

**[NAME OF SCHOOL]**

**- AND -**

**[THE CONTRACTOR]**

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**CALL OFF CONTRACT**

**for the supply of the**

**National Professional Qualifications under the Institute of Teaching**

***[Drafting note: this document will form the Model Call Off terms for Customer Call Offs made by a Schools under Schedule 4 of the Framework Agreement.]***

Version Control		
Version	Date	Comments
2.0	25 May 2022	First version included in the Framework Agreement

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THIS CONTRACT is made on DD MM YYYY

## BETWEEN

1. [Name of School] of [insert address] ("The Customer"); and
  2. [THE CONTRACTOR] (Company No.) whose registered office is at [INSERT ADDRESS] (the "Contractor");
- together, the "Parties"

## WHEREAS:

- a) By way of a contract notice dated 19 April 2021, the Department undertook a procurement for a provider to be appointed to a Framework Agreement to establish and operate the Institute .
- b) The Contractor was the Potential Provider that submitted the most economically advantageous tender and has therefore been appointed to the Framework Agreement.
- c) This Call Off Contract ("the Contract") sets out the terms and conditions that govern the provision of the Services.

## NOW IT IS HEREBY AGREED AS FOLLOWS:-

### 1 INTERPRETATION

#### 1.1 In this Contract the following words shall mean:-

"Agent"	means an organisation or individual engaged by the Customer to represent it;
"Affiliate"	in relation to any person, the holding company or subsidiary of that person or any subsidiary of such holding company, and "holding company" and "subsidiary" shall have the meaning given to them in Section 1159 and Schedule 6 of the Companies Act 2006;
"Central Government Body"	means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: <ol style="list-style-type: none"><li>(i) Government Customer;</li><li>(ii) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);</li><li>(iii) Non-Ministerial Customer; or</li><li>(iv) Executive Agency;</li></ol>
"Charges"	means the Charges made by the Contractor to the Customer in accordance with the Schedule 2 (Pricing and Performance Measures);
"Cohort"	means a group of Participants that are undertaking an NQP or NPQH Additional Support Offer;

"Cohort Commencement Date"	means the date that the Participants commence their induction. If this Call Off Contract covers more than one Cohort, it shall be the date that the first Cohort commences.
"Contract Date"	means the date this Contract is duly executed as stated above;
"Contractor Personnel"	all employees of Agents, Contractors and any Sub-Contractor;
"Confidential Information"	means information as defined in this Contract which includes the Customer's Confidential Information and/or the Contractor's Confidential Information including for the Contractor the information set out in Schedule 10 (Commercially Sensitive Information);
"Contracting Customer"	any contracting Customer as defined in Regulation 5(2) of the Public Contracts (Works, Services and Supply) (Amendment) Regulations 2000 other than the Customer;
"Contract Period"	shall be the contract duration as set out in clause 2.1;
"Contractor Personnel"	all employees, Agents, consultants, and contractors of the Contractor and/or of any Sub-Contractor engaged by the Contractor;
"Control"	means a person that possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and <b>"Controls"</b> and <b>"Controlled"</b> shall be interpreted accordingly;
"Controller", "Processor," "Data Subject", "Personal Data", "Personal Data Breach", "Data Protection Officer"	have the meaning given in the GDPR;
"Correctly Submitted Invoice"	means an invoice that is delivered in timing in accordance with the Contract; is for the correct sum; in respect of goods/services supplied or delivered to the required quality (or are expected to be at the required quality); includes the date, Contractor name, contact details and bank details; quotes the relevant purchase order/contract reference and has been delivered to the nominated address;
"Crown Body"	any department, office or agency of the Crown;
"Customer"	means the School that has placed an Order for Services under the Framework Agreement and is named as a Party to this Contract;
"the Customer's Contract Manager"	means [insert name];
"Customer's Intellectual Property Rights"	means all Intellectual Property Rights comprised in or necessary for or arising from the performance of the Services;

“Data Loss Event”	any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;
“DPA 2018”	Data Protection Act 2018;
“Data Protection Impact Assessment”	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
“Data Protection Legislation”	(i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;
“Data Subject Access Request”	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
“Delivery Solution”	means the Contractor’s Delivery Solution submitted with the Contractor’s Quotation and included in Schedule 1: Part 2 – The Contractor’s Solution;
“the Department”	means the Department of Education and its agencies;
“Digital Platform”	means the Contractor’s technology and ICT systems including any portal that will be used to deliver any part of the Services
“Disclosure and Barring Service or DBS”	the Home Office sponsored safeguarding services that helps employers make safer recruitment decisions and prevent unsuitable people from working with vulnerable groups, including children;
“Employee Transfer Date”	means in respect of any Future Transferring Employee the date on which the part of the Services to which they are assigned transfers from the Contractor to any Successor Contractor;
“Environmental Information Regulations”	the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Customer in relation to such regulations;
“Existing IPR”	any and all IPR that are owned by or licensed to either Party which are or have been developed independently of the Contract whether prior to the date of the Contract or otherwise.
“Exit Plan”	the plan prepared by the Contractor in accordance with clause 15.11 setting out the Contractor’s methodology for achieving an orderly transition of the Services from the contractor to the Customer or a Successor Contractor on the expiry or termination of this Contract;

“Expiry Date”	means <b>[insert date]</b> , being the last day of the Contract Period unless the Contract Period is extended in accordance with clause 2;
“Extension Period”	shall have the meaning given to it in clause 2.2;
“External Evaluator”	means the independent evaluator or evaluators appointed by the Customer further to paragraph 15 of Schedule 1 (Part A: The Services);
“FOIA”	the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Customer in relation to such legislation;
“Force Majeure”	<p>means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take reasonable preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other catastrophe, natural or man-made, but excluding:</p> <ul style="list-style-type: none"> <li>(a) any industrial action occurring within the Contractor’s or any of its Sub-Contractor’s organisation, or otherwise involving the Contractor Staff; or</li> <li>(b) the failure by any Sub-Contractor of the Contractor to perform its obligations under any Sub-Contract.</li> </ul>
“Framework Agreement”	means the Framework Agreement dated <b>[DD YYYY]</b> between the Customer and the Contractor which was awarded under Regulation 33 of the Regulations and under which the Services are being called off;
“Future Transfer Date”	means the date of termination or expiry of this Contract;
“Future Transferring Employees”	means those employees of the Contractor who are at the Future Transfer Date employed under a contract of service or apprenticeship or otherwise in the relevant part of the undertaking which transfers on the termination or expiry of this Contract pursuant to TUPE or the Acquired Rights Directive 187/77/EC or otherwise to any Successor Contractor;
“GDPR”	the General Data Protection Regulation (Regulation (EU) 2016/679)
“Good Industry Practice”	that degree of skill, care, prudence, foresight and operating practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced operator (engaged in the same type of undertaking as that of the Contractor) or any Sub-Contractor under the same or similar circumstances;
“Her Majesty’s Government”	means the duly elected Government for the time being during the reign of Her Majesty and/or any department, committee, office, servant, or officer of such Government



"ICT"	means information and communications technology.
"Implementation Plan"	means the Implementation Plan included in Schedule 7;
"Information"	has the meaning given under section 84 of the Freedom of Information Act 2000;
"Intellectual Property Right"	means any copyright, rights in designs, database rights, domain names, trademarks, service marks, patents or any applications for any of the foregoing, know-how or similar rights or obligations (whether registerable or not) including Moral Rights as defined in Chapter IV of the Copyright, Designs and Patents Act 1988;
"IPR Claims"	any claim against the Department of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPRs used by or on behalf of the Contractor (including by a Sub-Contractor) in relation to the delivery of the Services save for any such claim to the extent that it is caused by any use by or on behalf of the Department of any IPRs that are relevant to this Contract in combination with any item not supplied or recommended by the Contractor pursuant to this Contract or for a purpose not reasonably to be inferred from the Specification or the provisions of this Contract
"LED"	Law Enforcement Directive (Directive (EU) 2016/680);
"New IPR"	IPR in items created by the Contractor (or by a third party on behalf of the Contractor) specifically for the purposes of a Call Off Contract and updates and amendments of these items including (but not limited to) data base schemes;
"Participant"	means an individual undergoing training with the Contractor;
"Personal Data"	shall have the same meaning as set out in the Data Protection Act 1998;
"Prescribed Particulars"	means the information prescribed in Part B of Schedule 13;
"Property"	means the property, other than real property, issued or made available to the Contractor by the Client in connection with the Contract.
"Protective Measures"	appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;
"Regulatory Bodies"	those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Contract or any other affairs of the Customer and <b>"Regulatory Body"</b> shall be construed accordingly;

"the Regulations"	means the Public Contracts Regulations 2015;
"Relevant Legislation"	means any statute or regulations or the EC Treaty (or any directives or regulations made under them);
"Relevant Personnel Documentation"	means the information in relation to Future Transferring Employees as prescribed in Part C of Schedule 13 (TUPE);
"Request for Information"	a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations;
"Required Insurances"	means the insurances as set out in clause 9.7;
"the School"	means the Customer;
"Serious Breach"	means <ul style="list-style-type: none"> <li>(a) any breach referred to as a Serious Breach in the Contract; and/or</li> <li>(b) any breach or breaches which adversely, materially, or substantially affect the performance or delivery of the Services in part or in full, or the provisions of a safe, healthy and supportive learning environment. Serious Breach includes but is not limited to: <ul style="list-style-type: none"> <li>(i) a breach of security that adversely affects the Personal Data or privacy of an individual; and</li> <li>(ii) failure to comply with Law, or acts or omissions by the Contractor that endanger the health or safety of others;</li> </ul> </li> </ul>
"the Services"	means the services to be performed by the Contractor as described in Schedule 1;
"SME"	means a micro, small or medium-sized enterprise defined in accordance with the European Commission Recommendation 2003/361/EC and any subsequent revisions;

"Sub-Contract"	means a contract between two or more suppliers, at any stage of remoteness from the Customer in a Sub-Contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of the Contract;
"Sub-Contractor"	the third party with whom the Contractor enters into a Sub-Contract or its servants or Agents and any third party with whom that third party enters into a Sub-Contract or its servants or Agents;
"Sub-processor"	any third Party appointed to process Personal Data on behalf of the Contractor related to this Contract;
"Successor Contractor"	means the Contractor that delivers services that are substantially the same as the Services after the expiry or termination of the Contract;
"Termination Date"	means the date set out in a termination notice on which this Contract (or a part of it as the case may be) is to terminate;
"Transferring Contractor Employees"	means those employees of the Contractor who are at the Future Transfer Date employed under a contract of service or apprenticeship or otherwise in the relevant part of the undertaking which transfers on the termination or expiry of this Contract pursuant to TUPE or the Acquired Rights Directive 187/77/EC or otherwise to any Successor Contractor;
"Transfer of Undertakings (Protection of Employment) Regulations 2006 or TUPE"	means the Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended from time to time;
"Variation"	A change top the terms of this Contract agreed in accordance with Schedule 5
"Working Day"	any day other than a Saturday, Sunday or public holiday in England and Wales.

1.2 References to "Contract" mean this contract (and include the Schedules). References to "clauses" and "Schedules" mean clauses of and Schedules to this Contract. The provisions of the Schedules shall be binding on the parties as if set out in full in this Contract.

1.3 Reference to the singular include the plural and vice versa and references to any gender include both genders and the neuter. References to a person include any individual, firm, unincorporated association or body corporate.

## **2 COMMENCEMENT AND CONTINUATION**

2.1 The Contractor shall commence the Services on the Contract Date and, subject to clause 10.1 shall complete the Services on or before the Expiry Date.

2.2 The Customer shall have the right to request in writing that the Contract Period be extended for one or more period on one or more occasions but the maximum cumulative Extension Period shall not be longer than the original Contract Period

2.3 If the Customer exercises its right to request an extension under clause 2.2, the last date of the Extension Period shall be the new Expiry Date and references to "Expiry Date" shall be interpreted accordingly.

### **3 CONTRACTOR'S OBLIGATIONS**

- 3.1 The Contractor shall promptly and efficiently deliver the Services in accordance with the provisions set out in Schedule 1: Part 1 (The Services), the special conditions set out in Schedule 3 (Additional Clauses) and in accordance with the Schedule 1: Part 2 (the Contractor's Solution). Where there is any conflict between the terms of this Contract and the special conditions set out in Schedule 3, the special conditions shall prevail.
- 3.2 The Contractor shall comply with the accounting and performance measures set out in Schedule 2 (Pricing and Performance Measures).
- 3.3 The Contractor must implement quality management arrangements and comply with the Quality Assurance requirements set out in Schedule 2 and in Section 2B – of the Specification to ensure the Services are delivered to a consistent and high standard. The Contractor must notify the Customer as soon as practicable in the event it becomes aware of any matter(s) which may affect the quality of the Services.
- 3.4 The Contractor must attend meetings relating to the Services, Continuous Improvement and the Contractor's performance as set out in the Specification and this Contract. The Contractor will not be paid separately for attending such meetings unless expressly set out in the Call Off Order.
- 3.5 The Contractor shall comply with all statutory provisions including all prior and subsequent enactments, amendments and substitutions relating to that provision and to any regulations made under it.
- 3.6 In entering into this Contract the Contractor is confirming that:
- 3.6.1 it has read and understood the Customer's expectations of all services Contractors as set out in the Government's Contractor Code of Conduct at <https://www.gov.uk/government/publications/Contractor-code-of-conduct> and the Contractor will deliver the Services in accordance with the Contractor Code; and
- 3.6.2 it will deliver the Services by reference to the Contractor Code as dated February 2019 and thereafter as updated from time to time.
- 3.7 The Contractor shall update the Implementation Plan, as set out at Schedule 7 (Implementation Plan) and submit it to the Customer, for its approval, a finalised Implementation Plan within 6 (six) weeks of the Contract Date.
- 3.8 NOT USED
- 3.9 NOT USED

### **4 CUSTOMER'S OBLIGATIONS**

- 4.1 The Customer will comply with the payment provisions of Schedule 2: Part 1 (Pricing) provided that the Customer is satisfied it has received full and accurate information and documentation from the Contractor to support payment..

### **5 NOT USED**

### **6 MANAGEMENT**

- 6.1 The Contractor shall promptly comply with all reasonable requests or directions of the Customer's Contract Manager in respect of the Services.
- 6.2 The Contractor shall address any enquiries about procedural or contractual matters in writing to the Customer's Contract Manager..
- 6.3 The Contractor's Key-Personnel and Sub-Contractors are set out in Schedule 9 (Key-Personnel and Sub-Contractors). The Contractor shall notify the Customer of any changes to its Key-Personnel or any proposed change of Sub-Contractors. In relation to any proposed change of Sub-Contractor the Contractor shall comply with the provisions of clause 7.10 and clause 19.

## **7 CONTRACTOR'S EMPLOYEES AND SUB-CONTRACTORS**

- 7.1 The appointment by the Contractor of Sub-Contractors shall be subject always to the requirements of clause 19. Where the Contractor does enter into any Sub-Contract the provisions of clauses 7.2 to 7.10 shall apply.
- 7.2 Where the Contractor enters into a contract with one or more third party supplier for the purpose of performing some of the Contractor's obligations under the Contract (the "Sub-Contractor") it shall ensure prompt payment in accordance with this clause 7.1. Unless otherwise agreed by the Customer in writing, the Contractor shall ensure that any contract requiring payment to a Sub-Contractor shall provide for undisputed sums due to the Sub-Contractor to be made within the relevant period specified below from the receipt of a valid invoice not exceeding:
- 7.2.1 10 days, where the Sub-Contractor is an SME; or
- 7.2.2 30 days either, where the Sub-Contractor is not an SME, or both the Contractor and the Sub-Contractor are SMEs,
- 7.3 The Contractor shall comply with clause 7.2 and shall provide, at the Customer's request, sufficient evidence to demonstrate compliance.
- 7.4 The Contractor shall take all reasonable steps to satisfy itself that the Contractor Personnel it engages is suitable in all respects to perform the Services.
- 7.5 The Contractor shall give to the Customer if so requested a list of all persons who are or may be at any time directly concerned with the performance of this Contract specifying the capacity in which they are concerned with the provision of the Services and giving such other particulars as the Customer may reasonably require.
- 7.6 If the Customer notifies the Contractor that it considers that a Sub-Contractor is not appropriately qualified or trained to provide the Services or otherwise is not providing the Services in accordance with this Contract, then the Contractor shall, as soon as is reasonably practicable, take all such steps as the Customer considers necessary to remedy the situation or, if so required by the Customer, shall remove the said Sub-Contractor from providing the Services and shall provide a suitable replacement (at no cost to the Customer).
- 7.7 The Contractor shall take all reasonable steps to avoid changes of Sub-Contractors assigned to and accepted to provide the Services under the Contract except whenever changes are unavoidable or of a temporary nature. The Contractor shall give immediate notice in writing to the Customer's Contract Manager of proposals to change Sub-Contractors.
- 7.8 The Contractor shall immediately notify the Customer if they have any concerns regarding the propriety of any of its Sub-Contractors in respect of Services rendered in connection with this Contract.
- 7.9 The Contractor acknowledges that Key Contractor Personnel and Key Sub-Contractors are essential to the proper provision of the Services. The Parties have agreed to the appointment of Key Contractor Personnel and Key Sub-Contractors listed in Schedule 9 as at the Contract Date.
- 7.10 The Contractor agrees that:
- 7.10.1 Key Contractor Personnel shall not be released from supplying the Services without the Customer's consent except by reason of long-term sickness, maternity leave, paternity leave or termination of employment or other similar reason.
- 7.10.2 Any replacements of Key Contractor Personnel or Sub-Contractors shall be subject to the Customer's consent and shall be of at least equal status, experience and skills to Key Contractor Personnel or Sub-Contractor(s) being replaced and be suitable for the responsibilities of that person or company in relation to the Services.
- 7.11 The Customer shall not unreasonably withhold consent under clauses 7.10. Such consent shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse effect on Services which could be caused by a change in Key Contractor Personnel or Key Sub-Contractors.

- 7.12 The Customer may require the Contractor to remove any Key Contractor Personnel or Sub-Contractors who the Customer considers is in any respect unsatisfactory.
- 7.13 The Customer shall not be liable for the cost of replacing any Key Contractor Personnel or Sub-Contractors and the Contractor shall indemnify the Customer against all Employment Liabilities that may arise in this respect.
- 7.14 The Contractor, its employees and Sub-Contractors (or their employees), whilst on Customer premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time.
- 7.15 The Contractor shall ensure the security of all the Property whilst in its possession, during the supply of the Services, in accordance with the Customer's reasonable security requirements as required from time to time.
- 7.16 The Parties agree that:
- 7.16.1 the Contractor shall both during and after the Contract Period indemnify the Customer against all Employee Liabilities that may arise as a result of any claims brought against the Customer by any person where such claim arises from any act or omission of the Contractor or any Contractor Personnel; and
- 7.16.2 the Customer shall both during and after the Contract Period indemnify the Contractor against all Employee Liabilities that may arise as a result of any claims brought against the Contractor by any person where such claim arises from any act or omission of the Customer or any of the Customer's employees, Agents, consultants and contractors.

## **7A SAFEGUARDING**

- 7A.1 The Contractor shall make arrangements for ensuring that the Services are provided with a view to safeguarding and promoting the welfare of children receiving education or training. In doing so, the Contractor shall have regard to any guidance published, from time to time, by the Secretary of State for Education, which sets out the expectations in relation to safeguarding practice within schools. References to 'must' in any such guidance shall be treated as 'should' for the purposes of this Contract, save for any references to legal requirements arising from the Safeguarding Vulnerable Groups Act 2006 in respect of referrals to the Disclosure and Barring Service. Failure to do so may constitute a Serious Breach of this Contract.
- 7A.2 The Contractor must carry out appropriate Disclosure and Barring Service checks on all applicants including those from outside the UK for employment where such applicants would be employed to work in regulated activity relating to children or vulnerable adults (as defined by the Safeguarding Vulnerable Groups Act 2006) if successful, and must seek additional information about an applicant's conduct.
- 7A.3 The Contractor shall not employ or engage, or continue to employ or engage, any person who is subject to a prohibition order made under section 141B of the Education Act 2002 to carry out teaching work (as defined in regulation 3 of the Participants' Disciplinary (England) Regulations 2012).
- 7A.4 The Contractor shall, in circumstances where it Sub-Contracts the management and / or delivery of the Services under this Contract, ensure that the content of this clause 7A is included in its contract with Sub-Contractors.
- 7A.5 The Contractor and its Sub-Contractors must be able to demonstrate that they have robust record-keeping procedures in respect of safeguarding through checks on record keeping undertaken.
- 7A.6 A breach by the Contractor and / or its Sub-Contractors of this clause 7A shall constitute a Serious Breach of the Contract.

## **8 INTELLECTUAL PROPERTY RIGHTS (IPR)**

- 8.1 Each Party keeps ownership of its own Existing IPR.
- 8.2 Pursuant to clause 2.1 the Contractor gives the Customer a non-exclusive, perpetual, royalty-free, irrevocable, transferable UK-wide licence to use, change and sub-license the Contractor's Existing IPR to enable it to both:
  - 8.2.1 receive and use the Services;
  - 8.2.2 make use of services similar to the Services delivered by a Replacement Supplier.and the Customer gives the Contractor a licence to use the Customer's Existing IPR for the purpose of fulfilling its obligations during the Contract Period.
- 8.3 Any New IPR created under this Contract is owned by the Contractor. The Contractor gives the Customer a non-exclusive, perpetual, royalty-free, irrevocable, transferable UK-wide licence to use, change and sub-license the Contractor's Existing IPR and New IPR to enable it to:
  - 8.3.1 receive the Services under this Contract; and
  - 8.3.2 make use of services similar to the Services delivered by a Replacement Supplier; and
  - 8.3.3 make use of the materials created under this Contract in other services related to, but not limited to, NPQs.
- 8.4 Where a Party acquires ownership of IPR incorrectly under this Contract it must do everything reasonably necessary to complete a transfer assigning them in writing to the other Party on request and at its own cost.
- 8.5 Neither Party has the right to use the other Party's IPR, including any use of the other Party's names, logos or trademarks, other than as set out in this clause 8 or as agreed in writing.
- 8.6 The Contractor shall indemnify the Customer against all IPR Claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right.
- 8.7 The Contractor hereby waives any Moral Rights as defined at Chapter IV of the Copyright, Designs and Patents Act 1988.
- 8.8 The Contractor warrants:
  - 8.8.1 that the Contractor's Intellectual Property Rights comprise its own original work including where its Intellectual Property Rights were created by or on behalf of the Contractor;
  - 8.8.2 that the Customer's Intellectual Property Rights have not and will not be copied wholly or in part from any other work or material;
  - 8.8.3 that the use of or exercise by the Customer of the Customer's Intellectual Property Rights and the Background Intellectual Property will not infringe the rights of any third party;
  - 8.8.4 that the Contractor has not granted or assigned any rights of any nature in the Customer's Intellectual Property Rights to any third party.
- 8.9 The provisions of Schedule 14 (Contractor's Digital Platform) shall apply in relation to the Intellectual Property Rights in and licensing of Software.

## **9 WARRANTY AND INDEMNITY**

- 9.1 The Contractor warrants to the Customer that the obligations of the Contractor under this Contract will be performed by appropriately qualified and trained personnel with using Good Industry Practice. The Customer will be relying upon the Contractor's skill, expertise and experience in the performance of the Services and also upon the accuracy of all representations or statements made and the advice given by the Contractor in connection with the performance of the Services and the accuracy of any documents conceived, originated, made or developed by the Contractor as part of this Contract. The Contractor warrants that any goods supplied by the Contractor forming a part of

the Services will be of satisfactory quality and fit for their purpose and will be free from defects in design, material and workmanship.

- 9.2 Without prejudice to any other remedy, if any part of the Services is not performed in accordance with this Contract then the Customer shall be entitled, where appropriate to:
- 9.3 require the Contractor promptly to re-perform or replace the relevant part of the Services without additional charge to the Customer; or
- 9.4 if the Customer considers it would be impracticable or inappropriate to require the Contractor to take action in accordance with Clause 9.2.1, the Customer may assess the cost of remedying the failure ("the Assessed Cost") and deduct from any sums due to the Contractor the Assessed Cost for the period that such failure continue
- 9.5 assess the cost of remedying the failure ("the assessed cost") and to deduct from any sums due to the Contractor the Assessed Cost for the period that such failure continues.
- 9.6 Neither Party limits its liability for:
- (a) death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable);
  - (b) fraud or fraudulent misrepresentation by it or its employees;
  - (c) breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
  - (d) any liability to the extent it cannot be limited or excluded by Law.
- 9.7 The Contractor's liability in respect of the indemnities in Clause 16 (VAT, Income Tax and National Insurance Contributions), Clause 7.11 (Employment Indemnity), Clause 8.6 (IPRs Indemnity), Schedule 13 (Staff Transfer) and the Annexes to Schedule 13 (Staff Transfer) shall be unlimited.
- 9.8 The Customer's liability in respect of the indemnities in Clause 7.11 (Employment Indemnity), Clause 15.8(TUPE), Clause 15.9 (TUPE), Schedule 13 (Staff Transfer) and the Annexes to Schedule 13 (Staff Transfer) shall be unlimited.
- 9.9 Subject to Clauses 9.3 and 9.4 (Unlimited Liability) and Clauses 9.9 (Consequential Losses):
- (a) the Contractor's aggregate liability in respect of loss of or damage to the Customer Premises or other property or assets of the Customer (including technical infrastructure, assets or equipment but excluding any loss or damage to the Customer's Data or any other data) that is caused by Defaults of the Contractor occurring in each and any Contract Year shall in no event exceed [£10 million];
  - (b) the Contractor's aggregate liability in respect of loss of or damage to Customer Data or breach of the Data Protection Legislation that is caused by Default of the Contractor occurring in each and any Contract Year shall in no event exceed [£10 million];
  - (c) the Contractor's aggregate liability in respect of all Service Credits incurred shall be subject to the Service Credit Cap; and
  - (d) the Contractor's aggregate liability in respect of all other Losses incurred by the Customer under or in connection with this Contract as a result of Defaults by the Contractor shall in no event exceed [£8 million] in any Contract Year.
- 9.10 Deductions from Charges shall not be taken into consideration when calculating the Contractor's liability under Clause 9.6(c).
- 9.11 Not used
- 9.12 Notwithstanding Clause 9.9 but subject to Clause 9.6, the Contractor acknowledges that the Customer may, amongst other things, recover from the Contractor the following Losses incurred by the Customer to the extent that they arise as a result of a Default by the Contractor:
- (a) any additional operational and/or administrative costs and expenses incurred by the Customer, including costs relating to time spent by or on behalf of the Customer in dealing with the consequences of the Default;



- (b) any wasted expenditure or charges;
  - (c) the additional cost of procuring Replacement Services for the remainder of the Contract Period and/or replacement Deliverables, which shall include any incremental costs associated with such Replacement Services and/or replacement Deliverables above those which would have been payable under this Contract;
  - (d) any compensation or interest paid to a third party by the Customer; and
  - (e) any fine or penalty incurred by the Customer pursuant to Law and any costs incurred by the Customer in defending any proceedings which result in such fine or penalty.
- 9.13 Not used
- 9.14 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Contract, including any Losses for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Contract.
- 9.15 The Customer's total liability to the Contractor under this Contract shall be limited to paying the Charges in accordance with schedule 2 (Pricing) and complying with any other contract provision in the Call-Off Contract that requires a payment to be made by the Customer.
- 9.16 All property of the Contractor whilst on the Customer's premises shall be there at the risk of the Contractor and the Customer shall accept no liability for any loss or damage howsoever occurring to it.
- 9.17 Without prejudice to its liability to indemnify the Customer under this Contract the Contractor shall take out and maintain in force or procure the taking out and maintenance of the Required Insurances and any other insurances as may be required by law. The Required Insurances shall be effective in each case no later than the date on which the relevant risk commences.
- 9.18 The Required Insurances referred to in clause 9.17 shall amount to:
- 9.18.1 at least five million pounds (£5 million) in respect of public liability cover in respect of each and every occurrence;
  - 9.18.2 at least five million pounds (£5 million) in respect of employer's liability cover in respect of each and every occurrence; and
  - 9.18.3 at least five million pounds (£5 million) in respect of professional indemnity cover in respect of each and every claim;
- 9.19 The Customer may review the minimum indemnity limits specified for the Required Insurances in clause 9.18 on an annual basis. Any Change that is required to the minimum indemnity limits as a result of the Customer's review shall be implemented in accordance with the Change Control Procedure.
- 9.20 The Contractor shall provide to the Customer by 1 September annually during the Contract Period and at other times on request evidence confirming that the Required Insurances are and remain in place.

## **10 TERMINATION**

- 10.1 This Contract may be terminated on notice by the Customer giving to the Contractor at least 90 days' notice in writing.
- 10.2 NOT USED.
- 10.3 In the event of a Serious Breach of this Contract by either Party which can be remedied, the other Party may serve a notice on the party in breach requiring the breach to be remedied within a period specified in the notice which shall be reasonable in all the circumstances. If the breach has not been remedied by the expiry of the specified period, the Party not in breach may terminate this Contract with immediate effect by notice in writing.
- 10.4 If the Customer holds the view, acting reasonably, that the Contractor has committed a Serious Breach of the Contract that it would pose a risk to the health and safety of children or vulnerable

adults to permit it to continue to deliver the Services, it may require the Contractor to suspend delivery of the Services pending further investigations.

10.5 This Contract may be terminated by the Customer with immediate effect by notice in writing if at any time:

- 10.5.1 the Contractor commits a Serious Breach which cannot be remedied;
- 10.5.2 in England and Wales, a petition is presented for the Contractor's bankruptcy or a criminal bankruptcy order is made against the Contractor or it makes any composition or arrangement with or for the benefit of creditors or makes any conveyance or assignment for the benefit of creditors;
- 10.5.3 in Scotland, if the Contractor becomes apparently insolvent within the meaning of Section 7 of the Bankruptcy (Scotland) act 1985;
- 10.5.4 where the Contractor is a firm or a number of persons acting together in any capacity (including as trustees), any event referred to in Sub-Clauses 10.4.1 or 10.4.2 occurs in respect of any partner in the firm or any of those persons (including any trustees);
- 10.5.5 the Contractor is convicted (or being a company, any officers or representatives of the Contractor are convicted) of a criminal offence related to the business or professional conduct;
- 10.5.6 the Contractor commits (or being a company, any officers or representatives of the Contractor commit) an act of grave misconduct in the course of the business;
- 10.5.7 the Contractor fails (or being a company, any officers or representatives of the Contractor fail) to fulfil its obligations relating to the payment of Social Security contributions;
- 10.5.8 the Contractor fails (or being a company, any officers or representatives of the Contractor fail) to fulfil its obligations relating to payment of taxes;
- 10.5.9 the Contractor fails (or being a company, any officers or representatives of the Contractor fail) to disclose any serious misrepresentation in supplying information required by the Customer in or pursuant to this Contract.
- 10.5.10 any of the provisions of paragraph 4 of Schedule 4 (Financial Distress) have arisen.

10.6 Nothing in this clause 10 shall affect the coming into, or continuance in force of any provision of this Contract which is expressly or by implication intended to come into force or continue in force upon termination of this Contract.

## **11 NOT USED**

## **12 CONFIDENTIALITY**

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

- 12.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
- 12.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

12.2 Clause 12 shall not apply to the extent that:

- 12.2.1 such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to clause 13 (Freedom of Information);
- 12.2.2 such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- 12.2.3 such information was obtained from a third party without obligation of confidentiality;

- 12.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
- 12.2.5 it is independently developed without access to the other Party's Confidential Information.
- 12.3 The Contractor may only disclose the Customer's Confidential Information to the Contractor Personnel who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Contractor Personnel are aware of and shall comply with these obligations as to confidentiality.
- 12.4 The Contractor shall not, and shall procure that the Contractor Personnel do not, use any of the Customer's Confidential Information received otherwise than for the purposes of this Contract.
- 12.5 The Contractor shall ensure that its employees, servants or such professional advisors or consultants are aware of the Contractor's obligations under this Contract.
- 12.6 Nothing in this Contract shall prevent the Customer from disclosing the Contractor's Confidential Information:
  - 12.6.1 on a confidential basis to any Central Government Body for any proper purpose of the Customer or of the relevant Central Government Body;
  - 12.6.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
  - 12.6.3 to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
  - 12.6.4 on a confidential basis to a professional adviser, consultant, Contractor, or other person engaged by any of the entities described in clause 12.6.1 (including any benchmarking organisation) for any purpose relating to or connected with this Contract;
  - 12.6.5 on a confidential basis for the purpose of the exercise of its rights under this Contract, including audit rights, step-in rights and exit management rights; or
  - 12.6.6 on a confidential basis to a proposed successor body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract.
- 12.7 The Customer shall use all reasonable endeavours to ensure that any Central Government Body, Contracting Customer, employee, third party or Sub-Contractor to whom the Contractor's Confidential Information is disclosed pursuant to Clause 12 is made aware of the Customer's obligations of confidentiality.
- 12.8 Nothing in this clause 12 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of Intellectual Property Rights.
- 12.9 The Parties acknowledge that, except for any information that is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The Customer shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.
- 12.10 Subject to clause 12.9, the Contractor hereby gives its consent for the Customer to publish the Contract in its entirety, including from time to time agreed changes to the Contract, to the general public.
- 12.11 The Customer may consult with the Contractor to inform its decision regarding any redactions but the Customer shall have the final decision in its absolute discretion.
- 12.12 The Contractor shall assist and cooperate with the Customer to enable the Customer to publish this Contract.

### **13 FREEDOM OF INFORMATION**

- 13.1 The Contractor acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Customer to enable the Customer to comply with its information disclosure obligations.
- 13.2 The Contractor shall and shall procure that its Sub-Contractors shall:
- 13.2.1 transfer to the Customer all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;
  - 13.2.2 provide the Customer with a copy of all Information in its possession, or power in the form that the Customer requires within five Working Days (or such other period as the Customer may specify) of the Customer's request; and
  - 13.2.3 provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.
- 13.3 The Customer shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether any Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.
- 13.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Customer.
- 13.5 The Contractor acknowledges that (notwithstanding the provisions of clause 13) the Customer may, acting in accordance with the Ministry of Justice's Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("**the Code**"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Project:
- 13.5.1 in certain circumstances without consulting the Contractor; or
  - 13.5.2 following consultation with the Contractor and having taken their views into account;
- provided always that where clause 13.5.1 applies the Customer shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.
- 13.6 The Contractor shall ensure that all Information is retained for disclosure and shall permit the Customer to inspect such records as requested from time to time.

### **14 AUDIT AND SERVICE CONTINUITY PLAN**

- 14.1 The Contractor shall provide access at all reasonable times to the Customer's internal auditors or other duly authorised staff or Agents to inspect such documents as the Customer considers necessary in connection with this Contract and where appropriate speak to the Contractor's employees.
- 14.2 The Contractor shall provide the Customer with its Service Continuity Plan in accordance with the provisions of Schedule 11 (Service Continuity Plan).

### **15 TRANSFER OF RESPONSIBILITY ON EXPIRY OR TERMINATION**

- 15.1 The Contractor shall, at no cost to the Customer, promptly provide such assistance and comply with such timetable as the Customer may reasonably require for the purpose of ensuring an orderly transfer of responsibility upon the expiry or other termination of this Contract. The Customer shall be entitled to require the provision of such assistance both prior to and, for a reasonable period of time after the expiry or other termination of this Contract.
- 15.2 If to fulfil the Customer's request under Clause 15,1 the Contractor requires resources:
- 15.2.1 not normally accounted for in delivering the Services; or

15.2.2 no accounted for in the Charges; or

15.2.3 after the Expiry Date;

then the Parties shall agree a variation to the Charges for direct, reasonable and verifiable costs (which in the case of the Contractor shall not exceed the time and materials of the resources required).

- 15.3 Such assistance may include (without limitation) the delivery of documents and data in the possession or control of the Contractor which relate to this Contract, including the documents and data, if any, referred to in clause 15.8.
- 15.4 The Contractor undertakes that it shall not knowingly do or omit to do anything which may adversely affect the ability of the Customer to ensure an orderly transfer of responsibility.
- 15.5 The Customer and the Contractor shall act on the basis that TUPE applies on expiry or termination of the Contract where the Customer is proposing to re-procure services which are substantially the same as the Services.
- 15.6 Where any of the provisions in Clause 7.17 apply, the Contractor will comply with the obligations set out in Schedule 13 and:
- 15.6.1 6 months preceding the Expiry Date (or within 20 Working Days after the Department or the Contractor has given notice to terminate the Contract), the Contractor shall disclose to the Department and shall permit the Department to disclose to any tenderer for services which are substantially the same as the Services, the Staffing Information of the Provisional Contractor Personnel List provided that prior to so doing any such tenderer shall have executed in writing a confidentiality undertaking in favour of the Contractor;
- 15.6.2 the Contractor keeps the Staffing Information in the Provisional Contractor Personnel List updated at monthly intervals, to the Department and to the Replacement Supplier information in respect of each employee whom the Contractor reasonably believes will be a Transferring Contractor Employee provided that prior to so doing the Replacement Supplier nominated by the Department shall have executed in writing a confidentiality undertaking in favour of the Contractor;
- 15.6.3 the Contractor shall make reasonable endeavours to assist the Replacement Supplier to communicate with, meet and inform and consult with the employees whom the Contractor reasonably believes will be a Transferring Contractor Employee and their trade union or other employee representatives for the purposes of complying with the Transfer of Undertakings (Protection of Employment) Regulations 2006.
- 15.7 Within a period of 21 days following the expiry or termination of this Contract the Contractor shall provide to the Department or the Successor Contractor in writing the Staffing Information in relation to Transferring Contractor Employees in accordance with Schedule 13 (Staff Transfer).
- 15.8 In the event that the Department or the Replacement Supplier incurs costs, liabilities or expenditure in respect of Transferring Contractor Employees which is greater than would have been the case if the Required Information supplied by the Contractor had been accurate and complete, then such (net) greater costs, liabilities or expenditure shall be deemed to be costs suffered or incurred by the Customer and / or a Replacement Supplier and the Contractor shall fully indemnify the Customer for such costs both incurred by the Customer itself and a Replacement Supplier if applicable.
- 15.9 The Customer on its own account or on behalf of a Replacement Supplier shall be entitled to recover from the Contractor in full any legal, accountancy and other costs actually and reasonably incurred by the Customer or Replacement Supplier in connection with the Contractor's indemnity in clause 15.8.
- 15.10 This clause 15 shall continue in effect for six months following the expiry or termination of this Contract.

#### **Exit Plan & Handover**

- 15.11 Further to the requirements of this clause 15 and in accordance with Schedule 1 Part 1 (The Services) the Contractor shall, within three (3) months of the date of this contract prepare and submit to the Customer and shall thereafter maintain, an Exit Plan.
- 15.12 The Exit Plan shall set out the Contractor's proposals for achieving an orderly transition of Services from the Contractor to the Customer and/or its Replacement Contractor at the end of the Contract Period or on the earlier termination of any part of the Contract or cessation of the provision of any part of the Services by the Contractor.
- 15.13 Within thirty (30) days of the submission of the Exit Plan, both Parties will use reasonable endeavours to agree the Exit Plan. If the Parties are unable to agree the Exit Plan the dispute shall be referred to the dispute resolution procedure in clause 24.
- 15.14 The Contractor will review and (if appropriate) update the Exit Plan in the first month of each year of the Term to reflect changes to the Services. Following such update, the Contractor will submit the revised Exit Plan to the Customer for review. Within 30 days following submission of the revised Exit Plan, the Parties shall use reasonable endeavours to agree the revised Exit Plan and the changes that have occurred in the Services since the Exit Plan was last agreed. If the Parties are unable to agree the revised Exit Plan within 30 days, such dispute shall be referred to the dispute resolution procedure in clause 24.
- 15.15 The Contractor shall implement its Exit Plan not less than nine (9) months prior to whichever occurs first out of the Termination Date or the Expiry Date.
- 15.16 The Contractor shall co-operate fully with the Customer during any handover at the end of the Contract including allowing full access to, and providing copies of, all documents, reports, summaries and any other information necessary in order to achieve an effective transition without disruption to routine operational requirements.
- 15.17 Within ten (10) Working Days of being requested by the Customer, the Contractor shall transfer to the Customer, or any person designated by the Customer, free of charge, all computerised filing, recording, documentation, planning and drawing held on software and utilised in the provision of the Services. The transfer shall be made in a fully indexed and catalogued disk format, to operate on a proprietary software package identical to that used by the Customer.
- 15.18 The Contractor shall co-operate fully with the Customer in order to enable an efficient and detailed knowledge transfer from the Contractor to the Customer or any other Replacement Contractor at the end of the Contract Period or on the earlier termination of any part of the Contract or cessation of the provision of any part of the Services by the Contractor and shall provide the Customer free of charge with full access to Contractor Personnel, copies of all documents, reports, summaries and any other information requested by the Customer. The Contractor shall comply with the Customer's request for information no later than fifteen (15) W Days from the date that that request was made.

## **16 TAX INDEMNITY**

- 16.1 Where the Contractor is liable to be taxed in the UK in respect of consideration received under this contract, it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration. Where the Customer has deemed the Contractor to be an Off-Payroll Contractor as defined by Her Majesty's Revenue and Customs the Customer reserves the right to calculate Income Tax and pay it to HMRC. The amounts will be deducted from the Contractor's fee for the work provided.
- 16.2 Where the Contractor is liable to National Insurance Contributions (NICs) in respect of consideration received under this contract, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to NICs in respect of that consideration. Where the Customer has deemed the Contractor to be an Off-Payroll Contractor as defined by Her Majesty's Revenue and Customs the Customer reserves the right to calculate primary (employee) National Insurance contributions (NICs) and pay them to HMRC. The amounts will be deducted from the Contractor's fee for the work provided.

- 16.3 The Customer may, at any time during the term of this contract, ask the Contractor to provide information which demonstrates how the Contractor complies with clauses 16.1 and 16.2 above or why those clauses do not apply to it.
- 16.4 A request under clause 16.3 above may specify the information which the Contractor must provide and the period within which that information must be provided.
- 16.5 The Customer may terminate this Contract if:
- 16.5.1 in the case of a request mentioned in clause 16.3 above if the Contractor:
- (a) fails to provide information in response to the request within a reasonable time, or
  - (b) provides information which is inadequate to demonstrate either how the Contractor complies with clauses 16.1 and 16.2 above or why those clauses do not apply to it;
- 16.5.2 in the case of a request mentioned in clause 16.4 above, the Contractor fails to provide the specified information within the specified period, or
- 16.5.3 it receives information which demonstrates that, at any time when clauses 16.1 and 16.2 apply, the Contractor is not complying with those clauses.
- 16.6 The Customer may supply any information which it receives under clause 16.3 to the Commissioners of Her Majesty's Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible.
- 16.7 The Contractor warrants and represents to the Customer that it is an independent contractor and, as such, bears sole responsibility for the payment of tax and national insurance contributions which may be found due from it in relation to any payments or arrangements made under this Contract. The Contractor shall promptly and regularly pay all National Insurance Contributions due from it as a self-employed person and shall account to the HM Revenue and Customs for all taxes due from it in respect of the payments made to it under this Contract.
- 16.8 If, notwithstanding clause 16.7 the HM Revenue and Customs and/or any other appropriate agency consider that the Contractor is an employee of the Customer for the purposes of tax and/or national insurance contributions; then the Customer shall be entitled to terminate this Contract immediately and deduct from the payments payable to the Contractor under the terms of this Contract, such sums as the HM Revenue and Customs and/or other agencies require in respect of income tax and employee national insurance contributions. The deduction of such tax and national insurance contributions will not affect the status of the Contractor as self-employed for all other purposes.
- 16.9 Without prejudice to the provisions of clause 16.8 above, the Contractor shall indemnify the Customer against any liability, assessment or claim made by the HM Revenue and Customs or any other relevant Customer arising out of the performance by the parties of their obligations under this Contract (other than in respect of employer's secondary national insurance contributions) and any costs, expenses, penalty fine or interest incurred or payable by the Customer in connection with any such assessment or claim.
- 16.10 The Contractor authorises the Customer to provide the HM Revenue and Customs and all other departments or agencies of the Government with any information which they may request as to fees and/or expenses paid or due to be paid under this Contract whether or not the Customer is obliged as a matter of law to comply with such request.
- 16.11 The Contractor shall register for value added tax if and when required by law and shall promptly notify the Customer for Work and Pensions of its liability for Class 2 and, where appropriate, Class 4 national insurance contributions.

## **17 DATA PROTECTION**

- 17.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is listed in Schedule 6.

- 17.2 The Contractor shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.
- 17.3 The Contractor shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:
- 17.3.1 a systematic description of the envisaged processing operations and the purpose of the processing;
  - 17.3.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
  - 17.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
  - 17.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 17.4 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:
- 17.4.1 process that Personal Data only in accordance with Schedule 6, unless the Contractor is required to do otherwise by Law. If it is so required, the Contractor shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;
  - 17.4.2 ensure that it has in place Protective Measures, which have been reviewed and approved by the Customer as appropriate to protect against a Data Loss Event having taken account of the:
    - (a) nature of the data to be protected;
    - (b) harm that might result from a Data Loss Event;
    - (c) state of technological development; and
    - (d) cost of implementing any measures;
  - 17.4.3 ensure that:
    - the Contractor Personnel do not process Personal Data except in accordance with this Contract (and in particular Schedule 6);
    - it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:
      - (a) are aware of and comply with the Contractor's duties under this clause;
      - (b) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
      - (c) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Customer or as otherwise permitted by this Contract; and
      - (d) have undergone adequate training in the use, care, protection, and handling of Personal Data; and
  - 17.4.4 not transfer Personal Data outside of the UK and EU unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
    - (a) the Customer or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Customer;
    - (b) the Data Subject has enforceable rights and effective legal remedies;
    - (c) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data



that is transferred (or, if it is not so bound, uses its best endeavours to assist the Customer in meeting its obligations); and

- (d) the Contractor complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;

- 17.4.5 at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of the Contract unless the Contractor is required by Law to retain the Personal Data.
- 17.4.6 ensure it notifies, and seeks the permission of, any party whose Personal Data is being processed that the Customer may share their data with other Government departments and other organisations for the purposes set out in Schedule 6
- 17.5 Subject to clause 17.6, the Contractor shall notify the Customer immediately if it:
  - 17.5.1 receives a Data Subject Access Request (or purported Data Subject Access Request);
  - 17.5.2 receives a request to rectify, block or erase any Personal Data;
  - 17.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - 17.5.4 receives any communication from the Information Commissioner or any other regulatory Customer in connection with Personal Data processed under this Contract;
  - 17.5.5 receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
  - 17.5.6 becomes aware of a Data Loss Event.
- 17.6 The Contractor's obligation to notify under clause 17.5 shall include the provision of further information to the Customer in phases, as details become available.
- 17.7 Taking into account the nature of the processing, the Contractor shall provide the Customer with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 1.5 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:
  - 17.7.1 the Customer with full details and copies of the complaint, communication or request;
  - 17.7.2 such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
  - 17.7.3 the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
  - 17.7.4 assistance as requested by the Customer following any Data Loss Event;
  - 17.7.5 assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office.
- 17.8 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:
  - 17.8.1 the Customer determines that the processing is not occasional;
  - 17.8.2 the Customer determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
  - 17.8.3 the Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 17.9 The Contractor shall allow for audits of its Data Processing activity by the Customer or the Customer's designated auditor.

- 17.10 The Contractor shall designate a data protection officer if required by the Data Protection Legislation.
- 17.11 Before allowing any sub-processor to process any Personal Data related to this Contract, the Contractor must:
- 17.11.1 notify the Customer in writing of the intended sub-processor and processing;
  - 17.11.2 obtain the written consent of the Customer;
  - 17.11.3 provide the Customer with such information regarding the sub-processor as the Customer may reasonably require.
- 17.12 The Contractor shall remain fully liable for all acts or omissions of any sub-processor.
- 17.13 The Contractor shall indemnify the Customer against any liability, assessment or claim made by the Information Commissioner's Office or any other relevant Customer or Agency arising out of the performance by the parties of their obligations under this Contract and any costs, expenses, penalty fine or interest incurred or payable by the Customer in connection with any such assessment or claim.
- 17.14 The Contractor may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- 17.15 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Customer may on not less than 30 Working Days' notice to the Contractor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

## **18 AMENDMENT AND VARIATION**

- 18.1 No amendment or variation to this Contract shall be effective unless it is in writing and signed by or on behalf of each of the Parties hereto. The Contractor shall comply with any formal procedures for amending or varying contracts which the Customer may have in place from time to time.
- 18.2 In considering any amendment or variation to this Contract, the Parties shall use the Change Control Procedure as set out in Schedule 5 (Change Control Procedure).

## **19 ASSIGNMENT AND SUB-CONTRACTING**

- 19.1 The benefit and burden of this Contract may not be assigned or Sub-Contracted in whole or in part by the Contractor without the prior written consent of the Customer save as expressly set out in clause 19.2. Such consent may be given subject to any conditions which the Customer considers necessary. The Customer may withdraw its consent to any Sub-Contractor where it no longer has reasonable grounds to approve of the Sub-Contractor or the Sub-Contracting arrangement and where these grounds have been presented in writing to the Contractor.
- 19.2 The Contractor may enter into Sub-Contracts for the delivery of general services that indirectly enable the Contractor to perform the Services without the requirement to seek the Customer's prior consent as set out in clause 19.1.
- 19.3 Where the Customer has consented to the appointment of a Sub-Contractor, pursuant to clause 19.1, the Contractor shall, as soon as reasonably practicable following a request from the Customer provide to the Customer a copy of the Sub-Contract entered into between the Contractor and the Sub-Contractor which should pass down to the Sub-Contractor in terms which are the same or substantially similar to the provisions in this Contract as is relevant for the delivery of the Services under the Sub-Contract.
- 19.4 Where the Customer has consented to an assignment pursuant to clause 19.1 the Contractor shall evidence the assignment in writing to the Customer and provide a copy of the assignment document on request.
- 19.5 The Contractor shall not terminate or materially amend the terms of any Sub-Contract whose value exceeds £10,000 (ten thousand pounds) without obtaining the Customer's prior written consent.

- 19.6 The Customer may require the Contractor to terminate a Sub-Contract if the acts or omissions of the Sub-Contractor have given rise to the Customer's rights of termination pursuant to clause 10 unless the Sub-Contractor can remedy the breach to the Customer's satisfaction with 21 days of receipt by the Contractor of written notice from the Customer requiring the Sub-Contract to be terminated.
- 19.7 The Contractor shall remain responsible for all acts and omissions of its Sub-Contractors as if they were its own.
- 19.8 If the Customer believes there are:
- 19.8.1 Compulsory grounds for excluding a Sub-Contractor pursuant to Regulation 57 of the Regulations; or
  - 19.8.2 Non-compulsory grounds for excluding a Sub-Contractor pursuant to Regulation 57 of the Regulations;
- the Customer may require the Contractor to replace or not appoint the Sub-Contractor and the Contractor shall comply with such a requirement.
- 19.9 The Customer reserves the right to undertake due diligence in relation to any Sub-Contractor in accordance with clause 19.8.

## **20 THE CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999**

- 20.1 This Contract is not intended to create any benefit, claim or rights of any kind whatsoever enforceable by any person not a party to the Contract.

## **21 WAIVER**

- 21.1 No delay by or omission by either Party in exercising any right, power, privilege, or remedy under this Contract shall operate to impair such right, power, privilege or remedy or be construed as a waiver thereof. Any single or partial exercise of any such right, power, privilege or remedy shall not preclude any other or further exercise thereof or the exercise of any other right, power, privilege, or remedy.

## **22 FORCE MAJEURE**

- 22.1 If either Party is prevented or delayed in the performance of any of its obligations under the Contract by Force Majeure, that Party shall immediately serve notice in writing on the other Party specifying the nature and extent of the circumstances giving rise to Force Majeure, and shall subject to service of such notice and to clause 22.3 have no liability in respect of the performance of such of its obligations as are prevented by the Force Majeure events during the continuation of such events, and for such time after they cease as is necessary for that Party, using all reasonable endeavours, to recommence its affected operations in order for it to perform its obligations.
- 22.2 If either Party is prevented from performance of its obligations for a continuous period in excess of 3 months, the other Party may terminate the Contract forthwith on service of written notice upon the Party so prevented, in which case neither Party shall have any liability to the other except that rights and liabilities which accrued prior to such termination shall continue to subsist.
- 22.3 The Party claiming to be prevented or delayed in the performance of any of its obligations under the Contract by reason of Force Majeure shall use reasonable endeavours to end Force Majeure or to find solutions by which the Contract may be performed despite the Force Majeure.

## **23 NOTICES**

- 23.1 Any notice, demand or communication in connection with the Contract shall be in writing and may be delivered by hand, pre-paid first class post or (where being sent to an address in a different country to where posted) airmail, or e-mail, addressed to the recipient at its registered office or its address (or such other address, or e-mail address as may be notified in writing from time to time).
- 23.2 The notice, demand or communication shall be deemed to have been duly served:
- 23.2.1 if delivered by hand, when left at the proper address for service;

- 23.2.2 if given or made by prepaid first-class post 48 hours after being posted or in the case of airmail 14 days after being posted;
- 23.2.3 if made by e-mail, at the time of transmission, dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message or, in the case of transmission by e-mail where the time of transmission is not between 9.00 am and 5.00 pm, service shall be deemed to occur at 9.00 am on the next following Working Day (such times being local time at the address of the recipient).

## **24 DISPUTE RESOLUTION**

- 24.1 The Parties shall use all reasonable endeavours to negotiate in good faith and settle amicably any dispute that arises during the continuance of this Contract. This shall include escalating the dispute to a more senior level within both the Customer and the Contractor with a view to reaching a settlement.
- 24.2 Any dispute not capable of resolution by the parties in accordance with the terms of clause 24 shall be settled as far as possible by mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure.
- 24.3 No party may commence any court proceedings/arbitration in relation to any dispute arising out of this Contract until they have attempted to settle it by mediation, but any such mediation may be terminated by either party at any time of such party wishing to commence court proceedings/arbitration.

## **25 DISCRIMINATION**

- 25.1 The Contractor shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation or otherwise) in employment.
- 25.2 The Contractor shall take all reasonable steps to secure the observance of clause 25.1 by all servants, employees or Agents of the Contractor and all Contractors and Sub-Contractors employed in the execution of the Contract.

## **26 LAW AND JURISDICTION**

- 26.1 This Contract shall be governed by and interpreted in accordance with English Law and the parties submit to the jurisdiction of the English courts.

## **27 NOT USED**

## **28 PAYMENTS AND INVOICING**

- 28.1 Except where otherwise expressly stated in the Contract the only payments to be paid by the Customer for the performance by the Contractor of its obligations under the Contract shall be the Charges which shall be inclusive of all costs and expenses incurred by the Contractor in the performance of its obligations.
- 28.2 In consideration for the provision of the Services the Customer shall pay the Charges in accordance with the Schedule 2 subject to the receipt of correct invoices pursuant to Clause 28.10 being issued by the Contractor.
- 28.3 The Contractor shall submit the first invoice no later than three weeks prior to the Cohort Commencement Date and (where applicable if Payment Method 2 selected) subsequent invoices shall be submitted by the [insert date on award] of the month following the month in respect to which the invoice relates.
- 28.4 The Customer shall accept and process for payment an electronic invoice or paper copy invoice submitted for payment by the Contractor where the invoice is undisputed and where it complies with the standard on electronic invoicing. For the purposes of this paragraph, an electronic invoice complies with the standard on electronic invoicing where it complies with the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870.
- 28.5 Except where otherwise expressly stated in Schedule 2 the Contractor shall not be entitled to increase the Charges or any rates identified in Schedule 2 throughout the Contract Period.

- 28.6 The Charges are exclusive of Value Added Tax ("VAT") and all other taxes, duties and levies, but shall be inclusive of all charges, costs and expenses of whatever nature the Contractor incurs in providing the Services, and performing all other obligations of the Contractor, under the Contract (unless expressly stated otherwise in the Contract). The Contractor should notify the Customer of any direct VAT charges for the delivery of the Contract. The Contractor shall identify VAT and other applicable taxes, duties and levies separately on invoices, including identifying the elements of the Charges that are subject to VAT at the standard rate or at any other rates and that are zero rated or exempt from VAT.
- 28.7 Payment of the Charges by the Customer shall be without prejudice to any rights the Customer may have by reason of any Services, or any part thereof, failing to comply with any provision of the Contract and any breach by the Contractor of the Contract shall not be deemed to be accepted or waived by the Customer by reason of such payment.
- 28.8 The Customer may deduct from or offset against any monies due or becoming due to the Contractor under the Contract (including the Charges) any monies due from the Contractor under the Contract or otherwise under any other agreement or account whatsoever.
- 28.9 Invoices shall be submitted electronically by email to [insert where on award] or by post to [insert where on award] by the relevant date as specified in Clause 228.3.
- 28.10 An invoice is a Correctly Submitted Invoice if it is legible and includes:
- 28.10.1 the date of the invoice;
  - 28.10.2 Contractor's full name and address;
  - 28.10.3 Contract reference number;
  - 28.10.4 Purchase Order number (if applicable)
  - 28.10.5 the charging period;
  - 28.10.6 a detailed breakdown of the appropriate Charges including milestones achieved (if applicable)
  - 28.10.7 days and times worked (if applicable);
  - 28.10.8 Service Credits (if applicable); and
  - 28.10.9 VAT if applicable.
- 28.11 The Customer shall not pay an invoice which is not a Correctly Submitted Invoice.
- 28.12 The Customer intends to pay Correctly Submitted Invoice within 30 days of receipt, except in the circumstances set out in Schedule 2 Part 1 Pricing. Correctly Submitted Invoices not paid within 30 days are subject to interest at the rate of 2% above the base rate from time to time of Barclays Bank. This Clause 228.12 is a substantial remedy for late payment of any sum payable under the Contract in accordance with section 8(2) Late Payment of Commercial Debts (Interest) Act 1998.
- 28.13 The Customer shall not be responsible for any delay in payment caused by receipt of invoices which are not a Correctly Submitted Invoice and shall, within 10 Working Days of receipt, return to the Contractor for correction invoices that are not Correctly Submitted Invoices together with an explanation of the need for correction.
- 28.14 At the end of the Contract Period the Contractor shall promptly draw-up a final invoice which shall cover all Services provided up to the end of the Contract Period which have not already been invoiced to the Customer. The final invoice shall be submitted not later than 30 days after the end of the Contract Period.
- 28.15 The Customer shall not be obliged to pay the final invoice until the Contractor has carried out all of the Services.
- 28.16 If the Customer disputes any amount specified in a Correctly Submitted Invoice, it shall pay such amount of the invoice as is not in dispute and within 10 Working Days notify the Contractor of the reasons for disputing the invoice. The Customer may withhold the disputed amount pending resolution of the dispute.

28.17 The Parties shall use all reasonable endeavours to resolve any dispute over invoices within 10 Business Days of the dispute being raised, after which period either Party may refer the matter for resolution in accordance with Clause 24.

**AS WITNESS** the hands of the parties:

**Authorised to sign for and on behalf of [The Contractor]**

Signature: \_\_\_\_\_

Name in CAPITALS: \_\_\_\_\_

Witness signature: \_\_\_\_\_

Position in Organisation: \_\_\_\_\_

Address in full: \_\_\_\_\_

Date: \_\_\_\_\_

**Authorised to sign for and on behalf of [The Customer]**

Signature: \_\_\_\_\_

Name in CAPITALS: \_\_\_\_\_

Witness signature: \_\_\_\_\_

Position in Organisation: \_\_\_\_\_

Address in full: \_\_\_\_\_

Date: \_\_\_\_\_

**SCHEDULE 1: PART 1 – THE SERVICES**

[Insert Service Specification]



**SCHEDULE 1: PART 2 – THE CONTRACTOR’S SOLUTION**

[Insert the Contractor’s Delivery Solution]

## **SCHEDULE 2: PART 1 – PRICING**

### **1 DEFINITIONS**

1.1 In this Schedule, the following terms shall have the meanings set out below:

<b>“Charges”</b>	means the charges payable by the Customer for the performance of the Services by the Contractor.
<b>“Paragraph”</b>	means a paragraph of this Schedule 2: Part 1 unless expressly indicated to the contrary.
<b>“Per Participant Price”</b>	means the price set per Participant for each NPQ and NPQH Additional Support Offer.
<b>“Total Contract Value”</b>	means the total value of the Services to be delivered under this Call-Off Contract. The Total Contract Value is stated in the table at Annex 2.

### **2 GENERAL**

- 2.1 The Customer shall pay the Contractor the Charges as set out in Annex 2 for delivery of the Services, subject to satisfying the Customer's payment conditions for the delivery of Services.
- 2.2 The Charges are inclusive of all expenses incurred by the Contractor in relation to its provision of the Services and unless agreed otherwise in writing between the Contractor and the Customer, the Contractor shall not be entitled to claim any expenses in addition to the Charges.
- 2.3 Indexation shall not apply to the Charges.
- 2.4 At any time during the Contract Period (including, for the avoidance of doubt, at any time before and/or after payment by the Customer to the Contractor) the Customer shall be entitled to validate any claim for payment made by the Contractor. At all times the Contractor shall provide all necessary assistance as requested by the Customer (including without limitation, procuring the consent of Participants) to enable the Customer to validate any claim for payment made by the Contractor.
- 2.5 The Customer shall pay the Contractor the Charges for costs relating to the Services and satisfactorily meeting the KPIs, Service Levels and Performance Management, as set out in Part 2 of this Schedule 2 (Pricing and Performance Measures).

### **3 CHARGES TO PARTICIPANTS**

- 3.1 Neither the Contractor nor its Agents or Sub-Contractors shall levy any charge on Participants except as expressly permitted in advance and in writing by the Customer (at its sole discretion).

### **4 RECOVERY OF SUMS DUE**

- 4.1 Whenever under the Contract any sum of money is recoverable from the Contractor, or payable by the Contractor (including any sum which the Contractor is liable to pay to the Customer in respect of any breach of the Contract), the Customer may set off the sum from any sum due, or which at any later time may become any other agreement or contract with the Customer or the Crown.
- 4.2 Any overpayment by either Party, whether of the Charges or of VAT or otherwise shall be the sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- 4.3 The Contractor shall make any payments due to the Customer without any deductions whether by way of offset, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by Customer to the Contractor.
- 4.4 All payments due shall be made within 28 days once agreed between the parties that a sum of money is recoverable, unless otherwise specified in the Contract, in cleared funds, to such bank or building society as the recipient Party may from time to time direct.

## **5 DISPUTED CLAIMS**

- 5.1 Payment by the Customer of all or any part of any Charges rendered or other claim for payment by the Contractor shall not signify approval. The Customer reserves the right to verify Charges after the date of payment and subsequently to recover any sums, which have been overpaid.
- 5.2 If any part of a claim rendered by the Contractor is disputed or subject to question by the Customer either before or after payment then, upon request, the Contractor shall provide such further documentary and oral evidence as the Customer may reasonably require to verify its liability to pay the amount which is disputed or subject to question and the Contractor shall promptly provide such evidence in a form satisfactory to the Customer.
- 5.3 If any part of a claim rendered by the Contractor is disputed or subject to question by the Customer, the Customer shall not withhold payment of the remainder.
- 5.4 If any fee rendered by the Contractor is paid but any part of it is disputed or subject to question by the Customer and such part is subsequently agreed or determined not to have been properly payable then the Contractor shall immediately repay such part to the Customer.
- 5.5 The Customer shall be entitled to deduct from sums due to the Contractor by way of offset any amounts owed to it or which are in dispute or subject to question either in respect of the fee for which payment is being made or any previous fee.

## **6 ADJUSTMENT OF THE CHARGES**

- 6.1 The Charges may only be varied by means of a Contract Change Notice, and in accordance with the provisions of this Contract.

## ANNEX 1 TO SCHEDULE 2: PART 1 – PAYMENT PROCESS

*Drafting note: The Customer has two methods of payment. Only one will be specified in the Call Off Order:*

### 1 GENERAL

- 1.1 The Contractor shall provide the Services in accordance with one of the Payment Methods set out below which shall be specified in the Call Off Order.
- 1.2 To calculate the Call Off Contract Value (as stated in Annex 2), the Per Participant Prices (set out in table 1 below) will be multiplied by the number of Participants and the totals added together where appropriate.

### 2 PAYMENT METHOD 1

- 2.1 The Charges payable to the Contractor by the Customer shall consist of the total sum of each Per Participant Price multiplied by the number of Participants undertaking the respective NPQ or NPQH Additional Support Offer subject to and in accordance with the provisions of this Contract. The Charges will be paid in full and prior to Service Commencement in accordance with paragraphs 2.3 and 2.4.

#### Per Participant Price

- 2.2 The Contractor shall provide the Services in accordance with the Price per Participant list in Table 1 below:

Table 1 - Per Participant Price	
Qualification/Support Offer	Per Participant Price
NPQ Leading Participant Development (NPQLTD)	To be inserted at Call Off Award
NPQ for Leading Teaching (NPQLT)	To be inserted at Call Off Award
NPQ for Leading Behaviour and Culture (NPQLBC)	To be inserted at Call Off Award
NPQ for Senior Leadership (NPQSL)	To be inserted at Call Off Award
NPQ for Headship (NPQH)	To be inserted at Call Off Award
NPQ for Executive Leadership (NPQEL)	To be inserted at Call Off Award
NPQH Additional Support Offer	To be inserted at Call Off Award

- 2.3 The Contractor invoices the total Charges payable, as set out in Annex 2 of this Schedule, at least 3 weeks prior to the Cohort Commencement Date. The Customer pays the Contractor no later than 1 week prior to the Cohort Commencement Date.
- 2.4 If the Customer does not pay the Contractor at least 1 week prior to the Cohort Commencement Date, the Participant(s) will not be able to commence their qualification(s) or NPQH Additional Support Offer, unless otherwise agreed by the Contractor.
- 2.5 If a Participant withdraws from their qualification or NPQH Additional Support Offer, the Customer will not be able to claim back any of the Per Participant Price paid. If a Participant defers completing their qualification or NPQH Additional Support Offer due to:
- 2.5.1 going on maternity leave; or
  - 2.5.2 taking an extended period of absence such as for a sabbatical; or
  - 2.5.3 a change in their contracted employment hours with the Customer; or
  - 2.5.4 illness

the Contractor allows the Participant to complete their qualification or NPQH Additional Support Offer where reasonably practicable and does not levy any additional charges on the Customer or Participant(s) concerned. In the event the Contractor cannot accommodate the Participant completing their qualification or NPQH Additional Support Offer, the Contractor must make reasonable endeavours (and assist the Customer) before the contract has ended to ensure the Participant transferred to another Framework Contractor who will be in a position to allow the Participant complete their training.

### 3 PAYMENT METHOD 2

3.1 The Charges payable to the Contractor by the Customer shall consist of the total sum of each Per Participant Price or price per NPQH Additional Support Offer multiplied by the number of Participants undertaking the respective NPQ or NPQH Additional Support Offer, subject to and in accordance with the provisions of this Contract.

3.2 The Customer will pay in milestone payments in the following way:

3.2.1 40% of the Per Participant Price will be paid at least 1 week prior to the Service Commencement date for the Participant; and

3.2.2 The remaining 60% of the Per Participant Price will be paid in milestone payments as specified for each individual qualification and NPQH Additional Support Offer in Tables 2, 3 and 4.

#### Per Participant Price

3.3 The Contractor shall provide the Services in accordance with the Price per Participant list in Table 1 below:

Table 1 - Per Participant Price	
Qualification/Support Offer	Per Participant Price
NPQ Leading Participant Development (NPQLTD)	£ [Cannot exceed £902 (ex VAT)]
NPQ for Leading Teaching (NPQLT)	£ [Cannot exceed £902 (ex VAT)]
NPQ for Leading Behaviour and Culture (NPQLBC)	£ [Cannot exceed £902 (ex VAT)]
NPQ for Senior Leadership (NPQSL)	£ [Cannot exceed £1149 (ex VAT)]
NPQ for Headship (NPQH)	£ [Cannot exceed £1985 (ex VAT)]
NPQ for Executive Leadership (NPQEL)	£ [Cannot exceed £4099 (ex VAT)]
NPQH Additional Support Offer	£ [Cannot exceed £800 (ex VAT)]

#### 40% of the Per Participant Price

3.4 The Contractor must invoice 40% of the price payable for each Participant, at least 3 weeks prior to the Cohort Commencement Date of each Participant. The Customer pays the Contractor no later than 1 week prior to the Cohort Commencement Date of each Participant. The 40% of the price payable for each Participant prior to the Cohort Commencement Date is non-refundable and cannot be recovered by the Customer if a Participant withdraws from their qualification or NPQH Additional Support Offer.

3.5 If the Customer does not pay the Contractor 40% of the Per Participant Price at least 1 week prior to the Cohort Commencement Date, the Participant will not be able to start their respective qualification or NPQH Additional Support Offer, unless otherwise agreed by the Contractor.

- 3.6 If the Call Off Order covers multiple Cohorts and a Participant withdraws prior to their Cohort Commencement Date and payment has already been made, the Contractor is permitted to replace them with another Participant who can start their qualification or NPQH Additional Support Offer at the next Cohort Commencement Date covered by the Call Off Order.
- 3.7 **60% of the Per Participant Price**
- 3.8 The remaining 60% of the Per Participant Price will be paid in milestone payments, subject to the terms of the Contract. The Customer shall pay the Contractor the applicable milestone payment for each milestone review point that is reached in accordance with the requirements of the Contract. The applicable milestone payment shall be ascertained by reference to Table 2, Table 3 and Table 4 below.
- 3.9 In order to trigger payment for Milestone 1, and where they apply, Milestone 2 and Milestone 3, the Participant must be enrolled on the qualification or support offer until the milestone review point specified in Table 2 for Specialist NPQs, Table 3 for Leadership NPQs and Table 4 NPQH Additional Support Offer.

**Deferrals and withdrawals**

- 3.10 If a Participant withdraws from their NPQ or NPQH Additional Support Offer in between two milestone review points or before the first milestone review point, a milestone payment will be paid for the full period between the two milestone review points or between the period the 40% of the Per Participant Price was paid and the first milestone review point. No further milestone payments will be made past that point as the Contractor is no longer delivering to that Participant. For demonstration purposes, if the Participant dropped off between Milestone 1 and Milestone 2, a payment would be made for Milestone 2, but no more payments will be made past Milestone 2. For the avoidance of doubt, the same will apply to any 2 consecutive milestone review points.
- 3.11 If a Participant defers completing their qualification or NPQH Additional Support Offer due to:
  - 3.11.1 going on maternity leave; or
  - 3.11.2 taking an extended period of absence such as for a sabbatical; or
  - 3.11.3 a change in their contracted employment hours with the Customer; or
  - 3.11.4 illness
 between retention points, a milestone payment will be paid if the deferral has occurred within one calendar month of the next milestone point.
- 3.12 If a Participant defers more than one calendar month before the next milestone review point, a milestone payment will not be paid.
- 3.13 If a Participant wishes to recommence their programme and can complete their qualification or NPQH Additional Support Offer before the call off contract expiry date, agreement must be reached between the Parties on a future payment Schedule via Variation. In all other cases, where a Participant wishes to recommence their qualification or support offer the Contractor will need to agree a revised Schedule for remaining milestone payments with the Customer, under a separate Call Off Contract. In the event the Contractor cannot accommodate the Participant completing their qualification or NPQH Additional Support Offer, the Contractor must make reasonable endeavours (and assist the Customer) before the contract has ended to ensure the Participant is transferred to another Framework Contractor who will be in a position to allow the Participant to complete their qualification or support offer.

**Milestone Payments**

- 3.14 Payment will be made based upon the Participant reaching each milestone review point as set out in Tables 2, 3 and 4 during the contract.

**Table 2 – Milestone Payments for Leading Teaching NPQ, Teaching Development NPQ and Behaviour and Culture NPQ**

	Cohort 1	Cohort 2
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	Milestone Review Point – Payment Made	Milestone Payment	Milestone Review Point – Payment Made	Milestone Payment
<b>Milestone Payment 1</b>	25 March 20xx	30% of Per Participant Price[£ to be inserted at call-off award]	25 September 20xx	30% of Per Participant Price[£ to be inserted at call-off award]
<b>Milestone Payment 2</b>	25 August 20xx	30% of Per Participant Price[£ to be inserted at call-off award]	25 February 20xx	30% of Per Participant Price[£ to be inserted at call-off award]

**Table 3 – Milestone Payments for NPQ Senior Leader, NPQ Headteacher and NPQ Executive Leader**

	Cohort 1		Cohort 2	
	Milestone Review Point – Payment Made	Milestone Payment	Milestone Review Point – Payment Made	Milestone Payment
<b>Milestone Payment 1</b>	25 February 20xx	20% of Per Participant Price[£ to be inserted at call-off award]	25 July 20xx	20% of Per Participant Price[£ to be inserted at call-off award]
<b>Milestone Payment 2</b>	25 August 20xx	20% of Per Participant Price[£ to be inserted at call-off award]	25 January 20xx	20% of Per Participant Price[£ to be inserted at call-off award]
<b>Milestone Payment 3</b>	25 March 20xx	20% of Per Participant Price[£ to be inserted at call-off award]	25 August 20xx	20% of Per Participant Price[£ to be inserted at call-off award]

**Table 4 Milestone Payments and Payment Schedule for NPQH Additional Support Offer**

Output	Milestone review point – Payment Made	Milestone Payment
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<b>Milestone Payment 1</b>	One third of delivery complete	20% of Per Participant Price[£ to be inserted at call-off award]
<b>Milestone Payment 2</b>	Two thirds of delivery complete	20% of Per Participant Price[£ to be inserted at call-off award]
<b>Milestone Payment 3</b>	Support offer completed	20% of Per Participant Price[£ to be inserted at call-off award]

#### 4 PRICING OF VARIATIONS

- 4.1 The provisions of this paragraph 4 shall apply to the pricing of any Variation (or proposed Variation) and the calculation of any change to the Charges consequent upon a Variation (or proposed Variation).
- 4.2 The Parties acknowledge that a Variation or proposed Variation may have an impact on the Charges in the following way:
- 4.2.1 One-off cost, in which case paragraph 4.4 shall apply;
- 4.3 Where a Variation is requested by either Party under the Change Control Procedure then, subject to the terms of the Change Control Procedure, the Contractor shall at its own cost prepare, populate and submit for the Customer's approval a Pricing Schedule demonstrating the impact of the proposed Variation which shall:
- 4.3.1 Include full disclosure of any assumptions underlying such a quotation. The Customer reserves the right to request further clarity around these assumptions and the underlying calculations until it is satisfied as to their validity.
- 4.4 Where paragraph 4.2.1 applies:
- 4.4.1 The Contractor shall be paid in full upon completion, or by an agreed Schedule of milestone payments (both payment options subject to meeting specified acceptance criteria agreed at the outset).
- 4.4.2 The Customer shall issue a separate purchase order and the Contractor shall raise a separate invoice or credit note in respect of the one-off cost.
- 4.5 Following implementation of a Variation, the Customer shall make any necessary consequential changes and/or updates to the relevant tables of this Schedule 2: Part 1 or add any new additional tables to this Schedule 2: Part 1.



ANNEX 2 TO SCHEDULE 2: PART 1 – CONTRACT PRICING INFORMATION

1.1 The Contractor shall provide the Services in accordance with the Pricing Schedule as set out below:

Qualification	Price per Participant	Number of Participants included in Call Off Order	Total Price
NPQ for Leading Teaching	£ [to be inserted at Call Off award]	x	£x
NPQ for Leading Behaviour and Culture	£ [to be inserted at Call Off award]	x	£x
NPQ for Leading Participant Development	£ [to be inserted at Call Off award]	x	£x
NPQ for Senior Leadership	£ [to be inserted at Call Off award]	x	£x
NPQ for Headship	£ [to be inserted at Call Off award]	x	£x
NPQ for Executive Leadership	£ [to be inserted at Call Off award]	x	£x
NPQH Additional Support Offer	£ [to be inserted at Call Off award]	x	£x
Total Call Off Contract Value		x	£x

## SCHEDULE 2: PART 2 – PERFORMANCE

In this section the words below have the following meaning:

<b>“Improvement Plan”</b>	means a plan for improvement that the Customer can request from the Contractor within ten (10) Working Days in the event of failure.
<b>“KPI”</b>	means the Key Performance Indicators as set out in Annex A of this Schedule.
<b>“Performance Management”</b>	means how the Customer will measure the Contractor’s performance and progress against the Service Specification (Schedule 1: Part 1), the Contractors Solution (Schedule 1: Part 2), the Implementation Plan (Schedule 7), and Pricing (Annex 1 of Schedule 2: Part 1).
<b>“Performance Manager”</b>	means the person the Contractor will appoint to ensure that the Contract is delivered as specified in the Contract and that Service Levels, Minimum Targets and KPIs are achieved.
<b>“Reporting Period”</b>	means the reporting period that occurs every calendar month from 25th of each month to the 24th of the following month and will commence on the Contract Commencement Date.
<b>“Service Credits”</b>	means the service credits as set out in table 3 of this Schedule.
<b>“Service Level”</b>	means the Service Levels as set out in Table 1 of this Schedule by which the Contractor’s performance will be measured.

### 1 SERVICE LEVELS AND KPIS

- 1.1 This section sets out the Service Levels and Key Performance Indicators (KPIs) against which the Parties shall measure the Contractor’s performance.
- 1.2 The objective of the Service Levels and KPIs is to:
  - 1.2.1 ensure that the Services are of a consistently high quality and meet the requirements of the Customer;
  - 1.2.2 provide a mechanism whereby the Customer can attain meaningful recognition of inconvenience and/or loss resulting from the Contractor’s failure to deliver the Services; and
  - 1.2.3 incentivise the Contractor to meet the performance standards and to remedy any failure to meet the required standards expeditiously.

#### **Service Levels**

- 1.3 The Contractor shall ensure compliance with the Service Levels listed in Table 1 (Service Levels).
- 1.4 The Contractor and the Customer shall monitor the Contractor’s performance against each of the Service Levels listed in Table 1 (Service Levels).
- 1.5 The Contractor shall complete and return the **[insert period of reporting]** the data outlining performance against the Service Levels to date and confirm whether they have been achieved.
- 1.6 If the Contractor fails to meet any one Service Level in any Reporting Period, the Customer reserves the right to take action in line with paragraphs 2.10 to 2.14 (Consequence of Service Failure).

1.7 Service Levels are set out in Table 1 below:

Table 1 Service Levels			
Subject	Ref	Service Level	Level to be achieved
Performance/management Meetings	[insert at Call Off Stage]	[insert at Call Off Stage]	[insert at Call Off Stage]
Administration / Communication	[insert at Call Off Stage]	[insert at Call Off Stage]	[insert at Call Off Stage]
Management Information	[insert at Call Off Stage]	[insert at Call Off Stage]	[insert at Call Off Stage]
Finance	F1	Ensure that valid invoices are submitted to the Customer by the [insert date] of the month for the relevant Reporting Period.	100% of invoices to be submitted by [insert date] for the relevant reporting period
	F2	Ensure that all financial discrepancies identified by the Customer are 100% accurately reconciled ahead of the next invoice period and any variances to invoicing values offset.	100% of financial discrepancies accurately reconciled and invoicing values offset by the next reporting period deadline following identification or notification of the discrepancy

## KPIs

- 1.8 The Parties shall monitor the Contractor's performance against each of the KPIs listed in Annex A of this Schedule (KPIs) at the agreed intervals.
- 1.9 If at the agreed reporting milestone, the Contractor:
- 1.9.1 achieves a KPI, performance measures will be achieved, and no further action will be required;
- 1.9.2 does not achieve a KPI, it will be declared a 'Service Failure' and the Customer reserves the right to take action in line with paragraphs 2.10 to 2.14 (Consequence of Service Failure) Paragraph of this Schedule.
- 1.10 In line with the cross-government transparency agenda the Customer reserves the right to make the Contractors performance against the KPIs in Annex A available in the public domain, which may include publishing them on gov.uk and including them in any related transparency reporting.

## 2 PERFORMANCE MANAGEMENT

- 2.1 The Customer shall monitor the Contractor's performance and progress against the Service Specification (Schedule 1: Part 1), the Contractor's Solution (Schedule 1: Part 2), the Implementation Plan (Schedule 7), and Pricing (Annex 1 of Schedule 2: Part 1) on [insert time period] and during performance review meetings. The Contractor shall cooperate with the Customer in this regard and provide any information and evidence reasonably required by the Customer within five (5) Working Days of a request being received.
- 2.2 The Contractor shall appoint a named Performance Manager who will cooperate with the Customer to ensure that the Services are delivered as specified in the Contract and that Service Levels,

Minimum Targets and KPIs are achieved.

- 2.3 Performance reviews shall be documented. The Contractor shall provide any information and data requested by the Customer to facilitate the reviews and arrange, where necessary, access to any of Contractor Premises or delivery locations, including those operated by Sub-Contractors.
- 2.4 The Customer may instruct the Contractor to take appropriate remedial action where the Customer reasonably considers that the Implementation Plan and/or a Performance Improvement Plan is not being complied with, and the Contractor shall take such remedial action.
- 2.5 If there is a failure to achieve a Service Level, Minimum Target or KPI, the Contractor shall use all reasonable endeavours to immediately minimise the impact of any failure and to prevent such a failure from recurring.
- 2.6 The Contractor shall ensure that all systems and processes used for the monitoring and recording of performance are robust.

### **Contractor Management Information (MI) Requirements**

- 2.7 The Contractor shall supply Management Information and Data relevant to the delivery of the Services to the Customer, using formats and to timescales as detailed in the Specification or as are otherwise notified to the Contractor by the Customer.
- 2.8 In addition to the provision of Management Information, the Contractor responds to and provides additional information (at no additional charge) relating to the provision of the Services as required by the Customer from time to time.
- 2.9 The Customer shall be entitled to amend the reporting frequency and format in respect of any or all Management Information or waive the requirement for any aspect of the Management Information to be reported upon by giving the Contractor not less than one (1) Months' notice in writing.

### **Consequence of Service Failure**

- 2.10 Where the Service Failure is as result the Contractor failing to meet any one Service Level by the dates set out in Table 1 of Schedule 2 Part 2 for two consecutive Reporting Periods, and the Contractor has not addressed and resolved the Service Level failure within the time agreed between the Contractor and the Customer, the Customer will apply a Service Credit.
- 2.11 Without prejudice to any other rights or remedies arising under this Contract, including under Clause 10 (Termination) for material breach, if the Contractor incurs a Service Failure in any Relevant Period, the Contractor acknowledges and agrees that the Customer shall have the right to exercise (in its absolute and sole discretion) all or any of the following remedial actions:
  - 2.11.1 The Customer shall be entitled to require the Contractor, and the Contractor agrees to prepare and provide to the Customer, a plan for improvement (an "Improvement Plan") within ten (10) Working Days of a written request by the Customer for such Improvement Plan. Such Improvement Plan shall be subject to the Customer's prior approval and the Contractor will be required to implement any approved Improvement Plan, as soon as reasonably practicable;
  - 2.11.2 The Customer shall be entitled to require the Contractor, and the Contractor agrees to attend, within a reasonable time one (1) or more meetings at the request of the Customer in order to resolve the issues raised by the Customer in its notice to the Contractor requesting such meetings;
  - 2.11.3 The Customer shall be entitled to serve a notice of improvement ("Improvement Notice") on the Contractor and the Contractor shall implement such requirements for improvement as set out in the Improvement Notice;

- 2.11.4 The Customer shall be entitled to issue interim performance measures and/or milestones in order to monitor the Contractors implementation of any Improvement Plan or Improvement Notice;
- 2.11.5 If not already applied to the Service Failure prior to this point, apply a Service Credit.
- 2.12 In the event that the Customer has, in its absolute and sole discretion, invoked one or more of the remedies set in paragraph 2.11 and 2.12 above the Customer may suspend the Contractor from the Framework Agreement pending the Customer being satisfied that the Contractor has;
- 2.12.1 implemented the requirements for improvement set out in the Improvement Notice; and/or
- 2.12.2 implemented an Improvement Plan approved by the Customer; and/or
- 2.12.3 met the interim performance measures and/or milestones.
- 2.13 Whether or not the Customer has exercised its rights under pursuant to paragraph 2.13 in the event that the Customer has, in its absolute and sole discretions invoked one or more of the remedies set out in paragraph 2.12 above and the Contractor either;
- 2.13.1 fails to implement such requirements for improvement as set out in the Improvement Notice; and/or
- 2.13.2 fails to implement an Improvement Plan approved by the Customer; and/or
- 2.13.3 fails to meet the interim performance measures and/or milestones,
- then (without prejudice to any other rights and remedies of termination provided for in this Contract), the Customer shall be entitled to terminate this Contract and with immediate effect by notice in writing in accordance with clause 10.4.1. Termination of the Contract will be considered a Material Default and the Customer may at its absolute discretion terminate the Framework Agreement as per paragraph 7.4 of the Framework Agreement.

### 3 SERVICE CREDITS

- 3.1 Accrual of Service Credits shall entitle the Customer to a reduction in the Charges.
- 3.2 Financial consequences of Service Credits will be calculated against the Total Call Off Contract Value as stated in Annex 2 of Part 1 of Schedule 2. The Contractor shall off-set the value of any Service Credits against the Charges for the Contract up to a maximum of 5% of the Total Contract Value.
- 3.3 The Contractor confirms that it has taken Service Credits and the potential financial consequences into account in calculating the Charges. Both Parties agree that the Service Credits are a reasonable method of adjusting the Charges to reflect failure to meet minimum performance standards.
- 3.4 The financial consequences that will be applied in the event of a Service Credit are broken down in Table 3 below.

#### 3.5 Table 3: Service Credits

Service Credits accrued:	Financial consequence equivalent to:
1 Service Credit	1% of Call Off Contract Value
2 Service Credits	2% of Call Off Contract Value
3 Service Credits	3% of Call Off Contract Value
4 Service Credits	4% of Call Off Contract Value
5 or more Service Credits	5% of Call Off Contract Value

ANNEX A TO SCHEDULE 2: PART 2 – KEY PERFORMANCE INDICATORS

- I. The KPIs in Table A set out the measures the Customer will use to monitor the Contractor's performance. The KPIs will be applied to each Call Off Contract, with the Cohort specific targets and milestones included in the Call Off Contract in Part 2 of Schedule 2.
- II. The Customer reserves the right to tailor, amend or add additional KPIs to those stated in Table A for Call Off Contracts to ensure they reflect the needs and requirements of the specific Cohort.

Table A – Key Performance Indicators				
Ref	Type	Measure	Monitoring Method	Target and Milestone
1	[insert at Call Off Stage]	[insert at Call Off Stage]	[insert at Call Off Stage]	[insert at Call Off Stage]
2	[insert at Call Off Stage]	[insert at Call Off Stage]	[insert at Call Off Stage]	[insert at Call Off Stage]
3	Retention	Number of Participants who commence NPQ during the Call Off Contract, remain engaged until to end of the programme.	Monthly monitoring during the Call Off Contract.	[insert at Call Off Stage]
4	Satisfaction	The numbers of Participants who commence an NPQ during the Call Off Contract that rate their training as good or above at the end of the programme.	Satisfaction will be measured through a survey completed by Participants at the end of each year of the programme.	A minimum of 80% of the Participants who commence NPQ the Call Off Contract who rate the training good or above at the end of the programme.

## SCHEDULE 3: ADDITIONAL CLAUSES

### 1. Customer Security Standards

“BPSS”

“Baseline Personnel Security Standard”

a level of security clearance described as pre-employment checks in the National Vetting Policy. Further information can be found at:

<https://www.gov.uk/government/publications/government-baseline-personnel-security-standard>

“CCSC”

“Certified Cyber Security Consultancy”

is NCSC's approach to assessing the services provided by consultancies and confirming that they meet NCSC's standards. This approach builds on the strength of CLAS and certifies the competence of Contractors to deliver a wide and complex range of cyber security consultancy services to both the public and private sectors. See website:

<https://www.ncsc.gov.uk/scheme/certified-cyber-consultancy>

“CCP”

“Certified Professional”

is a NCSC scheme in consultation with government, industry and academia to address the growing need for specialists in the cyber security profession and are building a community of recognised professionals in both the UK public and private sectors. See website:

<https://www.ncsc.gov.uk/scheme/certified-professional>

“CC”

“Common Criteria”

the Common Criteria scheme provides assurance that a developer's claims about the security features of their product are valid and have been independently tested against recognised criteria.

“CPA”

“Commercial Product Assurance”

[formerly called “CESG Product Assurance”]

is an ‘information assurance scheme’ which evaluates commercial off the shelf (COTS) products and their developers against published security and development standards. These CPA certified products can be used by government, the wider public sector and industry. See website:

<https://www.ncsc.gov.uk/scheme/commercial-product-assurance-cpa>

“Cyber Essentials”

“Cyber Essentials Plus”

Cyber Essentials is the government backed, industry supported scheme to help organisations protect themselves against common cyber-attacks. Cyber Essentials and Cyber Essentials Plus are levels within the scheme.

There are a number of certification bodies that can be approached for further advice on the scheme; the link below points to one of these providers:

<https://www.iasme.co.uk/apply-for-self-assessment/>

"Data"	shall have the meanings given to those terms by the GDPR
"Data Controller"	
"Data Processor"	
"Personal Data"	
"Sensitive Personal Data"	
"Data Subject", "Process" and "Processing"	
"Customer's Data"	is any data or information owned or retained in order to meet Customer business objectives and tasks, including:
"Customer's Information"	<ul style="list-style-type: none"> <li>(a) any data, text, drawings, diagrams, images or sounds (together with any repository or database made up of any of these components) which are embodied in any electronic, magnetic, optical or tangible media, and which are: <ul style="list-style-type: none"> <li>(i) supplied to the Contractor by or on behalf of the Customer; or</li> <li>(ii) which the Contractor is required to generate, process, store or transmit pursuant to this Contract; or</li> </ul> </li> <li>(b) any Personal Data for which the Customer is the Data Controller;</li> </ul>
"Customer"	means [            ]
"Customer"	
"Customer Security Standards"	means the Customer's security policy or any standards, procedures, process or specification for security that the Contractor is required to deliver.
"Digital Marketplace / GCloud"	the Digital Marketplace is the online framework for identifying and procuring cloud technology and people for digital projects. Cloud services (e.g. web hosting or IT health checks) are on the G-Cloud framework.
"FIPS 140-2"	this is the Federal Information Processing Standard (FIPS) Publication 140-2, (FIPS PUB 140-2), entitled 'Security Requirements for Cryptographic Modules'. This document is the de facto security standard used for the accreditation of cryptographic modules.
General Data Protection Regulation (GDPR)	replaces Data Protection Act clauses for use in contracts that are live on or after 25 <sup>th</sup> May 2018.
"Good Industry Practice"	means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.
"Industry Good Practice"	



“Good Industry Standard”	
“Industry Good Standard”	means the implementation of products and solutions, and the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.
“GSC”	
“GSCP”	means the Government Security Classification Policy which establishes the rules for classifying HMG information. The policy is available at: <a href="https://www.gov.uk/government/publications/government-security-classifications">https://www.gov.uk/government/publications/government-security-classifications</a>
“HMG”	means Her Majesty’s Government
“ICT”	means Information and Communications Technology (ICT) is used as an extended synonym for information technology (IT), used to describe the bringing together of enabling technologies used to deliver the end-to-end solution
“ISO/IEC 27001” “ISO 27001”	is the International Standard for Information Security Management Systems Requirements
“ISO/IEC 27002” “ISO 27002”	is the International Standard describing the Code of Practice for Information Security Controls.
“ISO 22301”	is the International Standard describing for Business Continuity
“IT Security Health Check (ITSHC)”	
“IT Health Check (ITHC)”	means an assessment to identify risks and vulnerabilities in systems, applications and networks which may compromise the confidentiality, integrity or availability of information held on that IT system.
“Penetration Testing”	
“Need-to-Know”	the Need-to-Know principle is employed within HMG to limit the distribution of classified information to those people with a clear ‘need to know’ in order to carry out their duties.
“NCSC”	The National Cyber Security Centre (NCSC) formerly CESG is the UK government’s National Technical Customer for Information Assurance. The NCSC website is <a href="https://www.ncsc.gov.uk">https://www.ncsc.gov.uk</a>
“OFFICIAL”	the term ‘OFFICIAL’ is used to describe the baseline level of ‘security classification’ described within the Government Security Classification Policy (GSCP) which details the level of protection to be afforded to information by HMG, for all routine public sector business, operations and services.
“OFFICIAL-SENSITIVE”	the ‘OFFICIAL–SENSITIVE’ caveat is used to identify a limited subset of OFFICIAL information that could have more damaging consequences (for individuals, an organisation or government generally) if it were lost, stolen or published in the media, as described in the Government Security Classification Policy.

“Secure Sanitisation”

Secure sanitisation is the process of treating data held on storage media to reduce the likelihood of retrieval and reconstruction to an acceptable level. Some forms of sanitisation will allow you to re-use the media, while others are destructive in nature and render the media unusable. Secure sanitisation was previously covered by “Information Assurance Standard No. 5 - Secure Sanitisation” (“IS5”) issued by the former CESG. Guidance can now be found at:

<https://www.ncsc.gov.uk/guidance/secure-sanitisation-storage-media>

The disposal of physical documents and hardcopy materials advice can be found at:

<https://www.cpni.gov.uk/secure-destruction>

“Security and Information Risk Advisor”

“CCP SIRA”

“SIRA”

the Security and Information Risk Advisor (SIRA) is a role defined under the NCSC Certified Professional (CCP) Scheme. See also:

<https://www.ncsc.gov.uk/articles/about-certified-professional-scheme>

“SPF”

“HMG Security Policy Framework”

This is the definitive HMG Security Policy which describes the expectations of the Cabinet Secretary and Government’s Official Committee on Security on how HMG organisations and third parties handling HMG information and other assets will apply protective security to ensure HMG can function effectively, efficiently and securely.

<https://www.gov.uk/government/publications/security-policy-framework>

“Tailored Assurance”

[formerly called “CTAS”, or,

“CESG Tailored Assurance”]

is an ‘information assurance scheme’ which provides assurance for a wide range of HMG, MOD, Critical National Infrastructure (CNI) and public sector Customers procuring IT systems, products and services, ranging from simple software components to national infrastructure networks.

<https://www.ncsc.gov.uk/documents/ctas-principles-and-methodology>

- 1.1. The Contractor shall comply with Customer Security Standards for Contractors, which include but are not constrained to the following clauses;
- 1.2. As the Contractor will be handling information at OFFICIAL on behalf of the Customer, the requirements under Cabinet Office Procurement Policy Note – Use of Cyber Essentials Scheme certification - Action Note 09/14 25 May 2016, or any subsequent updated document, are mandated; that “contractors supplying products or services to HMG shall have achieved, and retain certification at the appropriate level, under the HMG Cyber Essentials Scheme”. The certification scope must be relevant to the services supplied to, or on behalf of, the Customer.
- 1.3. The Contractor shall be able to demonstrate conformance to, and show evidence of such conformance to the ISO/IEC 27001 (Information Security Management Systems Requirements) standard, including the application of controls from ISO/IEC 27002 (Code of Practice for Information Security Controls).
- 1.4. The Contractor shall have achieved, and be able to maintain, independent certification to ISO/IEC 27001 (Information Security Management Systems Requirements). The ISO/IEC 27001

certification must have a scope relevant to the services supplied to, or on behalf of, the Customer. The scope of certification and the statement of applicability must be acceptable, following review, to the Customer, including the application of controls from ISO/IEC 27002 (Code of Practice for Information Security Controls).

- 1.5. The Contractor shall follow the UK Government Security Classification Policy (GSCP) in respect of any Customer Data being handled in the course of providing this service and will handle this data in accordance with its security classification. (In the event where the Contractor has an existing Protective Marking Scheme then the Contractor may continue to use this but must map the HMG security classifications against it to ensure the correct controls are applied to the Customer Data).
- 1.6. The Contractor shall have in place and shall maintain procedural, personnel, physical and technical safeguards to protect Customer Data, including but not limited to: physical security controls; good industry standard policies and process; anti-virus and firewalls; security updates and up-to-date patching regimes for anti-virus solutions; operating systems, network devices, and application software, user access controls and the creation and retention of audit logs of system use.
- 1.7. Any data in transit using either physical or electronic transfer methods across public space or cyberspace, including mail and couriers systems, or third party provider networks must be protected via encryption which has been certified to FIPS 140-2 standard or a similar method approved by the Customer prior to being used for the transfer of any Customer Data.
- 1.8. Storage of Customer Data on any portable devices or media shall be limited to the absolute minimum required to deliver the stated business requirement and shall be subject to clause 1.9 and 1.10 below.
- 1.9. Any portable removable media (including but not constrained to pen drives, flash drives, memory sticks, CDs, DVDs, or other devices) which handle, store or process Customer Data to deliver and support the service, shall be under the control and configuration management of the contractor or (sub-)contractors providing the service, shall be both necessary to deliver the service and shall be encrypted using a product which has been certified to FIPS140-2 standard or another encryption standard that is acceptable to the Customer.
- 1.10. All portable ICT devices, including but not limited to laptops, tablets, smartphones or other devices, such as smart watches, which handle, store or process Customer Data to deliver and support the service, shall be under the control and configuration management of the contractor or Sub-Contractors providing the service, and shall be necessary to deliver the service. These devices shall be full-disk encrypted using a product which has been certified to FIPS140-2 standard or another encryption standard that is acceptable to the Customer.
- 1.11. Whilst in the Contractor's care all removable media and hardcopy paper documents containing Customer Data must be handled securely and secured under lock and key when not in use and shall be securely destroyed when no longer required, using either a cross-cut shredder or a professional secure disposal organisation.
- 1.12. When necessary to hand carry removable media and/or hardcopy paper documents containing Customer Data, the media or documents being carried shall be kept under cover and transported in such a way as to ensure that no unauthorised person has either visual or physical access to the material being carried. This clause shall apply equally regardless of whether the material is being carried inside or outside of company premises.
- 1.13. At the end of the contract or in the event of equipment failure or obsolescence, all Customer information and data, in either hardcopy or electronic format, that is physically held or logically stored on the Contractor's ICT infrastructure must be securely sanitised or destroyed and accounted for in accordance with the current HMG policy using a NCSC approved product or method. Where sanitisation or destruction is not possible for legal, regulatory or technical reasons, such as a Storage Area Network (SAN) or shared backup tapes, then the Contractor or Sub-Contractor shall protect the Customer's information and data until the time, which may be long after the end of the contract, when it can be securely cleansed or destroyed.
- 1.14. Access by Contractor or Sub-Contractor staff to Customer Data shall be confined to those individuals who have a "need-to-know" in order to carry out their role; and have undergone mandatory pre-employment screening, to a minimum of HMG Baseline Personnel Security

Standard (BPSS); or hold an appropriate National Security Vetting clearance as required by the Customer. All Contractor or Sub-Contractor staff must complete this process before access to Customer Data is permitted.

- 1.15. All Contractor or Sub-Contractor employees who handle Customer Data must have annual awareness training in protecting information.
- 1.16. The Contractor shall, as a minimum, have in place robust Business Continuity arrangements and processes including IT disaster recovery plans and procedures that conform to ISO 22301 to ensure that the delivery of the contract is not adversely affected in the event of an incident. An incident shall be defined as any situation that might, or could lead to, a disruption, loss, emergency or crisis to the services delivered. If an ISO 22301 certificate is not available the Contractor will provide evidence of the effectiveness of their ISO 22301 conformant Business Continuity arrangements and processes including IT disaster recovery plans and procedures. This should include evidence that the Contractor has tested or exercised these plans within the last 12 months and produced a written report of the outcome, including required actions.
- 1.17. Any suspected or actual breach of the confidentiality, integrity or availability of Customer Data being handled in the course of providing this service, or any non-compliance with these Customer Security Standards for Contractors, or other Security Standards pertaining to the solution, shall be investigated immediately and escalated to the Customer by a method agreed by both parties.
- 1.18. The Contractor shall ensure that any IT systems and hosting environments that are used to handle, store or process Customer Data shall be subject to independent IT Health Checks (ITHC) using a NCSC approved ITHC provider before go-live and periodically (at least annually) thereafter. The findings of the ITHC relevant to the service being provided are to be shared with the Customer and all necessary remedial work carried out. In the event of significant security issues being identified, a follow up remediation test may be required.
- 1.19. The Contractor or Sub-Contractors providing the service will provide the Customer with full details of any storage of Customer Data outside of the UK or any future intention to host Customer Data outside the UK or to perform any form of ICT management, support or development function from outside the UK. The Contractor or Sub-Contractor will not go ahead with any such proposal without the prior written agreement from the Customer.
- 1.20. The Customer reserves the right to audit the Contractor or Sub-Contractors providing the Services within a mutually agreed timeframe but always within seven days of notice of a request to audit being given. The audit shall cover the overall scope of the service being supplied and the Contractor's, and any Sub-Contractors, compliance with the clauses contained in this Section.
- 1.21. The Contractor shall contractually enforce all these Customer Security Standards for Contractors onto any third-party Contractors, Sub-Contractors or partners who could potentially access Customer Data in the course of providing this service.
- 1.22. The Contractor and Sub-Contractors shall undergo appropriate security assurance activities as determined by the Customer. Contractor and Sub-Contractors shall support the provision of appropriate evidence of assurance and the production of the necessary security documentation such as completing the Customer Security Assurance Model (DSAM) process or the Business Service Assurance Model (BSAM). This will include obtaining any necessary professional security resources required to support the Contractor and Sub-Contractor's security assurance activities such as: a NCSC Certified Cyber Security Consultancy (CCSC) or NCSC Certified Professional (CCP) Security and Information Risk Advisor (SIRA)

## **SCHEDULE 4: NOT USED**

## **SCHEDULE 5 – CHANGE CONTROL PROCEDURE**

### **1 INTRODUCTION**

- 1.1 This Schedule 5 sets out the Change Control Procedure to be used by the Customer and the Contractor to effect changes to this Contract.

### **2 PRINCIPLES**

- 2.1 The Parties acknowledge that minor changes to the Contract may be necessary to reflect operational and administrative procedures during the Contract Period and that such minor changes may be agreed in writing between the Parties' respective contract managers.
- 2.2 The Contractor shall use reasonable endeavours to incorporate minor changes requested by the Customer within the current Charges and shall not serve a Contractor Notice of Change unless the change involves a demonstrable material increase to its costs or requires a material change to the Contract.
- 2.3 Either Party may request a Variation provided that such Variation does not amount to a material change. For the avoidance of doubt, the Contractor must request a Variation in the event it is unable or wishes to change its method of delivery or Service Proposals.
- 2.4 The Contractor must request a Variation where it anticipates not delivering or is not delivering the Services or a part of the Services on an ongoing basis for a period that exceeds 5 (five) Business Days.
- 2.5 The Customer and the Contractor shall conduct discussions relating to proposed changes to this Contract in good faith. Neither party shall unreasonably withhold or delay consent to the other party's proposed changes.
- 2.6 Until such time as a Change Control Notice (CCN) has been signed by both parties, the Contractor shall continue to provide the Services in accordance with this Contract.
- 2.7 Any work undertaken in connection with any proposed change to this Contract by the Contractor, its Sub-Contractors or Agents (other than that which has previously been agreed in accordance with the provisions of paragraph 2.5 of this Schedule 5) shall be undertaken entirely at the expense and liability of the Contractor unless otherwise agreed between the Customer and the Contractor in advance.
- 2.8 Any discussions, negotiations or other communications which may take place between the parties in connection with any proposed change to this Contract, including but not limited to the submission of any written communications, prior to the signing by both parties of the relevant CCN, shall be without prejudice to the rights of either party.
- 2.9 The pricing of Variations shall be in accordance with Part 1 of Schedule 2

### **3 PROCEDURE**

- 3.1 Should either party wish to amend this Contract, that party's Contract Manager shall submit a draft CCN in the format at Annex 1 to this Schedule 5 for discussion detailing the proposed change to the other party's Contract Manager.
- 3.2 Discussion between the parties following the submission of a draft CCN shall result in either:
- 3.2.1. no further action being taken on that draft CCN; or
  - 3.2.2. agreement between the parties on the changes to be made to Contract (including agreement on the date upon which the changes are to take effect (the "effective date")), such agreement to be expressed in the form of proposed revisions to the text of the relevant parts of this Contract.

- 3.3 Where agreement is reached in accordance with paragraph 3.2.2, the party submitting the draft CCN shall prepare the final CCN for execution by both parties. The final CCN, the content of which has been agreed between the parties in accordance with paragraph 3.2.2 of this Schedule 5, shall be uniquely identified by a sequential number allocated by the Customer.
- 3.4 Two (2) copies of each CCN shall be signed by the Contractor and submitted to the Customer not less than ten (10) Working Days prior to the effective date agreed in accordance with paragraph 3.2.2 of this Schedule 5.
- 3.5 Subject to the agreement reached in accordance with paragraph 3.2.2 of this Schedule 5 remaining valid, the Customer shall sign both copies of the approved CCN within five (5) Working Days of receipt by the Customer. Following signature by the Customer, one (1) copy of the signed CCN shall be returned to the Consultant by the Customer.
- 3.6 A CCN signed by both parties shall constitute a valid variation or amendment to the Contract for the purposes of clause 18.2 of the Contract.
- 3.7 The Customer may at its absolute discretion reject any request for a Variation proposed by the Contractor.

## ANNEX 1 TO SCHEDULE 5 - CONTRACT CHANGE NOTE PRO FORMA

### Contract Change Note for the Contract Change Procedure

Contract Reference Number: [to be inserted post award]  
Sequential Number: [to be allocated by the Customer's Framework Manager]  
Title: [CCN title]  
Originator: [the Customer / the Contractor]  
Date change first proposed: [date]  
Number of pages attached: [pages]

WHEREAS the Contractor and the Customer entered into a Call Off Contract for the provision of National Professional Qualifications related services dated [date] and now wish to amend that Contract;

### Reason for proposed change

[Party proposing change to complete]

### Full details of proposed change

[Party proposing change to complete]

### Details of likely impact, if any, of proposed change on other aspects of the Call Off Contract

[Party proposing change to complete]

### IT IS AGREED as follows:

1. With effect from [date] it is proposed that the Call Off Contract shall be amended as set out below:  
[Details of the amendments to the Call Off Contract to be inserted here – to include the explicit changes required to the text in order to effect the change, i.e. clause/Schedule/paragraph number, required deletions and insertions etc.]
2. Save as herein amended, all other terms and conditions of the Call Off Contract inclusive of any previous CCNs shall remain in full force and effect.
3. The amendments shall be made by way of a Deed of Variation in accordance with clause **Error! Reference source not found.** of this Call Off Contract.

**Signed for and on behalf of** [the Contractor]

**By** .....

**Name** .....

**Title** .....



**Date** .....

**Signed for and on behalf of the Customer**

**By** .....

**Name** .....

**Title** .....

**Date** .....

## SCHEDULE 6: PROCESSING, PERSONAL DATA AND DATA SUBJECTS

*Drafting note: contractor should note that the Department is giving further consideration to data protection and the respective roles and responsibilities of the parties in relation to both the control and processing of data and the Customer/Department reserves the right to amend clause 17 and this Schedule 6 accordingly.*

1. The contact details of the Customer's Data Protection Officer are:  
[insert name and email]
2. The contact details of the Contractor's Data Protection Officer are:  
[Name]  
[Contact]
3. The Contractor shall comply with any further written instructions with respect to processing by the Customer.
4. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of the Controller and Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor in accordance with clause 17
Subject matter of the processing	The processing is needed in order to ensure: <ol style="list-style-type: none"><li>a) that the Contractor can effectively deliver the contract to provide the design and delivery of the National Professional Qualifications (NPQ) Delivery Framework;</li><li>b) that the Customer can effectively manage the delivery of the Contract by the Contractor.</li></ol>
Duration of the processing	The processing will take place throughout the lifetime of the contract.
Nature and purposes of the processing	<p><u>Legal Basis for Processing:</u></p> <p>(i) Personal Data is shared and processed on the legal basis that the processing is necessary for the performance of a task in the public interest pursuant to Section 14 of the Education Act 2002.</p> <p>(ii) Personal Data shared for the purposes of the National Professional Qualifications (NPQ) Delivery Framework, is shared and processed on the basis that the Data Subject has given consent to the processing.</p> <p><u>Nature for Processing:</u></p> <p>Collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) related to Participants to enable the recruitment, design, delivery, monitoring and evaluation of programme impacts and outcomes.</p> <p><u>Purpose for Processing:</u></p> <p>The contractor has an obligation to process data in the nature outlined above in order to fulfil the contractual requirements.</p> <p><u>Frequency of Sharing:</u></p>

	<p>Data will be shared with the Controller and the Customer on a monthly basis, in accordance with the provisions set out in Part 2 of Schedule (Performance)</p> <p><u>Method and Format of Transferring the Data:</u>  Personal Data of <u>all</u> NPQ and NPQH Additional Support Offer Participants will be transferred from the Processor to the Controller in accordance with the following process .....[exact process to the included at contract fine-tuning stage]</p>
Type of Personal Data being Processed	<p>The following Personal Data will be collected:</p> <ol style="list-style-type: none"> <li>1 Contractor</li> <li>2 URN of the Contractor (if applicable)</li> <li>3 Sub-Contractor</li> <li>4 URN of the Sub-Contractor (if applicable)</li> <li>5 Purchase order number</li> <li>6 Participant Reference Number (TRN)</li> <li>7 Cohort</li> <li>8 First Names</li> <li>9 Surname</li> <li>10 Previous surname</li> <li>11 Date of Birth</li> <li>12 Ethnicity</li> <li>13 Funded teacher or self funded teacher</li> <li>14 Method of call off for self funded teacher</li> <li>15 Customer URN</li> <li>16 Customer name</li> <li>17 E-mail Address of Customer contact</li> <li>18 Qualification/Support Offer Type</li> <li>19 Qualification/Support Offer Start Date</li> <li>20 Confirmation the Participant is still on the course</li> <li>21 Confirmation if the Participant has Withdrawn</li> <li>22 Withdrawal Date (if applicable)</li> <li>23 Reason for Withdrawal (if applicable)</li> <li>24 Confirmation if the Participant has Deferred</li> <li>25 Deferral Date (if applicable)</li> <li>26 Reason for Deferral (if applicable)</li> <li>27 Length of Deferral</li> <li>28 Restart Date (if previously deferred)</li> <li>29 Qualification/Support Offer End Date</li> <li>30 Confirmation if the Participant is on track to complete participation metric</li> <li>31 Date of assessment submission</li> <li>32 Date of assessment completion</li> <li>33 Metric 1 Outcome</li> <li>34 Metric 2 Outcome</li> <li>35 Outcome of Qualification</li> <li>36 Satisfaction Survey Completion</li> </ol>

Categories of Data Subject	NPQ and NPQH Additional Support Offer Participants
<p>Plan for return and destruction of the data once the processing is complete</p> <p>UNLESS requirement under union or member state law to preserve that type of data</p>	<p>Data will be retained for 6 years after the end of the term. At the end the data retention period, all Customer information and data, in either hardcopy or electronic format, that is physically held or logically stored on the Contractor's ICT infrastructure must be securely sanitised or destroyed and accounted for in accordance with the current HMG policy using a NCSC approved product or method.</p>

## **SCHEDULE 7: IMPLEMENTATION PLAN**

<insert the Implementation Plan>

## **SCHEDULE 8 QUALITY ASSURANCE**

*Drafting note – The Customer shall specify any specific Quality Assurance requirements here.*

### **1 DEFINITIONS**

1.1 In this Schedule, the following terms shall have the meanings set out below:

**“Quality Assurance”** means how the Customer or its Agents will measure the Contractor’s performance in developing and delivering the training programme.

### **2 GENERAL**

2.1 The Contractor complies with the Quality Assurance requirements set out in the Specification and this Schedule.

2.2 The Contractor ensures they implement effective quality management arrangements to ensure the Services are provided in accordance with the Specification.

### **3 COMPLAINTS**

3.1 The Contractor shall implement, maintain and operate effective and clear procedures for receiving, investigating and responding to complaints

3.2 The Contractor shall provide the Customer with information about the number and nature of complaints it receives and the outcome of each complaint it processes and in accordance with 3.3.2 & 3.3.3 below.

3.3 In addition, the Contractor shall ensure;

3.3.1 complaints are investigated by individuals not involved in the subject matter of the complaint;

3.3.2 report all complaints about the Services to Customer within three (3) working days from the date of the complaint;

3.3.3 provide a meaningful response to all complaints by telephone or in person, as well as in writing, copying in the Customer, within five (5) Working Days from the date of the complaint.

**SCHEDULE 9: KEY PERSONNEL AND SUB-CONTRACTORS**

**TO BE COMPLETED PRIOR TO CONTRACT SIGNATURE**

**Key Personnel**

The individuals listed in the table below are Key Personnel:

Name	Role	Period of Involvement

**Key Sub-Contractors**

The Contractor may Sub-Contract its obligations under the Contract to the Sub-Contractors listed in the table below:

Key Sub-Contractor Name and Address (if not the same as the registered office)	Registered Office and Company Number	Related Product/Service Description	Sub-Charges expressed as % of total projected Charges over Contract Period	Role in delivery of the Services

## **SCHEDULE 10: COMMERCIALLY SENSITIVE INFORMATION**

### **TO BE COMPLETED PRIOR TO CONTRACT SIGNATURE**

- 1 The Customer acknowledges that the Contractor has requested that the following information be treated as Commercially Sensitive Information;  
<insert table of the information identified as commercially sensitive>
- 2 The Customer will consult with the Contractor on any request for information, identified as Commercially Sensitive, under the FOIA.
- 3 The Customer reserves the right to disclose any Commercially Sensitive Information held within this Contract in response to a request under the FOIA as set out at clause 13 of this Contract.
- 4 The Customer will automatically publish all information provided by the Contractor not identified in this Schedule as constituting Commercially Sensitive Information provided that it satisfies the requirements of the FOIA.
- 5 The Customer reserves the right to determine whether any information provided in this Schedule does constitute Commercially Sensitive Information prior to publication.



## SCHEDULE 11 - SERVICE CONTINUITY PLAN

### 1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

<b>“Business Continuity Plan”</b>	has the meaning given in paragraph 2.2(a)(ii);
<b>“Business Continuity Services”</b>	has the meaning given in paragraph 4.2(b);
<b>“Customer”</b>	<p>a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:</p> <ul style="list-style-type: none"><li>(a) Government Customer; or</li><li>(b) Non-Ministerial Customer.</li></ul>
<b>“Disaster”</b>	<p>the occurrence of one or more events which, either separately or cumulatively, mean that the Services, or a material part of the Services will be unavailable for a period of [insert details] or which is reasonably anticipated will mean that the Services or a material part of the Services will be unavailable for that period;</p>
<b>“Disaster Recovery Plan”</b>	has the meaning given in paragraph 2.2(a)(iii);
<b>“Disaster Recovery Services”</b>	the services embodied in the processes and procedures for restoring the Services following the occurrence of a Disaster;
<b>“Disaster Recovery System”</b>	the system identified by the Contractor in the Contractor Solution which shall be used for the purpose of delivering the Disaster Recovery Services;
<b>“Insolvency Continuity Plan”</b>	has the meaning given in paragraph 2.2(a)(iv).
<b>“Related Service Provider”</b>	any person who provides services to the Customer in relation to this Contract from time to time, which persons include as at the Contract Date [insert details];
<b>“Review Report”</b>	has the meaning given in paragraphs 7.2(a) to 7.2(c);
<b>“Service Continuity Plan”</b>	means the plan prepared pursuant to paragraph 2 of this Schedule which incorporates the Business Continuity Plan, Disaster Recovery Plan and the Insolvency Continuity Plan;

### 2 SERVICE CONTINUITY PLAN

- 2.1 Within 40 Working Days from the Contract Date the Contractor shall prepare and deliver to the Customer for the Customer's written approval a plan, which shall detail the processes and arrangements that the Contractor shall follow to:
- (a) ensure continuity of the Services following any failure or disruption of any element of the Services (including where caused by an Insolvency Event of the Contractor, any Key Sub-Contractor and/or any Contractor Group member); and
  - (b) the recovery of the Services in the event of a Disaster.
- 2.2 The Service Continuity Plan shall:
- (a) be divided into four parts:
    - (i) Part A which shall set out general principles applicable to the Service Continuity Plan;
    - (ii) Part B which shall relate to business continuity (the "**Business Continuity Plan**");
    - (iii) Part C which shall relate to disaster recovery (the "**Disaster Recovery Plan**");
    - (iv) Part D which shall relate to an Insolvency Event of the Contractor, any Key Sub-Contractors and/or any Contractor Group member (the "**Insolvency Continuity Plan**"); and
  - (b) unless otherwise required by the Customer in writing, be based upon and be consistent with the provisions of paragraphs 3, 4, 5 and 6.
- 2.3 Following receipt of the draft Service Continuity Plan from the Contractor, the Customer shall:
- (a) review and comment on the draft Service Continuity Plan as soon as reasonably practicable; and
  - (b) notify the Contractor in writing that it approves or rejects the draft Service Continuity Plan no later than 20 Working Days after the date on which the draft Service Continuity Plan is first delivered to the Customer.
- 2.4 If the Customer rejects the draft Service Continuity Plan:
- (a) the Customer shall inform the Contractor in writing of its reasons for its rejection; and
  - (b) the Contractor shall then revise the draft Service Continuity Plan (taking reasonable account of the Customer's comments) and shall re-submit a revised draft Service Continuity Plan to the Customer for the Customer's approval within 20 Working Days of the date of the Customer's notice of rejection. The provisions of paragraph 2.3 and this paragraph 2.4 shall apply again to any resubmitted draft Service Continuity Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

### **3 SERVICE CONTINUITY PLAN: PART A – GENERAL PRINCIPLES AND REQUIREMENTS**

- 3.1 Part A of the Service Continuity Plan shall:
- (a) set out how the business continuity, disaster recovery and insolvency continuity elements of the plan link to each other;
  - (b) provide details of how the invocation of any element of the Service Continuity Plan may impact upon the operation of the Services and any services provided to the Customer by a Related Service Provider;

- (c) contain an obligation upon the Contractor to liaise with the Customer and (at the Customer's request) any Related Service Provider with respect to issues concerning business continuity, disaster recovery and insolvency continuity where applicable;
- (d) detail how the Service Continuity Plan links and interoperates with any overarching and/or connected disaster recovery, business continuity and/or insolvency continuity plan of the Customer and any of its other Related Service Providers in each case as notified to the Contractor by the Customer from time to time;
- (e) contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multi-channels (including but without limitation a web-site (with FAQs), e-mail, phone and fax) for both portable and desk top configurations, where required by the Customer;
- (f) contain a risk analysis, including:
  - (i) failure or disruption scenarios and assessments and estimates of frequency of occurrence;
  - (ii) identification of any single points of failure within the Services and processes for managing the risks arising therefrom;
  - (iii) identification of risks arising from the interaction of the Services with the Services provided by a Related Service Provider;
  - (iv) identification of risks arising from an Insolvency Event of the Contractor, any Key Sub-Contractors and/or Contractor Group member; and
  - (v) a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
- (g) provide for documentation of processes, including business processes, and procedures;
- (h) set out key contact details (including roles and responsibilities) for the Contractor (and any Sub-Contractors) and for the Customer;
- (i) identify the procedures for reverting to "normal service";
- (j) set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to ensure that there is no more than the accepted amount of data loss and to preserve data integrity;
- (k) identify the responsibilities (if any) that the Customer has agreed it will assume in the event of the invocation of the Service Continuity Plan; and
- (l) provide for the provision of technical advice and assistance to key contacts at the Customer as notified by the Customer from time to time to inform decisions in support of the Customer's business continuity plans.

### 3.2 The Service Continuity Plan shall be designed so as to ensure that:

- (a) the Services are provided in accordance with this Contract at all times during and after the invocation of the Service Continuity Plan;
- (b) the adverse impact of any Disaster; service failure; an Insolvency Event of the Contractor, any Key Sub-Contractor and/or any Contractor Group member; or disruption on the operations of the Customer, is minimal as far as reasonably possible;
- (c) it complies with the relevant provisions of ISO/IEC 22301 and all other industry standards from time to time in force; and
- (d) there is a process for the management of disaster recovery testing detailed in the Service Continuity Plan.

- 3.3 The Service Continuity Plan shall be upgradeable and sufficiently flexible to support any changes to the Services, to the business processes facilitated by and the business operations supported by the Services, and/or changes to the Contractor Group structure.
- 3.4 The Contractor shall not be entitled to any relief from its obligations under the Performance Indicators or to any increase in the Charges to the extent that a Disaster occurs as a consequence of any breach by the Contractor of this Agreement.

#### **4 SERVICE CONTINUITY PLAN: PART B – BUSINESS CONTINUITY PRINCIPLES AND CONTENTS**

- 4.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes and operations facilitated by the Services remain supported and to ensure continuity of the business operations supported by the Services including, unless the Customer expressly states otherwise in writing:
- (a) the alternative processes (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the Services; and
  - (b) the steps to be taken by the Contractor upon resumption of the Services in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.
- 4.2 The Business Continuity Plan shall:
- (a) address the various possible levels of failures of or disruptions to the Services;
  - (b) set out the Services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Services (such services and steps, the “**Business Continuity Services**”);
  - (c) specify any applicable Performance Indicators with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the Performance Indicators in respect of other Services during any period of invocation of the Business Continuity Plan; and
  - (d) clearly set out the conditions and/or circumstances under which the Business Continuity Plan is invoked.

#### **5 SERVICE CONTINUITY PLAN: PART C – DISASTER RECOVERY PRINCIPLES AND CONTENTS**

- 5.1 The Disaster Recovery Plan shall be designed so as to ensure that upon the occurrence of a Disaster the Contractor ensures continuity of the business operations of the Customer supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.
- 5.2 The Disaster Recovery Plan shall be invoked only upon the occurrence of a Disaster.
- 5.3 The Disaster Recovery Plan shall include the following:
- (a) the technical design and build specification of the Disaster Recovery System;
  - (b) details of the procedures and processes to be put in place by the Contractor in relation to the Disaster Recovery System and the provision of the Disaster Recovery Services and any testing of the same including but not limited to the following:
    - (i) data centre and disaster recovery site audits;
    - (ii) backup methodology and details of the Contractor's approach to data back-up and data verification;

- (iii) identification of all potential disaster scenarios;
  - (iv) risk analysis;
  - (v) documentation of processes and procedures;
  - (vi) hardware configuration details;
  - (vii) network planning including details of all relevant data networks and communication links;
  - (viii) invocation rules;
  - (ix) Service recovery procedures; and
  - (x) steps to be taken upon resumption of the Services to address any prevailing effect of the failure or disruption of the Services;
- (c) any applicable Performance Indicators with respect to the provision of the Disaster Recovery Services and details of any agreed relaxation to the Performance Indicators in respect of other Services during any period of invocation of the Disaster Recovery Plan;
  - (d) details of how the Contractor shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
  - (e) access controls to any disaster recovery sites used by the Contractor in relation to its obligations pursuant to this Schedule; and
  - (f) testing and management arrangements.

## **6 SERVICE CONTINUITY PLAN: PART D – INSOLVENCY CONTINUITY PLAN PRINCIPLES AND CONTENTS**

- 6.1 The Insolvency Continuity Plan shall be designed by the Contractor to permit continuity of the business operations of the Customer supported by the Services through continued provision of the Services following an Insolvency Event of the Contractor, any Key Sub-Contractor and/or any Contractor Group member with, as far as reasonably possible, minimal adverse impact.
- 6.2 The Insolvency Continuity Plan shall include the following:
  - (a) communication strategies which are designed to minimise the potential disruption to the provision of the Services, including key contact details in respect of the supply chain and key contact details for operational and contract Contractor Personnel, Key Sub-Contractor personnel and Contractor Group member personnel;
  - (b) identification, explanation, assessment and an impact analysis of risks in respect of dependencies between the Contractor, Key Sub-Contractors and Contractor Group members where failure of those dependencies could reasonably have an adverse impact on the Services;
  - (c) plans to manage and mitigate identified risks;
  - (d) details of the roles and responsibilities of the Contractor, Key Sub-Contractors and/or Contractor Group members to minimise and mitigate the effects of an Insolvency Event of such persons on the Services;
  - (e) details of the recovery team to be put in place by the Contractor (which may include representatives of the Contractor, Key Sub-Contractors and Contractor Group members); and
  - (f) sufficient detail to enable an appointed insolvency practitioner to invoke the plan in the event of an Insolvency Event of the Contractor.

## **7 REVIEW AND AMENDMENT OF THE SERVICE CONTINUITY PLAN**

- 7.1 The Contractor shall review and update the Service Continuity Plan (and the risk analysis on which it is based):
- (a) on a regular basis and as a minimum once every 6 months;
  - (b) within three calendar months of the Service Continuity Plan (or any part) having been invoked pursuant to paragraph 9;
  - (c) within 14 days of a Financial Distress Event;
  - (d) within 30 days of a Corporate Change Event; and
  - (e) where the Customer requests any additional reviews (over and above those provided for in paragraphs 7.1(a) to 7.1(d)) by notifying the Contractor to such effect in writing, whereupon the Contractor shall conduct such reviews in accordance with the Customer's written requirements. Prior to starting its review, the Contractor shall provide an accurate written estimate of the total costs payable by the Customer for the Customer's approval. The costs of both Parties of any such additional reviews shall be met by the Customer except that the Contractor shall not be entitled to charge the Customer for any costs that it may incur above any estimate without the Customer's prior written approval.
- 7.2 Each review of the Service Continuity Plan pursuant to paragraph 7.1 shall be a review of the procedures and methodologies set out in the Service Continuity Plan and shall assess their suitability having regard to any change to the Services or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the Service Continuity Plan or the last review of the Service Continuity Plan and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the Service Continuity Plan. The review shall be completed by the Contractor within the period required by the Service Continuity Plan or, if no such period is required, within such period as the Customer shall reasonably require. The Contractor shall, within 20 Working Days of the conclusion of each such review of the Service Continuity Plan, provide to the Customer a report (a "**Review Report**") setting out:
- (a) the findings of the review;
  - (b) any changes in the risk profile associated with the Services; and
  - (c) the Contractor's proposals (the "**Contractor's Proposals**") for addressing any changes in the risk profile and its proposals for amendments to the Service Continuity Plan following the review detailing the impact (if any and to the extent that the Contractor can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any services or systems provided by a third party.
- 7.3 Following receipt of the Review Report and the Contractor's Proposals, the Customer shall:
- (a) review and comment on the Review Report and the Contractor's Proposals as soon as reasonably practicable; and
  - (b) notify the Contractor in writing that it approves or rejects the Review Report and the Contractor's Proposals no later than 20 Working Days after the date on which they are first delivered to the Customer.
- 7.4 If the Customer rejects the Review Report and/or the Contractor's Proposals:
- (a) the Customer shall inform the Contractor in writing of its reasons for its rejection; and
  - (b) the Contractor shall then revise the Review Report and/or the Contractor's Proposals as the case may be (taking reasonable account of the Customer's

comments and carrying out any necessary actions in connection with the revision) and shall re-submit a revised Review Report and/or revised Contractor's Proposals to the Customer for the Customer's approval within 20 Working Days of the date of the Customer's notice of rejection. The provisions of paragraph 7.3 and this paragraph 7.4 shall apply again to any resubmitted Review Report and Contractor's Proposals, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

- 7.5 The Contractor shall as soon as is reasonably practicable after receiving the Customer's approval of the Contractor's Proposals (having regard to the significance of any risks highlighted in the Review Report) effect any change in its practices or procedures necessary so as to give effect to the Contractor's Proposals. Any such change shall be at the Contractor's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Services.

## **8 TESTING OF THE SERVICE CONTINUITY PLAN**

- 8.1 The Contractor shall test the Service Continuity Plan on a regular basis (and in any event not less than once in every Contract Year). Subject to paragraph 8.2, the Customer may require the Contractor to conduct additional tests of some or all aspects of the Service Continuity Plan at any time where the Customer considers it necessary, including where there has been any change to the Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the Service Continuity Plan.
- 8.2 If the Customer requires an additional test of the Service Continuity Plan, it shall give the Contractor written notice and the Contractor shall conduct the test in accordance with the Customer's requirements and the relevant provisions of the Service Continuity Plan. The Contractor's costs of the additional test shall be borne by the Customer unless the Service Continuity Plan fails the additional test in which case the Contractor's costs of that failed test shall be borne by the Contractor.
- 8.3 The Contractor shall undertake and manage testing of the Service Continuity Plan in full consultation with the Customer and shall liaise with the Customer in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Customer in this regard. Each test shall be carried out under the supervision of the Customer or its nominee.
- 8.4 The Contractor shall ensure that any use by it or any Sub-Contractor of "live" data in such testing is first approved with the Customer. Copies of live test data used in any such testing shall be (if so required by the Customer) destroyed or returned to the Customer on completion of the test.
- 8.5 The Contractor shall, within 20 Working Days of the conclusion of each test, provide to the Customer a report setting out:
- (a) the outcome of the test;
  - (b) any failures in the Service Continuity Plan (including the Service Continuity Plan's procedures) revealed by the test; and
  - (c) the Contractor's proposals for remedying any such failures.
- 8.6 Following each test, the Contractor shall take all measures requested by the Customer, (including requests for the re-testing of the Service Continuity Plan) to remedy any failures in the Service Continuity Plan and such remedial activity and re-testing shall be completed by the Contractor, at no additional cost to the Customer, by the date reasonably required by the Customer and set out in such notice.
- 8.7 For the avoidance of doubt, the carrying out of a test of the Service Continuity Plan (including a test of the Service Continuity Plan's procedures) shall not relieve the Contractor of any of its obligations under this Agreement.

- 8.8 The Contractor shall also perform a test of the Service Continuity Plan in the event of any major reconfiguration of the Services or as otherwise reasonably requested by the Customer.

## **9 INVOCATION OF THE SERVICE CONTINUITY PLAN**

- 9.1 In the event of a loss of any critical part of the Service or a Disaster, the Contractor shall immediately invoke the business continuity and disaster recovery provisions in the Service Continuity Plan, including any linked elements in other parts of the Service Continuity Plan, and shall inform the Customer promptly of such invocation. In all other instances the Contractor shall invoke the business continuity and disaster recovery plan elements only with the prior consent of the Customer.
- 9.2 The Insolvency Continuity Plan element of the Service Continuity Plans, including any linked elements in other parts of the Service Continuity Plan, shall be invoked by the Contractor:
- (a) where an Insolvency Event of a Key Sub-Contractor and/or Contractor Group member (other than the Contractor) could reasonably be expected to adversely affect delivery of the Services; and/or
  - (b) where there is an Insolvency Event of the Contractor and the insolvency arrangements enable the Contractor to invoke the plan;

## **SCHEDULE 12 – NOT USED**



## SCHEDULE 13 – STAFF TRANSFER

### 1. DEFINITIONS

9.3 In this Schedule, the following definitions shall apply:

<b>“Contractor's Final Contractor Personnel List”</b>	a list provided by the Contractor of all Contractor Personnel who will transfer under the Employment Regulations on the Service Transfer Date;
<b>“Contractor's Provisional Contractor Personnel List”</b>	a list prepared and updated by the Contractor of all Contractor 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 Contractor;
<b>“Former Supplier”</b>	a supplier supplying services to the Department before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor);
<b>“New Fair Deal”</b>	<p>the revised Fair Deal position set out in the HM Treasury guidance: <i>“Fair Deal for staff pensions: staff transfer from central government”</i> issued in October 2013 including:</p> <p>(a) any amendments to that document immediately prior to the Relevant Transfer Date;</p>

	(b) any similar pension protection in accordance with the Annexes AnnexD1-Annex D3 inclusive to Part D of this Schedule as notified to the Supplier by the Department;
<b>“Notified Sub-Contractor”</b>	a Sub-Contractor identified in the Annex to this Schedule to whom Transferring Department Employees and/or Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;
<b>“Old Fair Deal”</b>	HM Treasury Guidance <i>“Staff Transfers from Central Government: A Fair Deal for Staff Pensions”</i> issued in June 1999 including the supplementary guidance <i>“Fair Deal for Staff pensions: Procurement of Bulk Transfer Agreements and Related Issues”</i> issued in June 2004;
<b>“Replacement Sub-Contractor”</b>	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);
<b>“Relevant Transfer”</b>	a transfer of employment to which the Employment Regulations applies;
<b>“Relevant Transfer Date”</b>	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place. For the purposes of Part D and its Annexes, where the Contractor or a Sub-Contractor was the Former Supplier and there is no Relevant Transfer of the Fair Deal Employees because they remain continuously employed by the Contractor (or Sub-Contractor), references to the Relevant Transfer Date shall become references to the Contract Date;
<b>“Service Transfer”</b>	any transfer of the Services (or any part of the Services), for whatever reason, from the Contractor or any Sub-Contractor to a Replacement Supplier or a Replacement Sub-Contractor;
<b>“Service Transfer Date”</b>	the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires;
<b>“Staffing Information”</b>	in relation to all persons identified on the Contractor’s Provisional Contractor Personnel List or Contractor’s Final Contractor Personnel List, as the case may be, all information required in Annex E2 ( <i>Table of Staffing Information</i> ) in the format specified and with the identities of Data Subjects anonymised where possible. The

Department may acting reasonably make changes to the format or information requested in Annex E2 from time to time.

<b>“Statutory Schemes”</b>	means the CSPA, NHSPS or LGPS as defined in the Annexes to Part D of this Schedule;
<b>“Transferring Contractor Employees”</b>	those employees of the Contractor and/or the Contractor’s Sub-Contractors to whom the Employment Regulations will apply on the Service Transfer Date.
<b>“Transferring Department Employees”</b>	those employees of the Department to whom the Employment Regulations will apply on the Relevant Transfer Date;
<b>“Transferring Former Supplier Employees”</b>	in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date; and

## 2. INTERPRETATION

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

## **PART A: TRANSFERRING DEPARTMENT EMPLOYEES AT COMMENCEMENT OF SERVICES**

### **1. RELEVANT TRANSFERS**

#### **1.1 The Department and the Contractor agree that:**

- (a) 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 Department Employees; and
- (b) as a result of the operation of the Employment Regulations, the contracts of employment between the Department and the Transferring Department 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 Contractor and/or any Notified Sub-Contractor and each such Transferring Department Employee.

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

### **2. DEPARTMENT INDEMNITIES**

#### **2.1 Subject to Paragraph 2.2, the Department shall indemnify the Contractor and any Notified Sub-Contractor against any Employee Liabilities arising from or as a result of:**

- (a) any act or omission by the Department in respect of any Transferring Department Employee or any appropriate employee representative (as

defined in the Employment Regulations) of any Transferring Department Employee occurring before the Relevant Transfer Date;

- (b) the breach or non-observance by the Department before the Relevant Transfer Date of:
  - (i) any collective agreement applicable to the Transferring Department Employees; and/or
  - (ii) any custom or practice in respect of any Transferring Department Employees which the Department is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing the Transferring Department Employees arising from or connected with any failure by the Department to comply with any legal obligation to such trade union, body or person arising before the Relevant Transfer Date;
- (d) any proceeding, claim or demand by HMRC or other statutory Department 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 Department Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory Department relates to financial obligations arising before the Relevant Transfer Date; and
  - (ii) in relation to any employee who is not a Transferring Department Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Department to the Contractor and/or any Notified Sub-Contractor as appropriate, to the extent that the proceeding, claim or demand by the HMRC or other statutory Department relates to financial obligations arising before the Relevant Transfer Date.
- (e) a failure of the Department 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 Department Employees arising before the Relevant Transfer Date;
- (f) any claim made by or in respect of any person employed or formerly employed by the Department other than a Transferring Department Employee for whom it is alleged the Contractor and/or any Notified Sub-Contractor as appropriate may be liable by virtue of the Employment Regulations and/or the Acquired Rights Directive; and
- (g) any claim made by or in respect of a Transferring Department Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Department Employee relating to any act or omission of the Department 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 Contractor or any Sub-Contractor to comply with regulation 13(4) of the Employment Regulations.

2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Contractor or any Sub-Contractor (whether or not a Notified Sub-Contractor) whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities:

- (a) arising out of the resignation of any Transferring Department Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Contractor and/or any Sub-Contractor to occur in the period from (and including) the Relevant Transfer Date; or
- (b) arising from the failure by the Contractor or any Sub-Contractor to comply with its obligations under the Employment Regulations.

2.3 If any person who is not identified by the Department as a Transferring Department Employee claims, or it is determined in relation to any person who is not identified by the Department as a Transferring Department Employee, that his/her contract of employment has been transferred from the Department to the Contractor and/or any Notified Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:

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

2.4 If an offer referred to in Paragraph 2.3b is accepted, or if the situation has otherwise been resolved by the Department, the Contractor shall, or shall procure that the Notified Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.

2.5 If by the end of the 15 Working Day period specified in Paragraph 2.3(b):

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

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

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

2.7 The indemnity in Paragraph 2.6:

- (a) shall not apply to:
  - (i) any claim for:
    - (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

(B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Contractor and/or any Sub-Contractor; or

(ii) any claim that the termination of employment was unfair because the Contractor and/or Notified Sub-Contractor neglected to follow a fair dismissal procedure; and

(b) shall apply only where the notification referred to in Paragraph 2.3(a) is made by the Contractor and/or any Notified Sub-Contractor (as appropriate) to the Department within 6 months of the Effective Date.

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

### **3. CONTRACTOR INDEMNITIES AND OBLIGATIONS**

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

(a) any act or omission by the Contractor or any Sub-Contractor in respect of any Transferring Department Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Department Employee whether occurring before, on or after the Relevant Transfer Date;

(b) the breach or non-observance by the Contractor or any Sub-Contractor on or after the Relevant Transfer Date of:

(i) any collective agreement applicable to the Transferring Department Employees; and/or

(ii) any custom or practice in respect of any Transferring Department Employees which the Contractor or any Sub-Contractor is contractually bound to honour;

(c) any claim by any trade union or other body or person representing any Transferring Department Employees arising from or connected with any failure by the Contractor or any Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;

(d) any proposal by the Contractor or a Sub-Contractor made before the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Department Employees to their material detriment on or after their transfer to the Contractor or the relevant Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Department Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;

- (e) any statement communicated to or action undertaken by the Contractor or any Sub-Contractor to, or in respect of, any Transferring Department Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Department in writing;
- (f) any proceeding, claim or demand by HMRC or other statutory Department 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 Department Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory Department relates to financial obligations arising on or after the Relevant Transfer Date; and
  - (ii) in relation to any employee who is not a Transferring Department Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Department to the Contractor or a Sub-Contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory Department relates to financial obligations arising on or after the Relevant Transfer Date;
- (g) a failure of the Contractor 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 Department Employees in respect of the period from (and including) the Relevant Transfer Date;
- (h) any claim made by or in respect of a Transferring Department Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Department Employee relating to any act or omission of the Contractor or any Sub-Contractor in relation to their obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Department's failure to comply with its obligations under regulation 13 of the Employment Regulations; and
- (i) a failure by the Contractor or any Sub-Contractor to comply with its obligations under paragraph 2.8 above.

3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Department whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Department's failure to comply with its obligations under the Employment Regulations.

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

#### 4. **INFORMATION**



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

**5. PRINCIPLES OF GOOD EMPLOYMENT PRACTICE**

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

**6. PENSIONS**

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

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

### **1. RELEVANT TRANSFERS**

1.1 The Department and the Contractor agree that:

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

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

### **2. FORMER SUPPLIER INDEMNITIES**

2.1 Subject to Paragraph 2.2, the Department shall procure that each Former Supplier shall indemnify the Contractor and any Notified Sub-Contractor against any Employee Liabilities arising from or as a result of:

- (a) any act or omission by the Former Supplier in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as

defined in the Employment Regulations) of any Transferring Former Supplier Employee arising before the Relevant Transfer Date;

- (b) the breach or non-observance by the Former Supplier arising before the Relevant Transfer Date of:
  - (i) any collective agreement applicable to the Transferring Former Supplier Employees; and/or
  - (ii) any custom or practice in respect of any Transferring Former Supplier Employees which the Former Supplier is contractually bound to honour;
- (c) any proceeding, claim or demand by HMRC or other statutory Department in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (i) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory Department relates to financial obligations arising before the Relevant Transfer Date; and
  - (ii) in relation to any employee who is not a Transferring Former Supplier Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Contractor and/or any Notified Sub-Contractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory Department relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;
- (d) a failure of the Former Supplier to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period to (but excluding) the Relevant Transfer Date;
- (e) any claim made by or in respect of any person employed or formerly employed by the Former Supplier other than a Transferring Former Supplier Employee for whom it is alleged the Contractor and/or any Notified Sub-Contractor as appropriate may be liable by virtue of this Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
- (f) any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Former Supplier 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 Contractor or any Sub-Contractor to comply with regulation 13(4) of the Employment Regulations.

2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Contractor or any Sub-Contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:

- (a) arising out of the resignation of any Transferring Former Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Contractor or any Sub-Contractor to occur in the period from (and including) the Relevant Transfer Date; or

- (b) arising from the failure by the Contractor and/or any Sub-Contractor to comply with its obligations under the Employment Regulations.

2.3 If any person who is not identified by the Department as a Transferring Former Supplier Employee claims, or it is determined in relation to any person who is not identified by the Department as a Transferring Former Supplier Employee, that his/her contract of employment has been transferred from a Former Supplier to the Contractor and/or any Notified Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:

- (a) the Supplier shall, or shall procure that the Notified Sub-Contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Department and, where required by the Department, to the Former Supplier; and
- (b) the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Contractor and/or the Notified Sub-Contractor or take such other reasonable steps as the Former Supplier considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.

2.4 If an offer referred to in Paragraph (b) is accepted, or if the situation has otherwise been resolved by the Former Supplier and/or the Department, the Contractor shall, or shall procure that the Notified Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.

2.5 If by the end of the 15 Working Day period specified in Paragraph (b):

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

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

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

2.7 The indemnity in Paragraph 2.6:

- (a) shall not apply to:
  - (i) any claim for:
    - (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
    - (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Contractor and/or any Sub-Contractor; or

- (ii) any claim that the termination of employment was unfair because the Contractor and/or Notified Sub-Contractor neglected to follow a fair dismissal procedure; and

- (b) shall apply only where the notification referred to in Paragraph (a) is made by the Contractor and/or any Notified Sub-Contractor (as appropriate) to the Department and, if applicable, the Former Supplier, within 6 months of the Contract Date.

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

### **3. CONTRACTOR INDEMNITIES AND OBLIGATIONS**

- 3.1 Subject to Paragraph 3.2, the Contractor shall indemnify the Department and/or the Former Supplier against any Employee Liabilities arising from or as a result of:

- (a) any act or omission by the Contractor or any Sub-Contractor in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee whether occurring before, on or after the Relevant Transfer Date;
- (b) the breach or non-observance by the Contractor or any Sub-Contractor on or after the Relevant Transfer Date of:
  - (i) any collective agreement applicable to the Transferring Former Supplier Employee; and/or
  - (ii) any custom or practice in respect of any Transferring Former Supplier Employees which the Contractor or any Sub-Contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Former Supplier Employees arising from or connected with any failure by the Contractor or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- (d) any proposal by the Contractor or a Sub-Contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Supplier Employees to their material detriment on or after their transfer to the Contractor or a Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- (e) any statement communicated to or action undertaken by the Contractor or a Sub-Contractor to, or in respect of, any Transferring Former Supplier Employee before the Relevant Transfer Date regarding the Relevant Transfer

which has not been agreed in advance with the Department and/or the Former Supplier in writing;

- (f) any proceeding, claim or demand by HMRC or other statutory Department in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (i) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory Department relates to financial obligations arising on or after the Relevant Transfer Date; and
  - (ii) in relation to any employee who is not a Transferring Former Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Contractor or a Sub-Contractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory Department relates to financial obligations arising on or after the Relevant Transfer Date;
- (g) a failure of the Contractor or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period from (and including) the Relevant Transfer Date;
- (h) any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Contractor or any Sub-Contractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Supplier's failure to comply with its obligations under regulation 13 of the Employment Regulations; and
- (i) a failure by the Contractor or any Sub-Contractor to comply with its obligations under Paragraph 2.8 above

3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Supplier's failure to comply with its obligations under the Employment Regulations.

3.3 The Contractor shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Former Supplier Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and any other sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Contractor and the Former Supplier.

#### 4. **INFORMATION**

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

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

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

## **6. PROCUREMENT OBLIGATIONS**

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

## **7. PENSIONS**

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

## **PART C: NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES**

### **1. PROCEDURE IN THE EVENT OF TRANSFER**

- 1.1 The Department and the Contractor 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 Department and/or any Former Supplier.
- 1.2 If any employee of the Department and/or a Former Supplier claims, or it is determined in relation to any employee of the Department and/or a Former Supplier, that his/her contract of employment has been transferred from the Department and/or the Former Supplier to the Contractor and/or any Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
  - (a) the Contractor shall, and shall procure that the relevant Sub-Contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Department and, where required by the Department, give notice to the Former Supplier; and
  - (b) the Department and/or the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Contractor or the Sub-Contractor (as appropriate) or take such other reasonable steps as the Department or Former Supplier (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 1.3 If an offer referred to in Paragraph 12(b) is accepted (or if the situation has otherwise been resolved by the Department and/or the Former Supplier), the Contractor shall, or shall procure that the Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.
- 1.4 If by the end of the 15 Working Day period specified in Paragraph 1.2(b):
  - (a) no such offer of employment has been made;



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

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

## 2. INDEMNITIES

2.1 Subject to the Contractor and/or the relevant Sub-Contractor acting in accordance with the provisions of Paragraphs 1.2 to 1.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 2.4, the Department shall:

- (a) indemnify the Contractor and/or the relevant Sub-Contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Department referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Contractor takes, or shall procure that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities; and
- (b) procure that the Former Supplier indemnifies the Contractor and/or any Notified Sub-Contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Contractor takes, or shall procure that the relevant Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.2 If any such person as is described in Paragraph 1.2 is neither re employed by the Department and/or the Former Supplier as appropriate nor dismissed by the Contractor and/or any Sub-Contractor within the 15 Working Day period referred to in Paragraph 1.4 such person shall be treated as having transferred to the Contractor and/or the Sub-Contractor (as appropriate) and the Contractor shall, or shall procure that the Sub-Contractor shall, comply with such obligations as may be imposed upon it under Law.

2.3 Where any person remains employed by the Contractor and/or any Sub-Contractor pursuant to Paragraph 2.2, all Employee Liabilities in relation to such employee shall remain with the Contractor and/or the Sub-Contractor and the Contractor shall indemnify the Department and any Former Supplier, and shall procure that the Sub-Contractor shall indemnify the Department and any Former Supplier, against any Employee Liabilities that either of them may incur in respect of any such employees of the Contractor and/or employees of the Sub-Contractor.

2.4 The indemnities in Paragraph 2.1:

- (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 Contractor and/or any Sub-Contractor; or
- (ii) any claim that the termination of employment was unfair because the Contractor and/or any Sub-Contractor neglected to follow a fair dismissal procedure; and
- (b) shall apply only where the notification referred to in Paragraph 1.2(a) is made by the Contractor and/or any Sub-Contractor to the Department and, if applicable, Former Supplier within 6 months of the Contract Date.

### 3. **PROCUREMENT OBLIGATIONS**

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

## **PART D: PENSIONS**

### 1. **DEFINITIONS**

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

<b>"Actuary"</b>	a Fellow of the Institute and Faculty of Actuaries;
<b>"Admission Agreement"</b>	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>"Best Value Direction"</b>	the Best Value Authorities Staff Transfers (Pensions) Direction 2007 or the Welsh Authorities Staff Transfers (Pensions) Direction 2012 (as appropriate);
<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/or

- (b) in respect of benefits provided for or in respect of a member under a pension scheme, benefits that are consistent with that pension scheme's certificate of broad comparability issued by the Government Actuary's Department,

and "**Broad Comparability**" shall be construed accordingly;

**"CSPS"**

the schemes as defined in Annex D1 to this Part D;

**"Direction Letter/Determination"**

has the meaning in Annex D2 to this Part D;

**"Fair Deal Eligible Employees"**

means each of the CSPS Eligible Employees, the NHSPS Eligible Employees and/or the LGPS Eligible Employees (as applicable) (and shall include any such employee who has been admitted to and/or remains eligible to join a Broadly Comparable pension scheme at the relevant time in accordance with paragraph 10 or 11 of this Part D);

**"Fair Deal Employees"**

any of:

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

Value Direction protection in respect of any of the Statutory Schemes or a Broadly Comparable pension scheme provided in accordance with paragraph 10 of this Part D as notified by the Department;

<b>"Fund Actuary"</b>	a Fund Actuary as defined in Annex D3 to this Part D;
<b>"LGPS"</b>	the scheme as defined in Annex D3 to this Part D; and
<b>"NHSPS"</b>	the schemes as defined in Annex D2 to this Part D.

## 2. PARTICIPATION

- 2.1 In respect of all or any Fair Deal Employees each of Annex D1: CSPA, Annex D2: NHSPS and/or Annex D3: LGPS shall apply, as appropriate.
- 2.2 The Contractor undertakes to do all such things and execute any documents (including any relevant Admission Agreement and/or Direction Letter/Determination, if necessary) as may be required to enable the Contractor to participate in the appropriate Statutory Scheme in respect of the Fair Deal Employees and shall bear its own costs in such regard.
- 2.3 The Contractor undertakes:
  - (a) to pay to the Statutory Schemes all such amounts as are due under the relevant Admission Agreement and/or Direction Letter/Determination or otherwise and shall deduct and pay to the Statutory Schemes such employee contributions as are required; and
  - (b) subject to where it expressly states otherwise in Annex D3: LGPS to be fully responsible for all other costs, contributions, payments and other amounts relating to its participation in the Statutory Schemes, including for the avoidance of doubt any exit payments and the costs of providing any bond, indemnity or guarantee required in relation to such participation.
- 2.4 Where the Contractor is the Former Supplier (or a Sub-Contractor is a sub-contractor of the Former Supplier) and there is no Relevant Transfer of the Fair Deal Employees because they remain continuously employed by the Contractor (or Sub-Contractor) at the Contract Date, this Part D and its Annexes shall be modified accordingly so that the Contractor (or Sub-Contractor) shall comply with its requirements from the Contract Date or, where it previously provided a Broadly Comparable pension scheme, from the date it is able to close accrual of its Broadly Comparable pension scheme (following appropriate consultation and contractual changes as appropriate) if later. The Contractor (or Sub-Contractor) shall make arrangements for a bulk transfer from its Broadly Comparable pension scheme to the relevant Statutory Scheme in accordance with the requirements of the previous contract with the Department.

### 3. PROVISION OF INFORMATION

#### 3.1 The Contractor undertakes to the Department:

- (a) to provide all information which the Department may reasonably request concerning matters referred to in this Part D as expeditiously as possible;
- (b) not to issue any announcements to any Fair Deal Employee prior to the Relevant Transfer Date concerning the matters stated in this Part D without the consent in writing of the Department (such consent not to be unreasonably withheld or delayed); and
- (c) retain such records as would be necessary to manage the pension aspects in relation to any current or former Fair Deal Eligible Employees arising on expiry or termination of this Contract.

### 4. INDEMNITIES

#### 4.1 The Contractor shall indemnify and keep indemnified the Department, [NHS Pensions,] any Replacement Supplier and/or any Replacement Sub-Contractor on demand from and against all and any Losses whatsoever suffered or incurred by it or them which:

- (a) arise out of or in connection with any liability towards all and any Fair Deal Employees in respect of service on or after the Relevant Transfer Date which arises from any breach by the Contractor of this Part D, and/or the CSPA Admission Agreement and/or the Direction Letter/Determination and/or the LGPS Admission Agreement;
- (b) relate to the payment of benefits under and/or participation in a pension scheme (as defined in section 150(1) Finance Act 2004) provided by the Contractor or a Sub-Contractor on and after the Relevant Transfer Date until the Termination Date or Expiry Date of this Contract, including the Statutory Schemes or any Broadly Comparable pension scheme provided in accordance with paragraphs 10 or 11 of this Part D;
- (c) relate to claims by Fair Deal Employees of the Contractor and/or of any Sub-Contractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such Fair Deal Employees which Losses:
  - (i) relate to any rights to benefits under a pension scheme (as defined in section 150(1) Finance Act 2004) in respect of periods of employment on and after the Relevant Transfer Date until the Termination Date or Expiry Date of this Contract;
  - (ii) arise out of the failure of the Contractor and/or any relevant Sub-Contractor to comply with the provisions of this Part D before the Termination Date or Expiry Date of this Contract; and/or
- (d) arise out of or in connection with the Contractor (or its Sub-Contractor) allowing anyone who is not an NHSPS Fair Deal Employee to join or claim membership of the NHSPS at any time during the Contract Period.

#### 4.2 The indemnities in this Part D and its Annexes:

- (a) shall survive termination of this Contract; and
- (b) shall be unlimited as contained in Clause 9.4(*Limitation of Liability*).

## **5. DISPUTES**

5.1 The Dispute Resolution Procedure will not apply to any dispute (i) between the Department and/or the Contractor or (ii) between their respective actuaries and/or the Fund Actuary about any of the actuarial matters referred to in this Part D and its Annexes shall in the absence of agreement between the Department and/or the Contractor be referred to an independent Actuary:

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

5.2 The independent Actuary shall be agreed by the Parties or, failing such agreement the independent Actuary shall be appointed by the President for the time being of the Institute and Faculty of Actuaries on the application by the Parties.

## **6. THIRD PARTY RIGHTS**

6.1 The Parties agree Clause 43 (Third Party Rights) does not apply and that the CRTPA applies to this Part D to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation in respect of to him or her by the Contractor under this Part D, in his or her or its own right under section 1(1) of the CRTPA.

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

## **7. BREACH**

7.1 The Contractor agrees to notify the Department should it breach any obligations it has under this Part D and agrees that the Department shall be entitled to terminate its Contract for Serious Breach in the event that the Contractor:

- (a) commits an irremediable breach of any provision or obligation it has under this Part D; or
- (b) commits a breach of any provision or obligation it has under this Part D which, where capable of remedy, it fails to remedy within a reasonable time and in any event within 28 days of the date of a notice from the Department giving particulars of the breach and requiring the Contractor to remedy it.

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

8.1 Save on expiry or termination of this Contract, if the employment of any Fair Deal Eligible Employee transfers to another employer (by way of a transfer under the Employment Regulations or other form of compulsory transfer of employment), the Contractor shall or shall procure that any relevant Sub-Contractor shall:

- (a) notify the Department as far as reasonably practicable in advance of the transfer to allow the Department to make the necessary arrangements for participation with the relevant Statutory Scheme(s);
- (b) consult with about, and inform those Fair Deal Eligible Employees of, the pension provisions relating to that transfer; and
- (c) procure that the employer to which the Fair Deal Eligible Employees are transferred (the "**New Employer**") complies with the provisions of this Part D and its Annexes provided that references to the "Contractor" will become references to the New Employer, references to "Relevant Transfer Date" will become references to the date of the transfer to the New Employer and references to "Fair Deal Employees" will become references to the Fair Deal Eligible Employees so transferred to the New Employer.

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

- 9.1 The provisions of Part E: Employment Exit Provisions apply in relation to pension issues on expiry or termination of this Contract.
- 9.2 The Contractor shall (and shall procure that any of its Sub-Contractors shall) prior to the termination of this Contract provide all such co-operation and assistance (including co-operation and assistance from the Broadly Comparable pension scheme's Actuary) as the Replacement Supplier and/or NHS Pension and/or CSPA and/or the relevant Administering Department and/or the Department may reasonably require, to enable the Replacement Supplier to participate in the appropriate Statutory Scheme in respect of any Fair Deal Eligible Employee that remains eligible for New Fair Deal protection following a Service Transfer.

## 10. **BROADLY COMPARABLE PENSION SCHEME ON RELEVANT TRANSFER DATE**

- 10.1 If the terms of any of paragraphs 4 of Annex D2: NHSPS or 3.1 of Annex D3: LGPS applies, the Contractor must (and must, where relevant, procure that each of its Sub-Contractors will) ensure that, with effect from the Relevant Transfer Date until the day before the Service Transfer Date, the relevant Fair Deal Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided under the relevant Statutory Scheme, and then on such terms as may be decided by the Department.
- 10.2 Such Broadly Comparable pension scheme must be:
  - (a) established by the Relevant Transfer Date;
  - (b) a registered pension scheme for the purposes of Part 4 of the Finance Act 2004;
  - (c) capable of receiving a bulk transfer payment from the relevant Statutory Scheme or from a Former Supplier's Broadly Comparable pension scheme (unless otherwise instructed by the Department);
  - (d) capable of paying a bulk transfer payment to the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (unless otherwise instructed by the Department); and

- (e) maintained until such bulk transfer payments have been received or paid (unless otherwise instructed by the Department).

10.3 Where the Contractor has provided a Broadly Comparable pension scheme pursuant to the provisions of this paragraph 10, the Contractor shall (and shall procure that any of its Sub-Contractors shall):

- (a) supply to the Department details of its (or its Sub-Contractor's) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability (which remains valid as at the Relevant Transfer Date) covering all relevant Fair Deal Employees, as soon as it is able to do so before the Relevant Transfer Date (where possible) and in any event no later than seven (7) days after receipt of the certificate;
- (b) be fully responsible for all costs, contributions, payments and other amounts relating to the setting up, certification of, ongoing participation in and/or withdrawal and exit from the Broadly Comparable pension scheme, including for the avoidance of doubt any debts arising under section 75 or 75A of the Pensions Act 1995;
- (c) instruct any such Broadly Comparable pension scheme's Actuary to provide all such co-operation and assistance in agreeing bulk transfer process with the Actuary to the Former Supplier's Broadly Comparable pension scheme or the Actuary to the relevant Statutory Scheme (as appropriate) and to provide all such co-operation and assistance with any other Actuary appointed by the Department (where applicable). This will be with a view to the bulk transfer terms providing day for day and/or pound for pound (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) credits in the Broadly Comparable pension scheme in respect of any Fair Deal Eligible Employee who consents to such a transfer; and
- (d) provide a replacement Broadly Comparable pension scheme in accordance with this paragraph 10 with immediate effect for those Fair Deal Eligible Employees who are still employed by the Contractor and/or relevant Sub-Contractor and are still eligible for New Fair Deal protection in the event that the Contractor and/or Sub-Contractor's Broadly Comparable pension scheme is closed to future accrual and/or terminated. The relevant Fair Deal Eligible Employees must be given the option to transfer their accrued benefits from the previous Broadly Comparable pension scheme to the new Broadly Comparable pension scheme on day for day and/or pound for pound terms (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes).

10.4 Where the Contractor has provided a Broadly Comparable pension scheme pursuant to the provisions of this paragraph 10, the Contractor shall (and shall procure that any of its Sub-Contractors shall) prior to the termination of this Contract:

- (a) allow and make all necessary arrangements to effect, in respect of any Fair Deal Eligible 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 Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable). The bulk transfer terms provided shall be on a past service reserve basis which should be calculated allowing for projected final salary at the assumed date of retirement, leaving service or death (in the case of final salary benefits). The actuarial basis for this past service reserve basis should be aligned to the funding requirements of the Broadly Comparable pension



scheme in place at the time the bulk transfer terms are offered. The bulk transfer terms shall be subject to an underpin in relation to any service credits awarded in the Broadly Comparable pension scheme in accordance with paragraph (c) such that the element of the past service reserve amount which relates to such service credits shall be no lower than that required by the bulk transfer terms that were agreed in accordance with paragraph (c) but using the last day of the Fair Deal Eligible Employees' employment with the Contractor or Sub-Contractor (as appropriate) as the date used to determine the actuarial assumptions; and

- (b) if the transfer payment paid by the trustees of the Broadly Comparable pension scheme is less (in the opinion of the Actuary to the Replacement Supplier's Broadly Comparable pension scheme (or to the relevant Statutory Scheme if applicable)) than the transfer payment which would have been paid had paragraph (a) been complied with, the Contractor shall (or shall procure that the Sub-Contractor shall) pay the amount of the difference to the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable) or as the Department shall otherwise direct. The Contractor shall indemnify the Department or the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (as the Department directs) for any failure to pay the difference as required under this paragraph.

## **11. BROADLY COMPARABLE PENSION SCHEME IN OTHER CIRCUMSTANCES**

11.1 If the terms of any of paragraphs 2.2 of Annex D1: CSPS, 5.2 of Annex D2: NHSPS and/or 3.2 of Annex D3: LGPS apply, the Contractor must (and must, where relevant, procure that each of its Sub-Contractors will) ensure that, with effect from the cessation of participation in the Statutory Scheme, until the day before the Service Transfer Date, the relevant Fair Deal Eligible 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 at the date of cessation of participation in the relevant Statutory Scheme, and then on such terms as may be decided by the Department.

11.2 Such Broadly Comparable pension scheme must be:

- (a) established by the date of cessation of participation in the Statutory Scheme;
- (b) a registered pension scheme for the purposes of Part 4 of the Finance Act 2004;
- (c) capable of receiving a bulk transfer payment from the relevant Statutory Scheme (where instructed to do so by the Department);
- (d) capable of paying a bulk transfer payment to the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (unless otherwise instructed by the Department); and
- (e) maintained until such bulk transfer payments have been received or paid (unless otherwise instructed by the Department).

11.3 Where the Contractor has provided a Broadly Comparable pension scheme pursuant to the provisions of this paragraph 11, the Contractor shall (and shall procure that any of its Sub-Contractors shall):

- (a) supply to the Department details of its (or its Sub-Contractor's) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability (which remains valid as at the date of cessation of participation in the Statutory Scheme) covering all relevant Fair Deal Eligible Employees, as soon as it is able to do so before the cessation of participation in the Statutory Scheme (where possible) and in any event no later than seven (7) days after receipt of the certificate;
- (b) be fully responsible for all costs, contributions, payments and other amounts relating to the setting up, certification of, ongoing participation in and/or withdrawal and exit from the Broadly Comparable pension scheme, including for the avoidance of doubt any debts arising under section 75 or 75A of the Pensions Act 1995; and
- (c) where required to do so by the Department, instruct any such Broadly Comparable pension scheme's Actuary to provide all such co-operation and assistance in agreeing a bulk transfer process with the Actuary to the relevant Statutory Scheme and to provide all such co-operation and assistance with any other Actuary appointed by the Department (where applicable). The Contractor must ensure that day for day and/or pound for pound (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) credits in the Broadly Comparable pension scheme are provided in respect of any Fair Deal Employee who consents to such a transfer from the Statutory Scheme and the Contractor shall be fully responsible for any costs of providing those credits in excess of the bulk transfer payment received by the Broadly Comparable pension scheme; and
- (d) provide a replacement Broadly Comparable pension scheme in accordance with this paragraph 11 with immediate effect for those Fair Deal Eligible Employees who are still employed by the Contractor and/or relevant Sub-Contractor and are still eligible for New Fair Deal protection in the event that the Contractor and/or Sub-Contractor's Broadly Comparable pension scheme is closed to future accrual and/or terminated. The relevant Fair Deal Eligible Employees must be given the option to transfer their accrued benefits from the previous Broadly Comparable pension scheme to the new Broadly Comparable pension scheme on day for day and/or pound for pound terms (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes).

11.4 Where the Contractor has provided a Broadly Comparable pension scheme pursuant to the provisions of this paragraph 11, the Contractor shall (and shall procure that any of its Sub-Contractors shall) prior to the termination of this Contract allow and make all necessary arrangements to effect, in respect of any Fair Deal Eligible 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 Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable). The bulk transfer terms provided shall be sufficient to secure day for day and/or pound for pound credits (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) in the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable). For the avoidance of doubt, should the amount offered by the Broadly Comparable pension scheme be less than the amount required by the Replacement Supplier's Broadly Comparable pension scheme (or the

relevant Statutory Scheme if applicable) to fund the required credits ("**the Shortfall**"), the Contractor or the Sub-Contractor (as agreed between them) must pay the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable) the Shortfall as required, provided that in the absence of any agreement between the Contractor and any Sub-Contractor, the Shortfall shall be paid by the Contractor. The Contractor shall indemnify the Department or the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (as the Department directs) for any failure to pay the Shortfall under this paragraph.

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

12.1 The Department shall have a right to set off against any payments due to the Contractor under this Contract an amount equal to:

- (a) any unpaid employer's contributions or employee's contributions or any other financial obligations under the CSPA or any CSPA Admission Agreement in respect of the CSPA Eligible Employees whether due from the Contractor or from any relevant Sub-Contractor or due from any third party under any indemnity, bond or guarantee;
- (b) any unpaid employer's contributions or employee's contributions or any other financial obligations under the NHSPA or any Direction Letter/Determination in respect of the NHSPA Eligible Employees whether due from the Contractor or from any relevant Sub-Contractor or due from any third party under any indemnity, bond or guarantee; or
- (c) any unpaid employer's contributions or employee's contributions or any other financial obligations under the LGPS or any LGPS Admission Agreement in respect of the LGPS Eligible Employees whether due from the Contractor or from any relevant Sub-Contractor or due from any third party under any indemnity, bond or guarantee;

and shall pay such set off amount to the relevant Statutory Scheme.

12.2 The Department shall also have a right to set off against any payments due to the Contractor under this Contract all reasonable costs and expenses incurred by the Department as result of Paragraph 12.1 above.

## **ANNEX D1: CSPA**

### **1. DEFINITIONS**

1.1 In this Annex D1: CSPA to Part D: Pensions, the following words have the following meanings:

<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 CSPA Fair Deal Employee who at the relevant time is an active member or eligible to participate in the CSPA under a CSPA Admission Agreement;
<b>"CSPA Fair Deal Employee"</b>	a Fair Deal Employee who at the Relevant Transfer Date is or becomes entitled to protection in respect of the CSPA in accordance with the provisions of New Fair Deal;
<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 Arrangements and (ii) Death Benefits Arrangements; the Civil Service Additional Voluntary Contribution Scheme; and "alpha" introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014.

### **2. FUTURE SERVICE BENEFITS**

2.1 In accordance with New Fair Deal, the Contractor and/or any of its Sub-Contractors to which the employment of any CSPA Fair Deal Employee compulsorily transfers as a result of either the award of this Contract or a Relevant Transfer, if not an employer which participates automatically in the CSPA, shall each secure a CSPA Admission Agreement to ensure that CSPA Fair Deal Employees or CSPA Eligible Employees as appropriate 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. The Contractor and/or any of its Sub-Contractors shall procure that the CSPA Fair Deal Employees continue to accrue benefits in the CSPA in accordance with the provisions governing the relevant section of the CSPA for service from (and including) the Relevant Transfer Date.

- 2.2 If the Contractor and/or any of its Sub-Contractors enters into a CSPA Admission Agreement in accordance with paragraph 2.1 but the CSPA Admission Agreement is terminated during Contract Period of this Contract for any reason at a time when the Contractor or Sub-Contractor still employs any CSPA Eligible Employees, the Contractor shall (and procure that its Sub-Contractors shall) at no extra cost to the Department, offer the remaining CSPA Eligible Employees membership of a pension scheme which is Broadly Comparable to the CSPA on the date those CSPA Eligible Employees ceased to participate in the CSPA in accordance with the provisions of paragraph 11 of Part D.

## **ANNEX D: NHSPS**

### **1. DEFINITIONS**

1.1 In this Annex D2: NHSPS to Part D: Pensions, the following words have the following meanings:

<b>"Direction Letter/Determination"</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 Contractor or a Sub-Contractor of the Contractor (as appropriate) relating to the terms of participation of the Contractor or Sub-Contractor in the NHSPS in respect of the NHSPS Fair Deal Employees;
<b>"NHS Broadly Comparable Employees"</b>	<p>means 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:</p> <ul style="list-style-type: none"><li>(a) their employment with the Department, an NHS Body or other employer which participates automatically in the NHSPS; or</li><li>(b) their employment with a Former Supplier who provides access to either the NHSPS pursuant to a Direction Letter/Determination or to a Broadly Comparable pension scheme in respect of their employment with that Former Supplier (on the basis that they are entitled to protection under New Fair Deal (or previous guidance), having been formerly in employment with the Department, an NHS Body or other</li></ul>

employer who participated automatically in the NHSPS in connection with the Services, prior to being employed by the Former Supplier),

but who is now ineligible to participate in the NHSPS under the rules of the NHSPS and in respect of whom the Department has agreed are to be provided with a Broadly Comparable pension scheme to provide Pension Benefits that are Broadly Comparable to those provided under the NHSPS.

**“NHSPS Eligible Employees”**

any NHSPS Fair Deal Employee who at the relevant time is an active member or eligible to participate in the NHSPS under a Direction Letter/Determination Letter.

**"NHSPS Fair Deal Employees"**

means other than the NHS Broadly Comparable Employees, each of the Fair Deal Employees who at a Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the NHSPS as a result of either:

- (a) their employment with the Department, an NHS Body or other employer which participates automatically in the NHSPS; or
- (b) their employment with a Former Supplier who provides access to either the NHSPS pursuant to a Direction Letter/Determination or to a Broadly Comparable pension scheme in respect of their employment with that Former Supplier (on the basis that they are entitled to protection under New Fair Deal (or previous guidance), having been formerly in employment with the Department, 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/Determination or other NHSPS "access" facility but who has never been

employed directly by the Department, an NHS Body or other body which participates automatically in the NHSPS is not an NHSPS Fair Deal 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 the Public Service Pensions Act 2013 governed by subsequent regulations under those Acts including the NHS Pension Scheme Regulations;
<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 NHSPS Fair Deal Employee (had they remained in the employment of the Department, an NHS Body or other employer which participates automatically in the NHSPS) would have been or is 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

## **2. MEMBERSHIP OF THE NHSPS**

2.1 In accordance with New Fair Deal, the Contractor and/or any of its Sub-Contractors to which the employment of any NHSPS Fair Deal Employee compulsorily transfers as a result of either



the award of this Contract or a Relevant Transfer, if not an NHS Body or other employer which participates automatically in the NHSPS, shall each secure a Direction Letter/Determination to enable the NHSPS Fair Deal 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.

2.2 Where it is not possible for the Contractor and/or any of its Sub-Contractors to secure a Direction Letter/Determination on or before the Relevant Transfer Date, the Contractor must secure a Direction Letter/Determination as soon as possible after the Relevant Transfer Date, and in the period between the Relevant Transfer Date and the date the Direction Letter/Determination is secure, the Provider must ensure that:

- (a) all employer's and NHSPS Fair Deal Employees' contributions intended to go to the NHSPS are kept in a separate bank account; and
- (b) the Pension Benefits and Premature Retirement Rights of NHSPS Fair Deal Employees are not adversely affected.

2.3 The Contractor must supply to the Department a complete copy of each Direction Letter/Determination within 5 Working Days of receipt of the Direction Letter/Determination.

2.4 The Contractor must ensure (and procure that each of its Sub-Contractors (if any) ensures) that all of its NHSPS Fair Deal 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/Determination.

2.5 The Contractor will (and will procure that its Sub-Contractors (if any) will) comply with the terms of the Direction Letter/Determination, 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 and Social Care in respect of the NHSPS Fair Deal Employees for so long as it remains bound by the terms of any such Direction Letter/Determination.

2.6 Where any employee omitted from the Direction Letter/Determination supplied in accordance with paragraph 2.5 of this Annex are subsequently found to be an NHSPS Fair Deal Employee, the Contractor will (and will procure that its Sub-Contractors (if any) will) treat that person as if they had been an NHSPS Fair Deal Employee from the Relevant Transfer Date so that their Pension Benefits and NHS Premature Retirement Rights are not adversely affected.

2.7 The Contractor will (and will procure that its Sub-Contractors (if any) will) provide any indemnity, bond or guarantee required by NHS Pensions in relation to a Direction Letter/Determination.

### **3. NHS PREMATURE RETIREMENT RIGHTS**

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

#### **4. NHS BROADLY COMPARABLE EMPLOYEES**

4.1 The Contractor shall (and procure that its Sub-Contractors shall), with effect from the Relevant Transfer Date, offer the NHSPS Broadly Comparable Employees membership of a pension scheme which is Broadly Comparable to NHSPS on the Relevant Transfer Date in accordance with paragraph 10 of Part D. For the avoidance of doubt, this requirement is separate from any requirement to offer a Broadly Comparable pension scheme in accordance with paragraph 5.2 below.

#### **5. BREACH AND CANCELLATION OF ANY DIRECTION LETTER/DETERMINATION(S)**

5.1 The Contractor agrees that the Department is entitled to make arrangements with NHS Pensions for the Department to be notified if the Contractor (or its Sub-Contractors) breaches the terms of its Direction Letter/Determination. Notwithstanding the provisions of the foregoing, the Contractor shall notify the Department in the event that it (or its Sub-Contractor) breaches the terms of its Direction Letter/Determination.

5.2 If the Contractor (or its Sub-Contractors, if relevant) ceases to participate in the NHSPS for whatever reason, the Contractor (or any such Sub-Contractor, as appropriate) shall offer the NHSPS Eligible Employees membership of a pension scheme which is Broadly Comparable to the NHSPS on the date the NHSPS Eligible Employees ceased to participate in the NHSPS in accordance with the provisions of paragraph 11 of Part D.

#### **6. COMPENSATION**

6.1 If the Contractor (or its Sub-Contractor, if relevant) is unable to provide the NHSPS Fair Deal Employees with either membership of:

- (a) the NHSPS (having used its best endeavours to secure a Direction Letter/Determination); or
- (b) a Broadly Comparable pension scheme,

the Department may in its sole discretion permit the Contractor (or any of its Sub-Contractors) to compensate the NHSPS Fair Deal Employees in a manner that is Broadly Comparable or equivalent in cash terms, the Contractor (or Sub-Contractor as relevant) having consulted with a view to reaching agreement with any recognised trade union or, in the absence of such body, the NHSPS Fair Deal Employees. The Contractor must meet (or must procure that the relevant Sub-Contractor meets) the costs of the Department determining whether the level of compensation offered is reasonable in the circumstances.

6.2 This flexibility for the Department to allow compensation in place of Pension Benefits is in addition to and not instead of the Department's right to terminate the Contract under paragraph 7 (*Breach*) of Part D of this Schedule.

## 7. CONTRACTOR INDEMNITIES

7.1 The Contractor must indemnify and keep indemnified the Department and any Replacement Supplier against all Losses arising out of any claim by any NHSPS Fair Deal Employee or any NHS Broadly Comparable Employees 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.

## ANNEX D3: LGPS

### 1. DEFINITIONS

1.1 In this Annex D3: LGPS to Part D: Pensions, the following words have the following meanings:

<b>"2013 Regulations"</b>	the Local Government Pension Scheme Regulations 2013 (SI 2013/2356) (as amended from time to time);
<b>"Administering Department"</b>	in relation to <b>the Fund [insert name]</b> , the relevant administering Department of that Fund for the purposes of the 2013 Regulations;
<b>"Fund Actuary"</b>	the actuary to a Fund appointed by the Administering Department of the Fund;
<b>"Fund"</b>	<b>[insert name], a pension fund within the LGPS;</b>

<b>["Initial Contribution Rate"]</b>	[XX %] of pensionable pay (as defined in the 2013 Regulations);]
<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 2013 Regulations;
<b>"LGPS Admission Body"</b>	an admission body (within the meaning of Part 3 of Schedule 2 of the 2013 Regulations);
<b>"LGPS Eligible Employees"</b>	any LGPS Fair Deal Employee who at the relevant time is an active member or eligible to participate in the LGPS under an LGPS Admission Agreement;
<b>"LGPS Fair Deal Employees"</b>	any Fair Deal Employee who at the Relevant Transfer Date is or becomes entitled to protection in respect of the LGPS or a pension scheme that is Broadly Comparable to the LGPS in accordance with the provisions in accordance with the provisions of New Fair Deal and/or the Best Value Direction; and
<b>"LGPS Regulations"</b>	the 2013 Regulations and The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 (SI 2014/525), and any other regulations (in each case as amended from time to time) which are from time to time applicable to the LGPS.

## 2. CONTRACTOR TO BECOME AN LGPS ADMISSION BODY

- 2.1 In accordance with the principles of New Fair Deal and/or the Best Value Direction, the Contractor and/or any of its Sub-Contractors to which the employment of any LGPS Fair Deal Employee compulsorily transfers as a result of either the award of this Contract or a Relevant Transfer, if not a scheme employer which participates automatically in the LGPS, shall each become an LGPS Admission Body by entering into an LGPS Admission Agreement on or before the Relevant Transfer Date to enable the LGPS Fair Deal Employees to retain either continuous active membership of or eligibility for the LGPS on and from the Relevant Transfer Date for so long as they remain employed in connection with the delivery of the Services under this Contract.

### OPTION 1

- 2.2 [Any LGPS Fair Deal Employees who:

- (a) were active members of the LGPS (or a Broadly Comparable pension scheme) immediately before the Relevant Transfer Date shall be admitted to the LGPS with effect on and from the Relevant Transfer Date; and
- (b) were eligible to join the LGPS (or a Broadly Comparable pension scheme) but were not active members of the LGPS (or a Broadly Comparable pension scheme) immediately before the Relevant Transfer Date shall retain the ability to join the LGPS on or after the Relevant Transfer Date if they wish to do so. ]

## OPTION 2

### 2.3 [Any LGPS Fair Deal Employees whether:

- (a) active members of the LGPS (or a Broadly Comparable pension scheme) immediately before the Relevant Transfer Date; or
- (b) eligible to join the LGPS (or a Broadly Comparable pension scheme) but not active members of the LGPS (or a Broadly Comparable pension scheme) immediately before the Relevant Transfer Date

shall be admitted to the LGPS with effect on and from the Relevant Transfer Date. The Contractor shall not automatically enrol or re-enrol for the purposes of the Pensions Act 2008 any LGPS Fair Deal Employees in any pension scheme other than the LGPS unless they cease to be eligible for membership of the LGPS.]

- 2.4 The Contractor will (and will procure that its Sub-Contractors (if any) will) provide at its own cost any indemnity, bond or guarantee required by an Administering Department in relation to an LGPS Admission Agreement.

## 3. BROADLY COMPARABLE SCHEME

- 3.1 If the Contractor and/or any of its Sub-Contractors is unable to obtain an LGPS Admission Agreement in accordance with paragraph 2.1 because the Administering Department will not allow it to participate in the Fund, the Contractor shall (and procure that its Sub-Contractors shall), with effect from the Relevant Transfer Date, offer the LGPS Fair Deal Employees membership of a pension scheme which is Broadly Comparable to LGPS on the Relevant Transfer Date in accordance with the provisions of paragraph 10 of Part D.
- 3.2 If the Contractor and/or any of its Sub-Contractors becomes an LGPS Admission Body in accordance with paragraph 2.1 but the LGPS Admission Agreement is terminated during the Contract Period of this Contract for any reason at a time when the Contractor or Sub-Contractors still employs any LGPS Eligible Employees, the Contractor shall (and procure that its Sub-Contractors shall) at no extra cost to the Department, offer the remaining LGPS Eligible Employees membership of a pension scheme which is Broadly Comparable to the LGPS on the date the LGPS Eligible Employees ceased to participate in the LGPS in accordance with the provisions of paragraph 11 of Part D.

## 4. DISCRETIONARY BENEFITS

- 4.1 Where the Contractor and/or any of its Sub-Contractors is an LGPS Admission Body, the Contractor shall (and procure that its Sub-Contractors shall) comply with its obligations under

regulation 60 of the 2013 Regulations in relation to the preparation of a discretionary policy statement.

## 5. LGPS RISK SHARING

5.1 Subject to paragraphs 5.4 to 5.10, if at any time during the Contract Period of the Contract the Administering Department, pursuant to the LGPS Admission Agreement or the LGPS Regulations, requires the Contractor or any Sub-Contractor to pay employer contributions or other payments to the Fund in aggregate in excess of the Initial Contribution Rate, the excess of employer contributions above the Initial Contribution Rate for a Contract Year (the “**Excess Amount**”) shall be paid by the Contractor or the Sub-Contractor, as the case may be, and the Contractor shall be reimbursed by the Department.

5.2 Subject to paragraphs 5.4 to 5.9 and 5.11, if at any time during the Contract Period, the Administering Department, pursuant to the LGPS Admission Agreement or the LGPS Regulations, requires the Contractor or any Sub-Contractor to pay employer contributions or payments to the Fund in aggregate below the Initial Contribution Rate for a Contract Year, the Contractor shall reimburse the Department an amount equal to A–B (the “**Refund Amount**”) where:

A = the amount which would have been paid if contributions and payments had been paid equal to the Initial Contribution Rate for that Contract Year; and

B = the amount of contributions or payments actually paid by the Contractor or Sub-Contractor for that Contract Year, as the case may be, to the Fund.

5.3 Subject to paragraphs 5.4 to 5.10, where the Administering Department obtains an actuarial valuation and a revised rates and adjustment certificate under the LGPS Regulations and/or the terms of the LGPS Admission Agreement when the LGPS Admission Agreement ceases to have effect and the Contractor or any Sub-Contractor is required to pay any exit payment under Regulation 64(2) of the 2013 Regulations (the “**Exit Payment**”), such Exit Payment shall be paid by the Contractor or any Sub-Contractor (as the case may be) and the Contractor shall be reimbursed by the Department.

5.4 The Contractor and any Sub-Contractors shall at all times be responsible for the following costs:

- (a) any employer contributions relating to the costs of early retirement benefits arising on redundancy or as a result of business efficiency under Regulation 30(7) of the 2013 Regulations or otherwise;
- (b) any payment of Fund benefits to active members on the grounds of ill health or infirmity of mind or body under Regulation 35 of the 2013 Regulations or otherwise;
- (c) any payment of Fund benefits to deferred or deferred pensioner members on the grounds of ill health or infirmity of mind or body under Regulation 38 of the 2013 Regulations or otherwise;

- (d) any employer contributions relating to the costs of early or flexible retirement where the actuarial reduction is waived in whole or in part or a cost neutral reduction is not applied with the consent of the Contractor or any relevant Sub-Contractor including without limitation any decision made under Regulation 30(8) of the 2013 Regulations or Schedule 2 of The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014;
- (e) any employer contributions relating to the costs of enhanced benefits made at the discretion of the Contractor or any relevant Sub-Contractors including without limitation additional pension awarded under Regulation 31 of the 2013 Regulations or otherwise;
- (f) any increase to the employer contribution rate resulting from the award of pay increases by the Contractor or relevant Sub-Contractors in respect of all or any of the LGPS Eligible Employees in excess of the pay increases assumed in the Fund's most recent actuarial valuation (unless the Contractor and/or any Sub-Contractor is contractually bound to provide such increases on the Relevant Transfer Date);
- (g) to the extent not covered above, any other costs arising out of or in connection with the exercise of any discretion or the grant of any consent under the LGPS Regulations by the Contractor or any relevant Sub-Contractors where a member does not have an absolute entitlement to that benefit under the LGPS;
- (h) any cost of the administration of the Fund that are not met through the Contractor's or Sub-Contractor's employer contribution rate, including without limitation an amount specified in a notice given by the Administering Department under Regulation 70 of the 2013 Regulations;
- (i) the costs of any reports and advice requested by or arising from an instruction given by the Contractor or a Sub-Contractor from the Fund Actuary; and/or
- (j) any interest payable under the 2013 Regulations or LGPS Administration Agreement.

5.5 For the purposes of calculating any Exit Payment, Excess Amount or Refund Amount, any part of such an amount which is attributable to any costs which the Contractor or Sub-Contractors are responsible for in accordance with paragraph 5.4 above shall be disregarded and excluded from the calculation. In the event of any dispute as to level of any cost that should be excluded from the calculation, the opinion of the Fund Actuary shall be final and binding.

5.6 Where the Administering Department obtains an actuarial valuation and a revised rates and adjustment certificate under the LGPS Regulations and/or the terms of the LGPS Admission Agreement when the LGPS Admission Agreement ceases to have effect and the Contractor or any Sub-Contractor receives payment of an exit credit payment under Regulation 64(2) of the 2013 Regulations (the "**Exit Credit**"), the Contractor shall (or procure that any Sub-Contractor shall) reimburse the Department an amount equal to the Exit Credit within twenty (20) Working Days of receipt of the Exit Credit.

5.7 The Contractor shall (or procure that the Sub-Contractor shall) notify the Department in writing within twenty (20) Working Days:

- (k) of the end of each Contract Year of any Excess Amount or Refund Amount due in respect of the Contract Year that has just ended and provide a reasonable summary of how the Excess Amount or Refund Amount was calculated; and
- (l) of being informed by the Administering Department of any Exit Payment or Exit Credit that is determined by as being due from or to the Contractor or a Sub-Contractor and provide a copy of any revised rates and adjustments certificate detailing the Exit Payment or Exit Credit and its calculation.

5.8 Within twenty (20) Working Days of receiving the notification under paragraph 5.7 above, the Department shall either:

- (a) notify the Contractor in writing of its acceptance of the Excess Amount, Refund Amount or Exit Payment;
- (b) request further information or evidence about the Excess Amount, Refund Amount or Exit Payment from the Contractor; and/or
- (c) request a meeting with the Contractor to discuss or clarify the information or evidence provided.

5.9 Where the Excess Amount, Refund Amount or Exit Payment is agreed following the receipt of further information or evidence or following a meeting in accordance with paragraph 5.8 above, the Department shall notify the Contractor in writing. In the event that the Contractor and the Department are unable to agree the amount of the Excess Amount, Refund Amount or Exit Payment then they shall follow the Dispute Resolution Procedure.

5.10 Any Excess Amount or Exit Payment agreed by the Department or in accordance with the Dispute Resolution Procedure shall be paid by the Department within timescales as agreed between Department and Contractor. The amount to be paid by the Department shall be an amount equal to the Excess Amount or Exit Payment less an amount equal to any corporation tax relief which has been claimed in respect of the Excess Amount or Exit Payment by the Contractor or a Sub-Contractor.

5.11 Any Refund Amount agreed by the Department or in accordance with the Dispute Resolution Procedure as payable by the Contractor or any Sub-Contractor to the Department, shall be paid by the Contractor or any Sub-Contractor forthwith as the liability has been agreed. In the event the Contractor or any Sub-Contractor fails to pay any agreed Refund Amount, the Department shall demand in writing the immediate payment of the agreed Refund Amount by the Contractor and the Contractor shall make payment within seven (7) Working Days of such demand.

5.12 This paragraph 5 shall survive termination of this Contract.



## **PART E: EMPLOYMENT EXIT PROVISIONS**

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

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

- (a) receipt of a notification from the Department of a Service Transfer or intended Service Transfer;
- (b) receipt of the giving of notice of early termination or any Partial Termination of this Contract;
- (c) the date which is 12 months before the end of the Contract Period; and
- (d) receipt of a written request of the Department at any time (provided that the Department 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 DPA, the Contractor's Provisional Contractor Personnel List, together with the Staffing Information and it shall provide an updated Contractor's Provisional Contractor Personnel List at such intervals as are reasonably requested by the Department.

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

- (a) the Contractor's Final Contractor Personnel List, which shall identify which of the Contractor Personnel are Transferring Contractor Employees; and
- (b) the Staffing Information in relation to the Contractor's Final Contractor Personnel List (insofar as such information has not previously been provided).

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

1.4 The Contractor warrants, for the benefit of the Department, 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 (a), (b) and (c), the Contractor 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

Contractor's Provisional Contractor Personnel List and shall not without the approval of the Department (not to be unreasonably withheld or delayed):

- (a) replace or re-deploy any Contractor Personnel listed on the Contractor Provisional Contractor 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;
- (b) make, promise, propose, permit or implement any material changes to the terms and conditions of employment of the Contractor Personnel (including pensions and any payments connected with the termination of employment);
- (c) increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Contractor 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 Contractor's Provisional Contractor 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 Contractor's Provisional Contractor Personnel List save by due disciplinary process,

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

1.6 During the Contract Period, the Contractor shall provide, and shall procure that each Sub-Contractor shall provide, to the Department any information the Department may reasonably require relating to the manner in which the Services are organised, which shall include:

- (a) the numbers of employees engaged in providing the Services;
- (b) the percentage of time spent by each employee engaged in providing the Services;
- (c) the extent to which each employee qualifies for membership of any of the Statutory Schemes or any Broadly Comparable scheme set up pursuant to the provisions of any of the Annexes to Part D (Pensions) of this Schedule 13 (Staff Transfer) (as appropriate); and
- (d) a description of the nature of the work undertaken by each employee by location.

1.7 The Contractor shall provide, and shall procure that each Sub-Contractor shall provide, all reasonable cooperation and assistance to the Department, any Replacement Supplier and/or any Replacement Sub-Contractor to ensure the smooth transfer of the Transferring Contractor 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 Contractor Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Service Transfer Date, the Contractor shall provide, and shall procure that each Sub-Contractor shall provide, to the Department or, at the direction of the Department, to any Replacement Supplier and/or any Replacement Sub-Contractor (as appropriate), in respect of each person on the Contractor's Final Contractor Personnel List who is a Transferring Contractor 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; and
- (f) bank/building society account details for payroll purposes.

## **2. EMPLOYMENT REGULATIONS EXIT PROVISIONS**

- 2.1 The Department and the Contractor acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Agreement or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Sub-Contractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Department and the Contractor further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Contractor and the Transferring Contractor 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 Sub-Contractor (as the case may be) and each such Transferring Contractor Employee.
- 2.2 The Contractor shall, and shall procure that each Sub-Contractor shall, comply with all its obligations in respect of the Transferring Contractor 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 Contractor 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 as a result of any Fair Deal Employees' participation in the Schemes 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 Contractor and/or the Sub-Contractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Sub-Contractor.

2.3 Subject to Paragraph 2.4, the Contractor shall indemnify the Department 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 Contractor or any Sub-Contractor in respect of any Transferring Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Contractor Employee whether occurring before, on or after the Service Transfer Date;
- (b) the breach or non-observance by the Contractor or any Sub-Contractor occurring on or before the Service Transfer Date of:
  - (i) any collective agreement applicable to the Transferring Contractor Employees; and/or
  - (ii) any other custom or practice with a trade union or staff association in respect of any Transferring Contractor Employees which the Contractor or any Sub-Contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Contractor Employees arising from or connected with any failure by the Contractor 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 proceeding, claim or demand by HMRC or other statutory Department 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 Contractor Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory Department 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 Contractor's Final Contractor Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Contractor to the Department and/or Replacement Supplier and/or any Replacement Sub-Contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory Department relates to financial obligations arising on or before the Service Transfer Date;
- (e) a failure of the Contractor 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 Contractor Employees in respect of the period up to (and including) the Service Transfer Date);

- (f) any claim made by or in respect of any person employed or formerly employed by the Contractor or any Sub-Contractor other than a Transferring Contractor Employee identified in the Contractor's Final Contractor Personnel List for whom it is alleged the Department and/or the Replacement Supplier and/or any Replacement Sub-Contractor may be liable by virtue of this Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
- (g) any claim made by or in respect of a Transferring Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Contractor Employee relating to any act or omission of the Contractor 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 Department and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.

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

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

2.5 If any person who is not identified in the Contractor's Final Contractor Personnel list claims, or it is determined in relation to any person who is not identified in the Contractor's Final Contractor Personnel list, that his/her contract of employment has been transferred from the Contractor or any Sub-Contractor to the Replacement Supplier and/or Replacement Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:

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

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

2.7 If after the 15 Working Day period specified in Paragraph 2.5(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 Department shall advise the Replacement Supplier and/or Replacement Sub-Contractor, as appropriate that it may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

2.8 Subject to the Replacement Supplier and/or Replacement Sub-Contractor acting in accordance with the provisions of Paragraphs 2.5 to 2.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Contractor shall indemnify the 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 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:
  - (iii) 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 Replacement Supplier and/or Replacement Sub-Contractor; or
  - (iv) any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Sub-Contractor neglected to follow a fair dismissal procedure; and
- (b) shall apply only where the notification referred to in 2.5(a) is made by the Replacement Supplier and/or Replacement Sub-Contractor to the Contractor within 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 Contractor or any Sub-Contractor nor dismissed by the Replacement Supplier and/or Replacement Sub-Contractor within the time scales set out in Paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Contractor Employee.

2.11 The Contractor 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 Contractor's Final Contractor 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 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 Contractor and/or any Sub-Contractor; and
- (b) the Replacement Supplier and/or the Replacement Sub-Contractor.

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

2.13 Subject to Paragraph 2.14, the Department shall procure that the Replacement Supplier indemnifies the Contractor 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 Replacement Supplier and/or Replacement Sub-Contractor in respect of any Transferring Contractor Employee identified in the Contractor's Final Contractor Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Contractor Employee;
- (b) the breach or non-observance by the Replacement Supplier and/or Replacement Sub-Contractor on or after the Service Transfer Date of:
  - (v) any collective agreement applicable to the Transferring Contractor Employees identified in the Contractor's Final Contractor Personnel List; and/or
  - (vi) any custom or practice in respect of any Transferring Contractor Employees identified in the Contractor's Final Contractor Personnel List which the Replacement Supplier and/or Replacement Sub-Contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Contractor Employees identified in the Contractor's Final Contractor Personnel List arising from or connected with any failure by the Replacement Contractor 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 Replacement Supplier and/or Replacement Sub-Contractor to change the terms and conditions of employment or working conditions of any Transferring Contractor Employees identified in the Contractor's Final Contractor Personnel List on or after their transfer to the 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 Contractor's Final Contractor Personnel List who would have been a Transferring Contractor 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 Replacement Supplier or Replacement Sub-Contractor to, or in respect of, any Transferring Contractor Employee identified in the Contractor's Final Contractor Personnel List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Contractor in writing;
- (f) any proceeding, claim or demand by HMRC or other statutory Department in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (vii) in relation to any Transferring Contractor Employee identified in the Contractor's Final Contractor Personnel List, to the extent that the proceeding, claim or demand by HMRC or other statutory Department relates to financial obligations arising after the Service Transfer Date; and
  - (viii) in relation to any employee who is not a Transferring Contractor Employee identified in the Contractor's Final Contractor Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Contractor or Sub-Contractor, to the Replacement Supplier or Replacement Sub-Contractor to the extent that the proceeding, claim or demand by HMRC or other statutory Department relates to financial obligations arising after the Service Transfer Date;
- (g) a failure of the Replacement Supplier or Replacement Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Contractor Employees identified in the Contractor's Final Contractor 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 Contractor Employee identified in the Contractor's Final Contractor Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Contractor Employee relating to any act or omission of the Replacement Supplier or Replacement Sub-Contractor in relation to obligations under regulation 13 of the Employment Regulations.

2.14 The indemnities in Paragraph 2.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Contractor 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 Contractor and/or any Sub-Contractor (as applicable) to comply with its obligations under the Employment Regulations.

## **ANNEX E1: LIST OF NOTIFIED SUB-CONTRACTORS**



## **ANNEX E2: STAFFING INFORMATION**

### **EMPLOYEE INFORMATION (ANONYMISED)**

Name of Transferor:

Number of Employees in-scope to transfer:

Completion notes:

1. *If you have any Key Sub-Contractors, please complete all the above information for any staff employed by such Key Sub-Contractor(s) in a separate spreadsheet.*
2. *This spreadsheet is used to collect information from the current employer (transferor) about employees performing the relevant services to help plan for a potential TUPE transfer. Some or all of this information may be disclosed to bidders as part of a procurement process. The information should not reveal the employees' identities.*
3. *If the information cannot be included on this form, attach the additional information, such as relevant policies, and cross reference to the item number and employee number where appropriate.*

EMPLOYEE DETAILS & KEY TERMS							
Details	Job Title	Grade / band	Work Location	Age	Employment status (for example, employee, fixed-term employee, self-employed, agency worker)?	Continuous service date (dd/mm/yy)	Date employment started with existing employer
Emp No 1							
Emp No 2							
Emp No							
Emp No							
Emp No							
Emp No							
Emp No							
Emp No							

EMPLOYEE DETAILS & KEY TERMS							
Detail s	Contract end date (if fixed term contract or temporar y contract)	Contractua l notice period	Contractua l weekly hours	Regular overtim e hours per week	Mobility or flexibility clause in contract ?	Previously TUPE transferred to organisation ? If so, please specify (i) date of transfer, (ii) name of transferor, and (iii) whether ex public sector	Any collective agreements ?
Emp No 1							
Emp No 2							
Emp No							
Emp No							
Emp No							
Emp No							
Emp No							

	ASSIGNMENT	CONTRACTUAL PAY AND BENEFITS						
Details	% of working time dedicated to the provision of services under the contract	Salary (or hourly rate of pay)	Payment interval (weekly / fortnightly / monthly)	Bonus payment for previous 12 months (please specify whether contractual or discretionary entitlement)	Pay review method	Frequency of pay reviews	Agreed pay increases	Next pay review date
Emp No 1								
Emp No 2								
Emp No								
Emp No								
Emp No								
Emp No								

CONTRACTUAL PAY AND BENEFITS								
Details	Any existing or future commitment to training that has a time-off or financial implication	Car allowance (£ per year)	Lease or company car details	Any other allowances paid (e.g. shift allowance, standby allowance, travel allowance)	Private medical insurance (please specify whether single or family cover)	Life insurance (xSalary)	Long Contract Period Disability / PHI (% of Salary)	Any other benefits in kind
Emp No 1								
Emp No 2								
Emp No								
Emp No								
Emp No								
Emp No								
Emp No								

CONTRACTUAL PAY AND BENEFITS						
Details	Annual leave entitlement (excluding bank holidays)	Bank holiday entitlement	Method of calculating holiday pay (i.e. based on fixed salary only or incl. entitlements to variable remuneration such as bonuses, allowances, commission or overtime pay?)	Maternity or paternity or shared parental leave entitlement and pay	Sick leave entitlement and pay	Redundancy pay entitlement (statutory / enhanced / contractual / discretionary)
Emp No 1						
Emp No 2						
Emp No						
Emp No						
Emp No						
Emp No						
Emp No						



PENSIONS						
Details	Employee pension contribution rate	Employer pension contribution rate	Please provide the name of the pension scheme and a link to the pension scheme website	Is the scheme an occupational pension scheme as defined in the Pension Schemes Act 1993?	If the scheme is not an occupational pension scheme, what type of scheme is it? E.g. personal pension scheme?	Type of pension provision e.g. defined benefit (CARE or final salary, and whether a public sector scheme e.g. CSPS, NHSPS, LGPS etc. or a broadly comparable scheme) or a defined contribution scheme or an auto enrolment master trust?
Emp No 1						
Emp No 2						
Emp No						
Emp No						
Emp No						
Emp No						
Emp No						

PENSIONS						
Details	If the Employee is in the Local Government Pension Scheme, please supply details of Fund and Administering Authority.	If the Employee is in the Civil Service Pension Scheme, please provide details of the Admission Agreement.	If the Employee is in the NHSPS, please provide details of the Direction Letter.	If the Employee is in a broadly comparable pension scheme, please supply a copy of the GAD certificate of Broad Comparability.	Did Fair Deal or any other similar pension protection for ex-public sector employees apply to the employee when they TUPE transferred into your employment? If so, what was the nature of that protection (e.g. right to participate in a public sector pension scheme, or a broadly comparable scheme, or to bulk transfer past pension service into their current scheme)?	If Fair Deal, Best Value or other pension protection applied, which public sector employer did they originally transfer out of and when?
Emp No 1						
Emp No 2						
Emp No						
Emp No						
Emp No						
Emp No						
Emp No						

	OTHER		
Details	Security Check Level	Security Clearance Expiry date	Additional info or comments
Emp No 1			
Emp No 2			
Emp No			
Emp No			
Emp No			
Emp No			
Emp No			