to in this Part D as expeditiously as possible; and
- 18.1.2. 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).

## **19. INDEMNITIES**

19.1. 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.

19.2. 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:

- 19.2.1. 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
- 19.2.2. 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.

19.3. The indemnities in this Part D and its Annexes:

- 19.3.1. shall survive termination of this Contract; and
- 19.3.2. shall not be affected by the caps on liability contained in Clause 11 (How much you can be held responsible for).

## **20. DISPUTES**

20.1. 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:

20.1.1. who will act as an expert and not as an arbitrator;

20.1.2. whose decision will be final and binding on the CCS and/or the Buyer and/or the Supplier; and

20.1.3. whose expenses shall be borne equally by the CCS and/or the Buyer and/or the Supplier unless the independent Actuary shall otherwise direct.

## **21. THIRD PARTY RIGHTS**

21.1. 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.

21.2. 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.

## **22. BREACH**

22.1. 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:

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

22.1.2. 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.

## **23. TRANSFER TO ANOTHER EMPLOYER/ SUB- CONTRACTORS**

23.1. 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:

23.1.1. consult with and inform those Fair Deal Employees of the pension provisions relating to that transfer; and

23.1.2. 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.

## **24. PENSION ISSUES ON EXPIRY OR TERMINATION**

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

## **25. BROADLY COMPARABLE PENSION SCHEMES**

25.1. If either:

25.1.1. the terms of any of paragraphs 2.2 of Annex D1: CSPS, 5.2 of Annex D2: NHSPS and or 4 of Annex D3: LGPS apply; and/or

25.1.2. 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.

25.2. 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):

25.2.1. 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;

- 25.2.2. 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;
- 25.2.3. 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;
- 25.2.4. 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;
- 25.2.5. 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
- 25.2.6. 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 D1A: CSPA****26. DEFINITIONS**

In this Annex D1: CSPA to Part D: Pensions, the following words have the following meanings and they shall supplement Schedule J1: Definitions:

<b>"CSPA Admission Agreement"</b>	an admission agreement in the form available on the Civil Service Pensions website immediately prior to the Relevant Transfer Date to be entered into for the CSPA in respect of the Services;
<b>"CSPA Eligible Employee"</b>	any Fair Deal Employee who at the relevant time is an eligible employee as defined in the CSPA Admission Agreement;
<b>"CSPA"</b>	the Principal Civil Service Pension Scheme available to Civil Servants and employees of bodies under Schedule 1 of the Superannuation Act 1972 (and eligible employees of other bodies admitted to participate under a determination under section 25 of the Public Service Pensions Act 2013), as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Scheme and (ii) Death Benefits Scheme; the Civil Service Additional Voluntary Contribution Scheme; 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.

**27. FUTURE SERVICE BENEFITS**

27.1. The Supplier shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the CSPA 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 CSPA for service from (and including) the Relevant Transfer Date.

27.2. The Supplier undertakes that should it cease to participate in the CSPA for whatever reason at a time when it has CSPA 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 CSPA Eligible Employee with access to a pension scheme which is Broadly Comparable to the CSPA on the date the CSPA Eligible Employees ceased to participate in the CSPA.

**Annex D1B: MOD****28. DEFINITIONS**

In this Annex D1B: MOD to Part D: Pensions, the following words have the following meanings and they shall supplement Schedule J1: Definitions:

<b>Admission Agreement</b>	<b>“Admission Agreement”</b> means in relation to the Supplier or a Sub-contractor an agreement made (or to be made) between (1) The Minister for the Cabinet Office (2) the Supplier or the Sub-contractor, as the case may be, and (3) the Buyer relating to the participation of the Supplier or the Sub-contractor, as applicable, in the Schemes for the benefit of those of the Former Buyer Employees who are for the time being employed by the Supplier or the Sub-contractor, as applicable, and which is substantially in the form set out in Annex A to this Schedule.
<b>Active Member</b>	<b>“Active Member”</b> means an individual who has been admitted to and remains in active membership of any of the Schemes.
<b>Employer Contributions</b>	<b>“Employer Contributions”</b> means the sums which are payable to the Pension Schemes in accordance with paragraphs 7.1.5, 7.1.7, 7.1.8 and 7.2 of the Admission Agreement (which can be found on Civil Service Pensions website) in respect of the Former Buyer Employees, whether by the Supplier or a Sub-contractor. For the avoidance of doubt, the employee redundancy compensation payment amount which is taken into account under paragraph 7.2 of the Admission Agreement is not included as part of the pass-through under paragraph 2.1.3.
<b>Relevant Benefits</b>	<b>“Relevant Benefits”</b> means any benefit payable on retirement, on death, on reaching a particular age, on the onset of serious ill-health or incapacity or in similar circumstances (including the provision of medical, dental or similar benefits).

**29. NEW FAIR DEAL PENSIONS**

29.1. The Supplier shall:

- 29.1.1. comply with the Admission Agreement to which it is a party and shall not terminate the Admission Agreement while the Supplier is providing any of the Deliverables;
- 29.1.2. ensure that on each occasion (including, but without limitation, on the termination of a contract between the Supplier and a Sub-contractor) any Fair Deal Employee becomes an employee of the

Supplier pursuant to the Employment Regulations (and the date upon which he becomes such an employee is called the “Employment Date”) the Fair Deal Employee if not already an Active Member of the CSPS becomes such an Active Member with effect as on and from the Employment Date provided that this is permitted under the terms of the CSPS and the Admission Agreement as applicable.

- 29.1.3. The Supplier agrees that the Employer Contributions shall be priced on a pass-through basis in accordance with Part 1, paragraph 3 (Pass through costs) of Call-Off Schedule 5 (Call Off Pricing).
- 29.1.4. If it is in arrears in respect of any contributions due to the CSPS in respect of any Fair Deal Employee, agree (which agreement the Supplier hereby irrevocably gives) that the Buyer may deduct an amount equal to that which is overdue from any monies due to the Supplier and pay that amount to the CSPS.
- 29.1.5. If the Sub-contractor or Sub-Sub-contractor fails to pay by the due date any amount payable to the CSPS the Buyer may deduct an amount equal to that which has not been paid from any money otherwise payable by the Buyer to the Supplier and pay that amount to the CSPS.
- 29.1.6. The Supplier shall procure, and shall ensure that any Sub-contractor shall procure, that any information to be provided to the Buyer pursuant to the Admission Agreement is sent to: [Redacted – Commercially Sensitive]
- 29.1.7. The Supplier shall not recover any costs and/or other payments in relation to New Fair Deal where such costs and/or payments are recoverable or have already been recovered by the Supplier elsewhere in this Contract or otherwise. If the Supplier does recover costs and/or other payments as set out in this Paragraph 2.1.7 the Buyer may deduct an amount equal to the amount of such costs and/or other payments from any money otherwise payable by the Buyer to the Supplier.

**Annex A**

***Insert form of Admission Agreement***

***NOTE: To be replaced in due course by copy of Admission Agreement signed  
by all Parties***

**Annex D2: NHSPS****30. DEFINITIONS**

In this Annex D2: NHSPS to Part D: Pensions, the following words have the following meanings and they shall supplement Schedule J1: Definitions:

<b>"Direction Letter"</b>	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;
<b>"NHSPS Eligible Employees"</b>	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;
<b>"NHS Body"</b>	has the meaning given to it in section 275 of the National Health Service Act 2006 as amended by section 138(2)(c) of Schedule 4 to the Health and Social Care Act 2012;
<b>"NHS Pensions"</b>	NHS Pensions as the administrators of the NHSPS or such other body as may from time to time be responsible for relevant administrative functions of the NHSPS;
<b>"NHSPS"</b>	the National Health Service Pension Scheme for England and Wales, established pursuant to the Superannuation Act 1972 and governed by subsequent regulations under that Act including the NHS Pension Scheme Regulations;
<b>"NHS Pension Scheme Arrears"</b>	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;
<b>"NHS Pension Scheme Regulations"</b>	as appropriate, any or all of the National Health Service Pension Scheme Regulations 1995 (SI 1995/300), the National Health Service Pension Scheme Regulations 2008 (SI 2008/653), the National Health Service Pension Scheme Regulations 2015 (2015/94) and any subsequent regulations made in respect of the NHSPS, each as amended from time to time;
<b>"NHS Premature Retirement Rights"</b>	rights to which any 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;



<b>"Pension Benefits"</b>	any benefits payable in respect of an individual (including but not limited to pensions related allowances and lump sums) relating to old age, invalidity or survivor's benefits provided under an occupational pension scheme; and
<b>"Retirement Benefits Scheme"</b>	a pension scheme registered under Chapter 2 of Part 4 of the Finance Act 2004.

### 31. MEMBERSHIP OF THE NHSPS

- 31.1. 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.
- 31.2. 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.
- 31.3. The Supplier must ensure (and procure that each of its Sub-Contracts (if any) ensures) that all 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.
- 31.4. 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.
- 31.5. 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 Subcontractors (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.
- 31.6. 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.

### **32. FUTURE SERVICE BENEFITS IN THE NHSPS**

- 32.1. 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.

### **33. NHS PREMATURE RETIREMENT RIGHTS**

- 33.1. 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.

### **34. BREACH AND CANCELLATION OF ANY DIRECTION LETTER(S) AND RIGHT OF SET-OFF**

- 34.1. 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.
- 34.2. 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.
- 34.3. 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.

### **35. COMPENSATION**

- 35.1. If the Supplier (or its Subcontractor, if relevant) is unable to provide the NHSPS Eligible Employees with either:
- 35.1.1. membership of the NHSPS (having used its best endeavours to secure a Direction Letter); or
  - 35.1.2. 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.

35.2. 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.

### **36. SUPPLIER INDEMNITIES**

36.1. 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.

36.2. 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.

### **37. SUBCONTRACTORS**

37.1. 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:

37.1.1. 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

37.1.2. 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.

- 37.2. 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 B. 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: LGPS****38. DEFINITIONS**

38.1. In this Annex D3: LGPS to Part D: Pensions, the following words have the following meanings and they shall supplement Schedule J1: Definitions:

<b>"Administering Authority"</b>	in relation to <b>the Fund [insert name]</b> , the relevant Administering Authority of that Fund for the purposes of the Local Government Pension Scheme Regulations 2013;
<b>"Excess Amount"</b>	any Pension Costs incurred by the Supplier or its Subcontractors in any Pension Period that exceed the Pension Base Cost.
<b>"Fund Actuary"</b>	the actuary to a Fund appointed by the Administering Authority of that Fund;
<b>"Fund"</b>	<b>[insert name], a pension fund within the LGPS;</b>
<b>"LGPS"</b>	the Local Government Pension Scheme as governed by the LGPS Regulations, and any other regulations (in each case as amended from time to time) which are from time to time applicable to the Local Government Pension Scheme;
<b>"LGPS Admission Agreement"</b>	an admission agreement within the meaning in Schedule 1 of the Local Government Pension Scheme Regulations 2013;
<b>"LGPS Admission Body"</b>	an admission body (within the meaning of Part 3 of Schedule 2 of the Local Government Pension Scheme Regulations 2013);
<b>"LGPS Eligible Employees"</b>	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;
<b>"LGPS Regulations"</b>	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.

<b>“Pension Base Cost”</b>	<p>in relation to the LGPS Eligible Employees, who are at the relevant time members of the LGPS:</p> <ul style="list-style-type: none"> <li>• [ ]% of pensionable pay for those who are members of [insert name of Fund];</li> <li>• [ ]% of pensionable pay for those who are members of [insert name of Fund]; and</li> <li>• [ ]% of pensionable pay for those who are members of [insert name of Fund];</li> </ul> <p>("pensionable pay" for these purposes as defined under the LGPS Regulations);</p>
<b>“Pension Costs”</b>	<p>the costs of complying with the Pension Requirements, but excluding any costs relating to:</p> <p>(a) the provision of any bond or indemnity that the Supplier or its Subcontractors are required to provide under the terms of any Admission Agreement; and</p> <p>(b) the provision of advice from the actuary to the LGPS arising from the instruction from the Supplier or its Subcontractors in relation to the Pension Requirements; will be covered by the Supplier or Subcontractor, as appropriate; and</p>
<b>“Pension Requirements”</b>	<p>the terms and conditions set out in:</p> <p>(a) Paragraph 2 of this Annex D3 (Supplier to Become an LGPS Admission Body), and Paragraph 5 of Annex D3 (Discretionary Benefits); and</p> <p>(b) the LGPS Admission Agreement, but in each case in respect of LGPS Eligible Employees only.</p>

### 39. SUPPLIER TO BECOME AN LGPS ADMISSION BODY

39.1. 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.

39.2. 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.

39.3. The Supplier shall provide any indemnity, bond or guarantee required by an Administering Authority in relation to an LGPS Admission Agreement.

39.4. The Supplier shall not automatically enroll or re-enroll for the purposes of the Pensions Act 2008 any LGPS Eligible Employees in any pension scheme other than the LGPS.

#### **40. RIGHT OF SET-OFF**

40.1. 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.

#### **41. SUPPLIER CEASES TO BE AN LGPS ADMISSION BODY**

41.1. 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.

#### **42. DISCRETIONARY BENEFITS**

42.1. 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.

#### **43. FUNDING**

43.1. The Buyer hereby undertakes that it shall procure that the funding of the accrued rights of LGPS Eligible Employees in the LGPS in respect of pensionable service up to the first Relevant Transfer Date under the Contract shall be calculated on the basis that the LGPS had assets equal to its liabilities, as at that Relevant Transfer Date, based on the LGPS' ongoing actuarial valuation basis.

43.2. Subject to Paragraph 6.3 of this Annex D3, any **Excess Amount** shall be the sole responsibility of the Buyer and shall be dealt with as set out in Paragraphs 6.4 to 6.7 of this Annex D3.

43.3. Nothing in Paragraph 6.2 of this Annex D3 shall require the Buyer to be responsible for any Excess Amount to the extent that such Excess Amount has arisen as a result of:

43.3.1. a decision or exercise of discretion by the Supplier or any Subcontractor which:

43.3.1.1. increases the pensionable pay of LGPS Eligible Employees above the greater of:

43.3.1.1.1. the increases assumed in the relevant actuarial valuations of the LGPS; and

43.3.1.1.2. the increases the Supplier and/or any Subcontractor are contractually bound to provide on the Relevant Transfer Date;

43.3.1.2. otherwise increases the benefits payable to a LGPS Eligible Employee and in particular:

43.3.1.2.1. the immediate payment of benefits with:

43.3.1.2.1.1. the Supplier's or Subcontractors' consent under Regulation 30 of the LGPS Regulations, including waiving any reduction of benefits under Regulation 30(8) of the LGPS Regulations or otherwise; or

43.3.1.2.1.2. the Supplier or Subcontractors waiving any reduction of benefits on compassionate grounds under Schedule 2 of The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014); and/or

43.3.1.2.2. an award to additional pension under Regulation 31 of the LGPS Regulations;

43.3.2. the early retirement of LGPS Eligible Employees due to dismissal or termination of employment under Regulation 30(7) of the LGPS Regulations;

43.3.3. the early retirement of LGPS Eligible Employees under the provisions of regulations 35 to 39 of the LGPS Regulations;

43.3.4. any contribution required by the Administering Authority towards the cost of the administration of the Fund relating to the Supplier that are not met through the Supplier's or Subcontractors' payments under the applicable rates and adjustment certificate under regulation 62 of the LGPS Regulations, including without limitation an amount specified in a notice given by the Administering Authority under Regulation 70 of the LGPS Regulations and the costs of any



reports and advice requested by the Supplier from an actuary appointed by the Administering Authority; and/or

43.3.5. any interest payable under the LGPS Regulations or LGPS Administration Agreement.

43.4. Within 20 Working Days of the end of each Contract Year the Supplier shall notify the Buyer in writing of any Excess Amount in the immediately preceding Contract Year together with a reasonable summary of how the Supplier has arrived at its calculation of such amount.

43.5. On receipt of the Supplier's calculation in accordance with Paragraph 6.4 above the Buyer shall either:

43.5.1. notify the Supplier in writing of acceptance of the Excess Amount;

43.5.2. request further information/evidence; and/or

43.5.3. request a meeting to discuss/clarify the evidence provided.

43.6. Where the pension adjustment notified Paragraph 6.4 above is agreed following the receipt of further information/evidence or following a meeting, the Buyer shall notify the Supplier in writing. In the event that the Supplier and the Buyer are unable to agree the pension adjustment, they shall follow the Dispute Resolution Procedure.

43.7. Any Excess Amount agreed by the Buyer shall be paid within timescales as agreed between Buyer and Supplier. In respect of any Excess Amount the amount to be paid by the Buyer shall be an amount equal to the Excess Amount (less an amount equal to any corporation tax relief which has been claimed in respect of the Excess Amount by the Supplier or its Subcontractors).

43.8. EXIT COSTS AT CALL-OFF STAGE - Any decision regarding Suppliers exposure to LGPS costs arising at the end of the Contract will be notified at Call Off.

## **PART E: STAFF TRANSFER ON EXIT (MANDATORY)**

### **44. PRE-SERVICE TRANSFER OBLIGATIONS**

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

- 44.1.1. receipt of a notification from the Buyer of a Service Transfer or intended Service Transfer;
- 44.1.2. receipt of the giving of notice of early termination or any Partial Termination of the relevant Contract;
- 44.1.3. the date which is 12 Months before the end of the Term; and
- 44.1.4. 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.

44.2. 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).

44.3. 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.

44.4. 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.

44.5. 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):

- 44.5.1. 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;
- 44.5.2. not 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);
- 44.5.3. 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;
- 44.5.4. 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;
- 44.5.5. 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);
- 44.5.6. 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;
- 44.5.7. 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;
- 44.5.8. 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;
- 44.5.9. 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;

- 44.5.10. 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;
- 44.5.11. 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));
  - 44.5.11.1. The Parties agree Clause 19 (Other people's rights in this contract) does not apply and that the CRTPA applies to this Part E Paragraph 1.5.11 to the extent necessary to ensure that any Replacement Supplier will have the right to enforce any obligation owed to him or her or it by the Supplier under Paragraph 1.5.11, in his or her or its own right under section 1(1) of the CRTPA.
- 44.5.12. not to adversely affect pension rights accrued by all and any Fair Deal Employees in the period ending on the Service Transfer Date;
- 44.5.13. fully fund any Broadly Comparable pension schemes set up by the Supplier;
- 44.5.14. 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);
- 44.5.15. promptly provide to the Buyer such documents and information mentioned in Part D (Pensions) paragraph 3.1.1 which the Buyer may reasonably request in advance of the expiry or termination of this Contract; and
- 44.5.16. 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.

44.6. 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:

44.6.1. the numbers of employees engaged in providing the Services;

44.6.2. the percentage of time spent by each employee engaged in providing the Services;

44.6.3. the extent to which each employee qualifies for membership of any of the Fair Deal Schemes (as defined in Part D: Pensions); and

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

44.7. 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:

44.7.1. the most recent month's copy pay slip data;

44.7.2. details of cumulative pay for tax and pension purposes;

44.7.3. details of cumulative tax paid;

44.7.4. tax code;

44.7.5. details of any voluntary deductions from pay; and

44.7.6. bank/building society account details for payroll purposes.

#### **45. EMPLOYMENT REGULATIONS EXIT PROVISIONS**

45.1. 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. 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 disappplied 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.

45.2. 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).

45.3. 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.

45.4. 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.

45.5. 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.

45.5.1. 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;

45.5.2. 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;

45.5.3. if such offer of employment is accepted, the Replacement Supplier and/or Replacement Subcontractor shall immediately release the person from its employment;

- 45.5.4. 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.

45.6. The indemnity in Paragraph 2.5 shall not apply to:

- 45.6.1. (a) 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

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

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

45.8. 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.

45.9. 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.

45.10. 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.

- 45.11. 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 Subcontractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the 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).