

Schedule 9.1

TRANSFER REGULATIONS

PART 1 OF THIS SCHEDULE 9.1 - EMPLOYEE TRANSFER ARRANGEMENTS ON ENTRY

1 DEFINITIONS

1.1 In this Schedule 9.1 Part 1, save where otherwise provided, words and terms defined in Schedule 1 (*Definitions*) of the Contract shall have the meaning ascribed to them in Schedule 1 (*Definitions*) of the Contract.

1.2 Without prejudice to Schedule 1 (*Definitions*) of the Contract, in this Schedule 9.1 Part 1 unless the context otherwise requires:

**"Authority Employees"** means those employees of the Authority who are listed in the relevant Final List;

**"Costs"** means recruitment costs in respect of the provision of the Services, those costs of employing the employees of the Authority and/or any reasonable termination costs, including, without limitation, redundancy payments (but excluding costs arising from acts or omissions of the Supplier and/or Employing Sub-Contractor, and excluding any payment which the Supplier and/or any Employing Sub-Contractor is not obliged to make by contract or statute, and excluding any compensation, payment, costs or awards (whether protective or otherwise) in connection with claims of unfair dismissal, discrimination and claims in respect of a protective award under the Trade Union and Labour Relations (Consolidation) Act 1992 (save where such claims are as a result of an act or omission of the Authority));

**"Data Protection Legislation"** means all applicable data protection and privacy legislation in force from time to time in the UK, including but not limited to:

- (i) the General Data Protection Regulation ((EU) 2016/679) as retained in UK law by the EU (Withdrawal) Act 2018 and the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (the **"UK General Data Protection Regulation"** or **"UK GDPR"**);
- (ii) the Data Protection Act 2018;
- (iii) the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended; and
- (iv) all applicable legislation and regulatory requirements in force from time to time which apply to a party relating to the processing of personal data and privacy and the guidance and codes of practice issued by the Information Commissioner's Office which apply to a party;

**"Employee Liability Information"** has the same meaning as in Regulation 11(2) of the Transfer Regulations;

**"Employee List"** means the list of Expected Authority Transferees plus the information listed in Part A of Appendix 2 of this Part 1 of this Schedule 9.1 for those Expected Authority Transferees;

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**"Employing Sub-Contractor"** means any sub-contractor of the Supplier which is providing or going to provide any part of the Services who is or is to be the employer of an Authority Employee, a Previous Supplier Employee or an Unexpected Employee;

**"Expected Authority Transferee"** means an employee of the Authority whom the Authority considers prior to the relevant Relevant Transfer Date is assigned (sufficiently for the purposes of the Transfer Regulations) to provide the Services which are to be provided by the Supplier and/or by an Employing Sub-Contractor and who the Authority expects to transfer to the Supplier or an Employing Sub-Contractor on the relevant Relevant Transfer Date;

**"Final List"** means the list of Expected Authority Transferees as at twenty-eight (28) days prior to the relevant Relevant Transfer Date, plus the information listed in Part B of Appendix 2 of this Part 1 of this Schedule 9.1 in respect of those Expected Authority Transferees;

**"New Provider"** means any replacement service provider or providers (together with their subsidiaries, of any tier) engaged to provide the Services (or part thereof) or substantially similar services (or the Authority itself where the Services or substantially similar services or part thereof become provided by the Authority) after partial termination, termination or expiry of this Contract;

**"Former Authority Employee"** means at any time any person whose employment previously transferred to a contractor or its sub-contractor by operation of the Transfer Regulations and who has, pursuant to this Contract, transferred to the Supplier or any Sub-contractor by operation of the Transfer Regulations *provided that* since such person was employed by the Authority (a) he has not ceased to be eligible for membership of the Schemes; and (b) any intervening change in his employer has been effected pursuant to the Transfer Regulations;

**"Previous Supplier"** means [names], their subcontractors (of any tier), and any other supplier (together with their subcontractors, of any tier) supplying services to the Authority before the relevant Previous Supplier Relevant Transfer Date that are the same as or substantially similar to any of the Services;

**"Previous Supplier Employee"** means an employee of a Previous Supplier (including but not limited to Former Authority Employees) who immediately before the relevant Previous Supplier Relevant Transfer Date is assigned to carry out the services to be carried out by the Supplier or Sub-Contractor under this Contract and who has not been dismissed, resigned, been reassigned or objected to the Previous Supplier Relevant Transfer;

**"Previous Supplier Relevant Transfer"** means a transfer to the Supplier or an Employing Sub-Contractor of a Previous Supplier Employee pursuant to this Contract and by operation of the Transfer Regulations;

**"Previous Supplier Relevant Transfer Date"** means each date on which a Previous Supplier Relevant Transfer is effected for Previous Supplier Employees;

**"Relevant Statutory Scheme"** has the same meaning as in Regulation 8 of the Transfer Regulations;

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**"Relevant Transfer"** means each transfer to the Supplier or an Employing Sub-Contractor of Authority Employees pursuant to this Contract by operation of the Transfer Regulations;

**"Relevant Transfer Date"** means the date on which a Relevant Transfer is effected for Authority Employees;

**"Subsequent Transfer Date"** means as defined in Part 2 of this Schedule 9.1;

**"Transfer Regulations"** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 and the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006, each as amended or replaced by similar provisions from time to time, as appropriate;

**"Unexpected Employee"** means any employee of the Authority or former employee of the Authority (excluding any Former Authority Employee and any other actual or alleged Previous Supplier Employee) who is not on the Final List relating to the relevant Relevant Transfer provided in accordance with Paragraph 2.1.4 and who is or was assigned by the Authority to the Services to be provided by the Supplier and/or an Employing Sub-Contractor immediately prior to the relevant Relevant Transfer Date.

## **2 AUTHORITY EMPLOYEES**

### **2.1 Authority Employee Information / [Contract Price] Adjustment**

2.1.1 Three (3) months prior to each Relevant Transfer Date, the Authority shall provide to the Supplier :

- (a) The Employee List for that Relevant Transfer; and
- (b) Employee Liability Information in respect of those Expected Authority Transferees;

2.1.2 In the period prior to the twenty-eighth (28<sup>th</sup>) day before each Relevant Transfer Date the Authority shall inform the Supplier of, and provide any information related to, any changes to the information provided pursuant to Paragraph 2.1.1 as soon as reasonably practicable.

2.1.3 The Supplier's Representative shall provide any information provided to it by the Authority under Paragraphs 2.1.1 and 2.1.2 to an Employing Sub-Contractor within seven (7) Working Days of receipt to the extent that such Expected Authority Transferees are to transfer to an Employing Sub-Contractor under a Relevant Transfer.

2.1.4 No later than twenty-eight (28) days prior to each Relevant Transfer Date the Authority shall provide to the Supplier the Final List relating to that Relevant Transfer.

2.1.5 Paragraphs 2.1.1, 2.1.2 and 2.1.4 are subject to the Authority's obligations in respect of the Data Protection Legislation and the Authority shall use its reasonable endeavours to obtain the consent of its employees to the extent necessary under the Data Protection Legislation or provide the data in anonymous form in order to enable disclosure of the information required under Paragraph 2.1.1. To the extent anonymous data has been provided by the Authority to the

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Supplier pursuant to its obligations under Paragraph 2.1.1 above, the Authority shall (subject to the Data Protection Legislation) provide full data to the Supplier no later than twenty-eight (28) days prior to the relevant Relevant Transfer.

- 2.1.6 Where any differences between the employee lists in relation to Authority Transferring Employees in Appendix 1 of this Part 1 of Schedule 9.1 (which shows the employee information on which the Supplier based the employment costs in relation to Authority Transferring Employees used to calculate the [Contract Price], those employment costs being £[insert sum]) and the relevant Final List(s) result in reasonable additional Costs to the Supplier and/or any Employing Sub-Contractor, the Supplier may propose a reasonable adjustment to the [Contract Price] to meet such reasonable additional Costs that the Supplier and/or any Employing Sub-Contractor incurs as a result of such a change provided that such a change is not as a result of an act or omission of the Supplier and/or any Employing Sub-Contractor. The Supplier shall produce such evidence of the reasonable additional Costs incurred as the Authority may reasonably require as soon as is reasonably practicable and in any event no later than twenty-eight (28) days following the receipt of such a written request prior to any adjustment being made. No adjustment to the [Contract Price] shall be made where there is a failure to produce such evidence within this timescale or where the Authority considers such information insufficient.
- 2.1.7 Where the Authority considers that any differences between the employee lists at Appendix 1 of this Part 1 of Schedule 9.1 (which shows the employee information on which the Supplier based its employment costs in respect of Authority Transferring Employees used to calculate the [Contract Price], those employment costs being £[insert sum]) and the relevant Final List(s) result in a reduction of Costs to the Supplier and/or any Employing Sub-Contractor, the Authority shall propose a reasonable adjustment to the [Contract Price] to reflect any reasonable reduction in Costs to the Supplier and/or any Employing Sub-Contractor. The Authority and the Supplier shall produce such reasonable evidence as the other Party shall reasonably require as soon as is reasonably practicable and in any event no later than twenty-eight (28) days after a request is made in writing in order to establish such a reduction in Costs. A failure by the Supplier to produce such evidence shall preclude the Supplier from objecting to an adjustment to the [Contract Price]. A failure by the Authority to produce such evidence, save where such a failure is as a result of an act or omission of the Supplier or Employing Sub-Contractor, shall result in no adjustment to the [Contract Price].
- 2.1.8 Where, following a Relevant Transfer Date, the Supplier and/or the Authority provides reasonable evidence to the other Party that any of the details (other than the number or identities of the Expected Authority Transferees, which shall instead be an issue dealt with under Paragraphs 2.1.6 and 2.1.7 above) in the relevant Final List(s) were inaccurate the [Contract Price] shall be adjusted to reflect the adjustment which would have been made under Paragraphs 2.1.6 and/or 2.1.7 (if any) had the relevant Final List(s) been accurate on the relevant Relevant Transfer Date(s). The Authority and the Supplier shall produce such reasonable evidence of the inaccuracies and/or the additional Costs and/or reduction in Costs incurred as the other Party may reasonably require as soon as is reasonably practicable and in any event, no later than twenty-eight (28) days following the receipt of such a request prior to any adjustments being made. Where there is a failure by the Supplier to produce such evidence within this timescale or where the Authority reasonably considers such information insufficient, no increase to the [Contract Price] shall be made. A failure by the Authority to produce reasonable evidence to demonstrate inaccuracies and/or the

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reduction in Costs, save where such a failure is as a result of an act or omission of the Supplier or Employing Sub-Contractor, shall result in no reduction to the [Contract Price].

- 2.1.9 No adjustments shall be made to the [Contract Price] in respect of inaccuracies which are raised under Paragraphs 2.1.6, 2.1.7 or 2.1.8 more than six (6) months following the relevant Relevant Transfer Date.
- 2.1.10 The Parties agree that any adjustments to the [Contract Price] under Paragraphs 2.1.6, 2.1.7 or 2.1.8 for each Relevant Transfer shall be made at the same time which shall be no earlier than six (6) months after the final Relevant Transfer Date.
- 2.1.11 If a claim or allegation is made by an Unexpected Employee that he has or should have transferred to the Supplier and/or any Sub-Contractor and/or (in the case of an Unexpected Employee whose employment terminated on or before the relevant Relevant Transfer Date) that any liability relating to him has transferred to the Supplier and/or any Sub-Contractor by virtue of the Transfer Regulations and this Contract, the Party receiving the claim or allegation shall notify the other Party (and the Supplier shall notify the Authority on the Sub-Contractor's behalf) in writing as soon as reasonably practicable and no later than ten (10) Working Days after receiving notification of the Unexpected Employee's claim or allegation, whereupon:
- (a) the Authority shall, as soon as reasonably practicable, offer and/or confirm continued employment to the Unexpected Employee or take such other steps so as to effect a written withdrawal of the claim or allegation; and
  - (b) if the Unexpected Employee's claim or allegation is not withdrawn or resolved the Authority shall notify the Supplier (who will notify any Sub-Contractor who is a party to such claim or allegation), and the Supplier or Sub-Contractor shall employ the Unexpected Employee or as soon as reasonably practicable (subject to compliance with its obligations at Paragraph 2.1.11(c)(iii)), serve notice to terminate the Unexpected Employee's employment in accordance with his contract of employment and/or (in the case of an Unexpected Employee whose employment terminated on or before the Relevant Transfer Date) shall resist any claim brought by the Unexpected Employee against the Supplier and/or any Sub-Contractor; and
  - (c) the Authority shall effect an adjustment to the [Contract Price] which has the effect of reimbursing the Supplier for any of the following liabilities incurred by the Supplier or Sub-Contractor in dealing with or disposing of the Unexpected Employee's claim or allegation:
    - (i) any additional Costs of employing the Unexpected Employee to provide the Services under this Contract up to the date of dismissal (where the Unexpected Employee has been dismissed in accordance with Paragraph 2.1.11(b));
    - (ii) any liabilities acquired by virtue of the Transfer Regulations in relation to the Unexpected Employee;

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- (iii) any liabilities relating to the termination of the Unexpected Employee's employment provided the Supplier or Sub-Contractor has used reasonable endeavours to find alternative employment for the Unexpected Employee, but excluding such proportion or amount of any liability for unfair dismissal, breach of contract or discrimination attributable:
  - (A) to a failure by the Supplier or an Employing Subcontractor to act reasonably to mitigate the costs of dismissing such person;
  - (B) directly or indirectly to the procedure followed by the Supplier or an Employing Subcontractor in dismissing the Unexpected Transferee; or
  - (C) to the acts/omissions of the Supplier or an Employing Subcontractor not wholly connected to the dismissal of that person;
- (iv) any liabilities incurred under a settlement of the Unexpected Employee's claim which was reached with the express written permission of the Authority (not to be unreasonably withheld or delayed);
- (v) reasonable administrative costs incurred by the Supplier or Sub-Contractor in dealing with the Unexpected Employee's claim or allegation, subject to a cap per Unexpected Employee of £[REDACTED]; and
- (vi) legal and other professional costs reasonably incurred;
- (d) the Supplier shall be deemed to have waived its right to an adjustment as per Paragraph 2.1.11(c) if it fails without reasonable cause to take, or fails to procure any Sub-Contractor takes, any action in accordance with any of the timescales referred to in this Paragraph 2.1.11.

**2.2 Obligations in Respect of Authority Employees**

- 2.2.1 The Supplier and the Authority acknowledge, and the Supplier shall procure that the Employing Sub-Contractors acknowledge, that the provision of the Services under this Contract are likely to constitute one or more Relevant Transfers for the purposes of the Transfer Regulations, as to which:
  - (a) if the Parties agree in writing that there will be no such Relevant Transfer, this Paragraph 2.2 will operate on that basis;
  - (b) otherwise the Parties will proceed on the basis of this Paragraph 2.2.
- 2.2.2 The Supplier agrees and shall procure that the Sub-Contractors agree that from the relevant Relevant Transfer Date the contracts of employment of the Authority Employees who are identified on the Final List for that Relevant Transfer Date together with any collective agreements (save insofar as such contracts and such agreements relate to benefits for old age, invalidity or survivors under any occupational pension scheme or are otherwise of a kind which do not transfer pursuant to regulation 4A of the Transfer Regulations) will take effect as if

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originally made between the Supplier or an Employing Sub-Contractor and the Authority Employees (or the relevant trade union, as the case may be).

- 2.2.3 The Authority and the Supplier shall (and the Supplier shall procure that any Employing Sub-Contractors shall):
- (a) before and in relation to each Relevant Transfer Date liaise with each other and shall co-operate with each other in order to implement effectively the smooth transfer of the relevant Authority Employees to the Supplier or Employing Sub-Contractor; and
  - (b) comply with their respective obligations under the Transfer Regulations including their obligations to inform and consult under Regulation 13.
- 2.2.4 The Authority shall be responsible for all emoluments and outgoings in respect of each Authority Employee (including without limitation all wages, bonuses, commissions, payments in respect of holiday taken up to their Relevant Transfer Date, PAYE, national insurance contributions and contributions to retirement benefit schemes) in respect of the period prior to their Relevant Transfer Date and shall indemnify the Supplier in respect of the same.
- 2.2.5 The Supplier or Employing Sub-Contractor (as the case may be) shall have responsibility for all emoluments and outgoings (including without limitation all wages, bonuses, commissions, payments in respect of holiday taken after the Relevant Transfer Date, PAYE, national insurance contributions and contributions to retirement benefit schemes) in relation to the Authority Employees with effect from and including the relevant Relevant Transfer Date and the Supplier shall indemnify the Authority in respect of the same.
- 2.2.6 No later than three (3) months after the relevant Relevant Transfer Date the Supplier shall pay to the Authority a sum equal to the outstanding balance on the Relevant Transfer Date of any loan, advance or other indebtedness of any Authority Employee to the Authority which is outstanding immediately prior to the Relevant Transfer save to the extent that such sums are recovered by the Authority pursuant to Paragraph 2.2.5.
- 2.2.7 The Authority shall indemnify the Supplier against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any claim or claims by any Authority Employee brought against the Supplier and/or any Employing Sub-Contractor at any time up to the relevant Subsequent Transfer Date arising out of or in connection with any acts or omissions of the Authority which occurred prior to that Authority Employee's Relevant Transfer Date provided that any such reasonable costs (including reasonable legal costs), losses and expenses and any such damages, compensation, fines and liabilities arising out of or in connection with such claims are not the result of any act or omission of the Supplier and/or Employing Sub-Contractor.
- 2.2.8 The Authority shall indemnify the Supplier against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any claim or claims by any Authority Employee or trade union representative or Authority Employee representative brought against the Supplier, whether before or after the Relevant Transfer Date, arising out of any failure by the Authority to comply with its obligations under Regulation 13 of the Transfer Regulations in respect of any

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Authority Employee or any other employee of the Authority affected by a Relevant Transfer effected by this Contract (as defined by Regulation 13 of the Transfer Regulations), except to the extent that any such reasonable costs (including reasonable legal costs), losses and expenses and any such damages, compensation, fines and liabilities arising out of or in connection with such claims are the result of any act or omission of the Supplier and/or Employing Sub-Contractor.

- 2.2.9 The Supplier shall indemnify the Authority against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any claim or claims by any employee or trade union representative or employee representative brought against the Authority, whether before or after any Relevant Transfer Date, arising out of any act or omission of the Supplier or any Sub-Contractor (including any failure by the Supplier or any Sub-Contractor to comply with its or their obligations under Regulation 13 of the Transfer Regulations) save to the extent that any such reasonable costs (including reasonable legal costs), losses, and expenses and any such damages, compensation, fines and liabilities arising out of such claims are the result of the act or omission of the Authority.
- 2.2.10 The Supplier shall indemnify the Authority in respect of all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and other liabilities arising out of or in connection with or as a result of any actual or alleged substantial change proposed or made by the Supplier or any Employing Sub-Contractor to the working conditions of all or any Authority Employees to the material detriment of such Authority Employees. For the purposes of this Paragraph the expressions "substantial change" and "material detriment" shall have the same meaning as for the purposes of Regulation 4(9) of the Transfer Regulations.
- 2.2.11 The Supplier shall indemnify the Authority in respect of all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and other liabilities arising out of or in connection with or as a result of any variations or proposed variations to any Authority Employee's terms and conditions of employment pursuant to regulations 4(5) and 4(5B) of the Transfer Regulations.

### 2.3 Application of Paragraphs in this Schedule to employed Unexpected Employees

- 2.3.1 Paragraph 2.2.2, 2.2.4 to 2.2.6, 2.2.7 and 2.2.10 of Part 1, Paragraph 2.5 of Part 2 (*Staff Transfer on Exit*) and Part 3 (*Pension Matters*) of this Schedule 9.1 shall apply to any Unexpected Employee whom the Supplier and/or any Sub-Contractor has decided to employ in accordance with Paragraph 2.1.11(b) save that references to any "**Relevant Transfer Date**" in Paragraphs 2.2.2, 2.2.4 to 2.2.6 and 2.2.7 of this Schedule 9.1 Part 1 shall be construed as being references to the date on which that Unexpected Employee took up employment with the Supplier or Sub-Contractor and any reference to an "**Authority Employee**" shall be construed as being a reference to the Unexpected Employee.

### 2.4 Employee Liability Information

- 2.4.1 The Parties: consider that the provisions of this Contract (and in particular Paragraph 2.1.6 of this Part 1) provide sufficient protection and opportunity for compensation to the Supplier or Employing Sub-Contractors in the event of any breach by the Authority of its obligations under Regulation 11 of the Transfer



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Regulations; and consider that as anticipated by Regulation 12(5) of the Transfer Regulations it is just and equitable that the Tribunal make no award for compensation under Regulation 12(3)(b); and agree that, in the alternative, if the Tribunal determines that it is just and equitable for an award of compensation to be made then the Supplier (for itself and on behalf of any Employing Subcontractor) will accept that such award should be no more than £[REDACTED] in respect of any relevant employee.

### **2.5 General**

- 2.5.1 The Supplier shall not recover any Costs and/or other losses under this Schedule 9.1 Part 1 where such Costs and/or losses are recoverable by the Supplier elsewhere in this Contract and/or have been recovered under the Transfer Regulations or otherwise.

## **3 PREVIOUS SUPPLIER EMPLOYEES**

### **3.1 Employee Information**

- 3.1.1 No later than three (3) months prior to each Previous Supplier Relevant Transfer Date the Authority shall provide to the Supplier the information listed in Part A of Appendix 2 of this Part 1 of this Schedule 9.1 (and later any information the Authority receives as listed in Parts B and C of that Appendix) in respect of relevant Previous Supplier Employees to the extent that such information has been provided to the Authority by the Previous Supplier.
- 3.1.2 The Authority shall provide the Supplier with any update to the information provided under Paragraph 3.1.1 as soon as is reasonably practicable, to the extent that such information has been provided to the Authority by the Previous Supplier.
- 3.1.3 The Supplier shall provide any information provided to it by the Authority pursuant to Paragraph 3.1.1 to an Employing Sub-Contractor within seven (7) Working Days of receipt to the extent that such Previous Supplier Employees are likely to or will transfer to an Employing Sub-Contractor under a Previous Supplier Relevant Transfer.
- 3.1.4 Paragraphs 3.1.1 and 3.1.2 are subject to the Authority and any Previous Supplier's obligations in respect of the Data Protection Legislation and any data provided by the Authority in accordance with Paragraphs 3.1.1 and 3.1.2 shall be provided in anonymous form in order to enable its disclosure. To the extent anonymous data has been provided by the Authority pursuant to its obligations under Paragraph 3.1.1 above, the Authority shall (to the extent that it is provided by the Previous Supplier, and subject to the Data Protection Legislation) provide full data no later than twenty-eight (28) days prior to the relevant Previous Supplier Relevant Transfer.
- 3.1.5 The Authority does not warrant the accuracy of the information provided under Paragraphs 3.1.1, 3.1.2 and 3.1.4.

### **3.2 Obligations in respect of Previous Supplier Employees**

- 3.2.1 The Supplier and the Authority acknowledge (and the Supplier shall procure that the Employing Sub-Contractor acknowledges) that the provision of the Services under this Contract are likely to constitute one or more Previous Supplier Relevant Transfers.

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- 3.2.2 The Supplier agrees (and will procure that the Sub-Contractors agree) that from the relevant Previous Supplier Relevant Transfer Date the contracts of employment of any Previous Supplier Employees together with any collective agreements (save insofar as such contracts and such agreements relate to benefits for old age, invalidity or survivors under any occupational pension scheme) will take effect (in accordance with the Transfer Regulations) as if originally made between the Supplier or an Employing Sub-Contractor and the Previous Supplier Employees (or the relevant trade union, as the case may be) subject to any variations to such contracts of employment validly made pursuant to Regulation 9 of the Transfer Regulations, where applicable.
- 3.2.3 Save for any liabilities in respect of Previous Supplier Employees under a Relevant Statutory Scheme or Schemes, the Supplier or Employing Sub-Contractor (as the case may be) shall have responsibility for all emoluments and outgoings (including without limitation all wages, bonuses, commissions, payments in respect of holiday taken after the Previous Supplier Relevant Transfer Date as appropriate, PAYE, national insurance contributions and contributions to retirement benefit schemes) in relation to the Previous Supplier Employees with effect from and including each Previous Supplier Employee's Previous Supplier Relevant Transfer Date and shall indemnify the Authority and the Previous Supplier in respect of the same.

### **3.3 Indemnities**

- 3.3.1 The Supplier shall indemnify and hold harmless the Authority and any Previous Supplier against all demands, claims, liabilities, losses and damages, costs and expenses (including all interest, penalties, legal and other costs and expenses) together with any applicable Value Added and similar taxes or liability for deduction of PAYE tax properly incurred by the Authority or any Previous Supplier arising out of or in connection with:
- (a) any act or omission of the Supplier or any Sub-Contractor in relation to any Previous Supplier Employee or other employee or former employee of a Previous Supplier;
  - (b) any breach by the Supplier and/or any Sub-Contractor of their obligations under Regulation 13 of the Transfer Regulations;
  - (c) any act or proposal by the Supplier or any Employing Sub-Contractor prior to or following any Previous Supplier Relevant Transfer Date which amounts to a repudiatory breach of contract as referred to in Regulation 4(11) of the Transfer Regulations and/or to make an actual or alleged substantial change in working conditions of any Previous Supplier Employee to the material detriment of that employee. For the purposes of this sub-clause the expressions "repudiatory breach", "substantial change" and "material detriment" shall have the same meanings as for the purposes of Regulation 4(9) and 4(11) of the Transfer Regulations;
  - (d) any collective agreement or any arrangement with any trade union or staff association after the Previous Supplier Relevant Transfer Date; and
  - (e) any variations or proposed variations to any Previous Supplier Employee's terms and conditions of employment pursuant to regulations 4(5) and 4(5B) of the Transfer Regulations.

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**4 GENERAL PROVISIONS APPLICABLE TO AUTHORITY EMPLOYEES, PREVIOUS SUPPLIER EMPLOYEES AND SUPPLIER PERSONNEL**

**4.1 Contractor Indemnity**

4.1.1 The Supplier shall indemnify the Authority and any New Provider against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with the employment or termination of employment by the Supplier or any Sub-Contractor of any person (including the Authority Employees and Previous Supplier Employees) engaged to any extent in connection with the provision of the Services during the term of this Agreement.

**4.2 Post Transfer Reporting**

4.2.1 The Supplier shall upon request by the Authority provide (and shall procure that each Sub-Contractor shall provide) the Authority with the following information in respect of the employees who are wholly or mainly employed, assigned or engaged in providing the Services:

- (a) any proposed, agreed or imposed changes to terms and conditions of service;
- (b) disputes relating to compliance with the Transfer Regulations which are regarded as unresolved by a recognised trade union;
- (c) any court action or tribunal proceedings relating to compliance with the Transfer Regulations;
- (d) completed court action or tribunal proceedings relating to compliance with the Transfer Regulations; and
- (e) out of court settlements relating to compliance with the Transfer Regulations if possible having regard to the wording of the settlement.

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**Appendix 1 of Part 1 of Schedule 9.1**

**LIST OF EMPLOYMENT INFORMATION ON WHICH THE SUPPLIER BASED THE AUTHORITY  
PERSONNEL COSTS OF THE CONTRACT PRICE**

**[To be included at a later date]**

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**Appendix 2 of Part 1 of Schedule 9.1**

**PERSONNEL INFORMATION TO BE RELEASED PURSUANT TO THIS AGREEMENT**

**[Note to bidders: the Authority may generate a slightly amended version of this Appendix 2.]**

**PART A of Appendix 2 of Part 1 of Schedule 9.1**

1. The written statement of employment particulars as required by section 1 of the Employment Rights Act 1996 together with the following information will be provided to the extent it is not included within the written statement of employment particulars:
  - 1.1 **Personal, Employment and Career**
    - a) Age;
    - b) Security Vetting Clearance;
    - c) Job title;
    - d) Work location;
    - e) Conditioned hours of work;
    - f) Employment Status;
    - g) Details of training and operating licensing required for Statutory and Health and Safety reasons;
    - h) Details of training or sponsorship commitments;
    - i) Standard Annual leave entitlement and current leave year entitlement and record;
    - j) Annual leave reckonable service date;
    - k) Details of disciplinary or grievance proceedings taken by or against transferring employees in the last two (2) years;
    - l) Information of any legal proceedings between employees and their employer within the previous two (2) years or any such proceedings that the transferor has reasonable grounds to believe that an employee may bring against the transferee arising out of their employment with the transferor;
    - m) Issue of Uniform/Protective Clothing;
    - n) Working Time Directive opt-out forms; and
    - o) Date from which the latest period of continuous employment began.

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### **1.2 Superannuation and Pay**

- a) Maternity leave or other long-term leave of absence (meaning more than four (4) weeks) planned or taken within the last two (2) years;
- b) Annual salary and rates of pay band/grade;
- c) Shifts, unsociable hours or other premium rates of pay;
- d) Overtime history for the preceding twelve-month period;
- e) Allowances and bonuses for the preceding twelve-month period;
- f) Details of outstanding loan, advances on salary or debts;
- g) Civil Service Pension Scheme Membership (Opt-out of Civil Service Pension Scheme, Classic, Classic Plus, Premium, Defined Contribution) or, where relevant Supplier Scheme or other Supplier/Sub-Contractor pension scheme membership;
- h) For pension purposes, the notional reckonable service date;
- i) Pensionable pay history for three (3) years to date of transfer;
- j) Percentage of any pay currently contributed under additional voluntary contribution arrangements; and
- k) Percentage of pay currently contributed under any added years arrangements.

### **1.3 Medical**

- a) Details of any period of sickness absence of three (3) months or more in the preceding period of twelve (12) months; and
- b) Details of any active restoring efficiency case for health purposes.

### **1.4 Disciplinary**

- a) Details of any active restoring efficiency case for reasons of performance; and
- b) Details of any active disciplinary cases where corrective action is ongoing.

### **1.5 Further information**

- a) Information about specific adjustments that have been made for an individual under the Equality Act 2010;
- b) Short term variations to attendance hours to accommodate a domestic situation;
- c) Individuals that are members of the Reserves, or staff may have been granted special leave for public duties such as a School Governor; and

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- d) Information about any maternity or other statutory leave or other absence from work.

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**Part B of Appendix 2 of Part 1 of Schedule 9.1**

1.6 Information to be provided twenty-eight (28) days prior to the relevant Relevant Transfer Date, or relevant Previous Supplier Relevant Transfer Date:

- a) Employee's full name;
- b) Date of Birth
- c) Home address;
- d) Bank/building society account details for payroll purposes Tax Code.

**PART C of Appendix 2 of Part 1 of Schedule 9.1**

1.7 Information to be provided within fourteen (14) days following the relevant Relevant Transfer Date:

1.7.1 Performance Appraisal

- a) The current year's Performance Appraisal;
- b) Current year's training plan (if it exists); and
- c) Performance Pay Recommendations (PPR) forms completed in the current reporting year, or where relevant, any bonus entitlements;

1.7.2 Superannuation and Pay

- a) Cumulative pay for tax and pension purposes;
- b) Cumulative tax paid;
- c) National Insurance Number;
- d) National Insurance contribution rate;
- e) Other payments or deductions being made for statutory reasons;
- f) Any other voluntary deductions from pay;



PART 2 OF THIS SCHEDULE 9.1 - STAFF TRANSFER ARRANGEMENTS ON EXIT

1. DEFINITIONS

1.1 In this Schedule 9.1 Part 2, save where otherwise provided, words and terms defined in Schedule 1 (Definitions) or Schedule 9.1 Part 1 of the Contract shall have the meaning ascribed to them in Schedule 1 (Definitions) or Schedule 9.1 Part 1 of the Contract.

1.2 Without prejudice to Schedule 1 (Definitions) of the Contract or Schedule 9.1, Part 1, in this Schedule 9.1 Part 2 unless the context otherwise requires:

**"Authority Employees"** means those employees of the Authority who transferred to the Supplier or an Employing Sub-Contractor under the Transfer Regulations and pursuant to this Contract;

**"CSCS"** means Civil Service Compensation Scheme;

**"Employing Sub-Contractor"** means any sub-contractor of the Supplier providing all or any part of the Services who employs or engages any person in providing the Services;

**"Final List of Subsequent Transferring Employees"** means the list referred to in Paragraph 2.1.3 of this Part 2, as it was first given in accordance with that Paragraph;

**"Subsequent Relevant Transfer"** means a transfer of the employment of Subsequent Transferring Employees from the Supplier or any Employing Sub-Contractor to a New Provider or the Authority under the Transfer Regulations, by virtue of the full or partial termination or expiry of this Contract or of the provision of any Services under this Contract;

**"Subsequent Transfer Date"** means any date on which the transfer of a Subsequent Transferring Employee takes place under a Subsequent Relevant Transfer;

**"Subsequent Transferring Employee"** means an employee wholly or mainly employed or otherwise assigned to the Services (or in respect of partial termination, the relevant part of the Services) whose employment transfers under the Transfer Regulations from the Supplier or any Employing Sub-Contractor to a New Provider;

**"Unexpected Subsequent Transferring Employee"** means as defined in Paragraph 2.3.1 of this Part 2.

**2. EMPLOYMENT**

**2.1 Employee information**

**2.1.1 Upon any written request(s) made by the Authority on or after the following occasions:**

(i) two (2) years preceding the termination, partial termination or Expiry of this Contract;

(ii) two (2) years preceding any other potential Subsequent Transfer Date;

(iii) after the service of a notice to terminate this Contract or the provision of any of the Services (whether in whole or part); or

(iv) at any other time;

the Supplier shall (and shall procure that any Employing Sub-Contractor shall):

- (a) supply to the Authority such information as the Authority may reasonably require in order to consider the application of the Transfer Regulations on the termination, partial termination or expiry of this Contract (including details of anyone whom the Supplier expects would be a Subsequent Transferring Employee, together with thorough reasoning of why, and reasonable supporting evidence);
- (b) supply to the Authority such full and accurate and up-to-date information as may be requested by the Authority including the information listed in Appendix 1 to this Part 2 of Schedule 9.1 relating to the employees who are wholly or mainly employed, assigned or engaged in providing the Services or part of the Services under this Contract who may be subject to a Subsequent Relevant Transfer, separately identifying those former employees of the Authority whose employment previously transferred to the Supplier and/or Employing Sub-Contractor who continue to be eligible under New Fair Deal (as defined and set out in Part 3 (Pension Matters) of this Schedule);
- (c) provide the information promptly and in any event not later than twenty-one (21) days from the date when a request for such information is made and at no cost to the Authority;
- (d) acknowledge that the Authority will use the information for informing any prospective New Provider for any services which are substantially the same as the Services or part of the Services provided pursuant to this Contract; and
- (e) up to each relevant Subsequent Transfer Date inform the Authority as soon as reasonably practicable of any changes to the information provided under Paragraph 2.1.1.

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- 2.1.2 Three (3) months preceding the termination, partial termination or expiry of this Contract or otherwise on receipt of a written request from the Authority the Supplier shall:
- (a) ensure that Employee Liability Information and all information listed in Part A of Appendix 2 of this Part 2 of this Schedule 9.1 (Personnel Information) relating to the Subsequent Transferring Employees is provided to the Authority and/or any New Provider;
  - (b) as soon as reasonably practicable inform the Authority and/or any New Provider of any changes to the information provided under this Paragraph 2.1.2 up to any Subsequent Transfer Date; and
  - (c) enable and assist the Authority, any New Provider and any sub-contractor of a New Provider to communicate with and meet those employees and their trade union or other employee representatives.
- 2.1.3 No later than twenty-eight (28) days prior to each relevant Subsequent Transfer Date the Supplier shall provide the Authority (and as appropriate any New Provider) with the Final List of Subsequent Transferring Employees together with the information listed in Part B of Appendix 2 of this Part 2 of this Schedule 9.1 (Personnel Information) relating to the Subsequent Transferring Employees. The Supplier shall inform the Authority and/or New Provider of any changes to this list or information up to the Subsequent Transfer Date.
- 2.1.4 Within fourteen (14) days following the relevant Subsequent Transfer Date the Supplier shall provide to the Authority (or as appropriate any New Provider) the information set out in Part C of Appendix 2 of this Part 2 of this Schedule 9.1 in respect of Subsequent Transferring Employees.
- 2.1.5 Paragraphs 2.1.1 to 2.1.4 of this Part 2 of this Schedule 9.1 are subject to the Supplier's and each Employing Sub-Contractor's obligations in respect of the Data Protection Legislation and the Supplier shall use its best endeavours to obtain the consent of its employees (and shall procure that its Sub-Contractors use their best endeavours to obtain the consent of their employees) to the extent necessary under the Data Protection Legislation but if such consent is nevertheless withheld shall provide the data in an anonymous form in order to enable disclosure of the information required under Paragraphs 2.1.1 to 2.1.4. Notwithstanding this Paragraph 2.1.5, the Supplier acknowledges (and shall procure that its Sub-Contractors acknowledge) that they are required to provide sufficient information to the Authority to enable the Authority to determine the nature of the activities being undertaken by employees engaged in providing the Services, to assess whether there is an organised grouping for the purposes of the Transfer Regulations and to assess who is assigned to such organised grouping. To the extent that anonymous data has been provided by the Supplier pursuant to its obligations under Paragraph 2.1.1 or 2.1.2 above, the Supplier shall provide full data to the Authority no later than twenty-eight (28) days prior to the relevant Subsequent Transfer Date.
- 2.1.6 With effect from the earlier of notification to the Supplier by the Authority of a New Provider, or the date six (6) months prior to the Termination Date, or service of a notice to terminate this Contract (whether in whole or in part), and in any event on receipt of a written request by the Authority, the Supplier shall not and shall procure that each Employing Sub-Contractor shall not:

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- (a) materially amend or promise to amend the rates of remuneration or other terms and conditions of employment of any person wholly or mainly employed or engaged in providing the Services under this Contract; or
- (b) replace or re-deploy from any of the Services any person wholly or mainly employed or engaged in providing those Services, or materially increase or decrease the number of persons performing any of the Services under this Contract or the working time spent on the Services (or any part thereof); or
- (c) reorganise any working methods or assign to any person wholly or mainly employed or engaged in providing the Services (or any part thereof) any duties unconnected with the Services under this Contract; or
- (d) terminate or give notice to terminate the employment of any person wholly or mainly employed or engaged in providing the Services under this Contract other than in the case of serious misconduct or for poor performance,

save in the ordinary course of business and with the prior written consent of the Authority (not to be unreasonably withheld or delayed) and the Supplier shall indemnify and keep indemnified the Authority in respect of any reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any breach of Paragraphs 2.1.1 to 2.1.6 of this Schedule 9.1 Part 2.

- 2.1.7 The Authority may at any time prior to the period set out in Paragraphs 2.1.1 to 2.1.6 of this Schedule 9.1 Part 2 request from the Supplier any of the information in sections 1(a) to (d) of Appendix 1 of this Part 2 and the Supplier shall and shall procure any Sub-Contractor will provide the information requested within twenty-eight (28) days of receipt of that request.

## 2.2 **Obligations in Respect of Subsequent Transferring Employees, and resolution of disputes about the operation of the Transfer Regulations at exit**

- 2.2.1 To the extent that the Transfer Regulations apply on expiry, termination or partial termination of this contract, the Supplier shall and shall procure any Employing Sub-Contractor shall and the Authority shall and shall procure that a New Provider shall in such circumstances:

- (a) before and in relation to each Subsequent Transfer Date liaise with each other and shall co-operate with each other in order to implement effectively the smooth transfer of the Subsequent Transferring Employees to the Authority and/or a New Provider; and
- (b) comply with their respective obligations under the Transfer Regulations including their obligations to inform and consult under Regulation 13 of the Transfer Regulations.

## 2.3 **Unexpected Subsequent Transferring Employees**

- 2.3.1 If a claim or allegation is made by an employee or former employee of the Supplier or any Employing Sub-Contractor who is not named on the Final List of Subsequent Transferring Employees (an "**Unexpected Subsequent Transferring Employee**") that his employment (or any liabilities relating to it or its termination)

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has or should have transferred to the Authority and/or any New Provider by virtue of the Transfer Regulations, the Party receiving the claim or allegation shall notify the other Party (and the Supplier shall notify the Authority on the Sub-Contractor's behalf and the Authority shall notify the Supplier on the New Provider's behalf) in writing as soon as reasonably practicable and no later than ten (10) Working Days after receiving notification of the Unexpected Subsequent Transferring Employee's claim or allegation, whereupon:

- (a) the Supplier shall (or shall procure that the Employing Sub-Contractor shall), as soon as reasonably practicable, offer and/or confirm continued employment to the Unexpected Subsequent Transferring Employee or take such other steps so as to effect a written withdrawal of the claim or allegation; and
- (b) if the Unexpected Subsequent Transferring Employee's claim or allegation is not withdrawn or resolved the Supplier shall notify the Authority (who will notify any New Provider who is a party to such claim or allegation), and the Authority (insofar as it is permitted) and/or New Provider (as appropriate) shall employ the Unexpected Subsequent Transferring Employee or as soon as reasonably practicable (subject to compliance with its obligations at Paragraph 2.3.1(c)(iii)) serve notice to terminate the Unexpected Subsequent Transferring Employee's employment in accordance with his contract of employment; and
- (c) the Supplier shall indemnify the Authority and any New Provider against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any of the following liabilities incurred by the Authority or New Provider in dealing with or disposing of the Unexpected Subsequent Transferring Employee's claim or allegation:
  - (i) any additional costs of employing the Unexpected Subsequent Transferring Employee up to the date of dismissal (where the Unexpected Subsequent Transferring Employee has been dismissed in accordance with Paragraph 2.3.1(b));
  - (ii) any liabilities acquired by virtue of the Transfer Regulations in relation to the Unexpected Subsequent Transferring Employee;
  - (iii) any liabilities relating to the termination of the Unexpected Subsequent Transferring Employee's employment but excluding such proportion or amount of any liability for unfair dismissal, breach of contract or discrimination attributable:
    - (A) to a failure by the Authority or a New Provider to act reasonably to mitigate the costs of dismissing such person;
    - (B) directly or indirectly to the procedure followed by the Authority or a New Provider in dismissing the Unexpected Transferee; or
    - (C) to the acts/omissions of the Authority or a New Provider not wholly connected to the dismissal of that person;

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- (iv) any liabilities incurred under a settlement of the Unexpected Subsequent Transferring Employee's claim which was reached with the express permission of the Supplier (not to be unreasonably withheld or delayed);
  - (v) reasonable administrative costs incurred by the Authority or New Provider in dealing with the Unexpected Subsequent Transferring Employee's claim or allegation, subject to a cap per Unexpected Subsequent Transferring Employee of £[REDACTED]; and
  - (vi) legal and other professional costs reasonably incurred;
- 2.3.2 the Authority shall be deemed to have waived its right to an indemnity under Paragraph 2.3.1(c) if it fails without reasonable cause to take, or fails to procure any New Provider takes, any action in accordance with any of the timescales referred to in this Paragraph 2.3.
- 2.4 **Indemnities on Subsequent transfer under the Transfer Regulations on Partial Termination, Termination or Expiry of the Contract**
- 2.4.1 If on the expiry, termination or partial termination of the Contract or of the provision of any Services under it there is any actual or alleged Subsequent Relevant Transfer, the Supplier shall indemnify the Authority and any New Provider against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any claim by any employee or trade union representative or employee representative arising whether before or after the Subsequent Transfer Date out of any actual or alleged act or omission of the Supplier or any Subcontractor in relation to current or former Supplier Personnel (including any failure by the Supplier or any Sub-Contractor to comply with their obligations under Regulation 13 of the Transfer Regulations in relation to any Subsequent Transferring Employee or any other employee of the Supplier or any Sub-Contractor), save to the extent that any such reasonable costs (including reasonable legal costs), losses and expenses, and any such damages, compensation, fines and liabilities, are a result of the act or omission of the Authority or the New Provider.
- 2.4.2 If there is a Subsequent Relevant Transfer, the Authority shall indemnify the Supplier against all reasonable costs (including reasonable legal costs) losses and expenses, and any such damages, compensation, fines and liabilities arising out of, or in connection with:
  - (a) any claim or claims by a Subsequent Transferring Employee at any time on or after the Subsequent Transfer Date which arise as a result of an act or omission of the Authority or a New Provider or a sub-contractor of a New Provider during the period from and including the relevant Subsequent Transfer Date;
  - (b) subject to Paragraph 2.4.1 any claim by any employee or trade union representative or employee representative arising whether before or after the Subsequent Transfer Date out of any failure by the Authority or a New Provider or a sub-contractor of a New Provider to comply with their obligations under Regulation 13 of the Transfer Regulations in relation to any Subsequent Transferring Employee or any other employee engaged

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wholly or mainly in connection with the Services by the New Provider or any other employee of the Authority or any New Provider affected by a Subsequent Relevant Transfer effected by this Contract (as defined by Regulation 13 of the Transfer Regulations),

save to the extent that any such reasonable costs (including reasonable legal costs), losses and expenses and any such damages, compensation, fines and liabilities are a result of the act or omission of the Supplier or any Employing Sub-Contractor.

- 2.4.3 In the event of a Subsequent Relevant Transfer, the Authority shall indemnify the Supplier in respect of all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and other liabilities arising out of or in connection with or as a result of a substantial change by a New Provider on or after the relevant Subsequent Transfer Date to the working conditions of any Subsequent Transferring Employee to the material detriment of any such Subsequent Transferring Employee. For the purposes of this Paragraph 2.4.3, the expressions "substantial change" and "material detriment" shall have the meanings as are ascribed to them for the purposes of Regulation 4(9) of the Transfer Regulations.

### **2.5 Redundancy Liability on Partial Termination, Termination or Expiry**

- 2.5.1 On expiry, partial termination or termination of this Contract, any redundancy costs incurred by the Supplier shall be the responsibility of the Supplier.

### **2.6 Contracts (Rights of Third Parties) Act 1999**

- 2.6.1 [Pursuant to DEFCON 537] a New Provider may enforce the terms of this Paragraph 2 against the Supplier in accordance with the Contracts (Rights of Third Parties) Act 1999.
- 2.6.2 The consent of a New Provider (save where the New Provider is the Authority) is not required to rescind, vary or terminate this Contract.
- 2.6.3 Nothing in this Paragraph 2.6 shall affect the accrued rights of the New Provider prior to the rescission, variation, expiry or termination of this Contract.

### **2.7 General**

- 2.7.1 The Supplier shall not recover any Costs and/or other losses under this Schedule 9.1 Part 2 where such Costs and/or losses are recoverable by the Supplier elsewhere in this Contract and/or are recoverable under the Transfer Regulations or otherwise.

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**Appendix 1 of Part 2 of Schedule 9.1**

**CONTRACTOR PERSONNEL-RELATED INFORMATION**

**[Note to bidders: the Authority may generate a slightly amended version of this Appendix 1.]**

1. The following information will be provided:
  - a) The total number of individual employees (including any employees of Sub-Contractors) that are currently engaged, assigned or employed in providing the Services (sufficiently for the purposes of the Transfer Regulations) and who may therefore be transferred. Alternatively the Supplier should provide information why none of their employees or those of their Sub-Contractors will transfer;
  - b) The total number of actual posts, and the proportion of posts expressed as a full-time equivalent value, that currently undertake the work that is to transfer;
  - c) The preceding twelve (12) months total pay costs (Pay, benefits employee/employer ERNIC and Overtime);
  - d) Total redundancy liability including any enhanced contractual payments;
2. In respect of those employees included in the total at 1(a), the following information:
  - a) Age (not date of Birth);
  - b) Employment Status (i.e. Fixed Term, Casual, Permanent);
  - c) Length of current period of continuous employment (in years, months) and notice entitlement;
  - d) Weekly conditioned hours of attendance (gross);
  - e) Standard Annual Holiday Entitlement (not "in year" holiday entitlement that may contain carry over or deficit from previous leave years);
  - f) Pension Scheme Membership (including for Former Authority Employees or other former Civil Servants who are current members of the Civil Service Pension Schemes ([REDACTED]));
  - g) Pension and redundancy liability information;
  - h) Annual Salary;
  - i) Details of any regular overtime commitments (these may be weekly, monthly or annual commitments for which staff may receive an overtime payment);
  - j) Details of attendance patterns that attract enhanced rates of pay or allowances;



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- k) Regular/recurring allowances;
  - l) Outstanding financial claims arising from employment (i.e. season ticket loans, transfer grants); and
  - m) A thorough explanation of why the person is considered to be assigned to the relevant activities, sufficiently for the purposes of the Transfer Regulations.
3. The information to be provided under this Appendix 1 of Part 2 of Schedule 9.1 should not identify an individual employee by name or other unique personal identifier unless such information is being provided twenty-eight (28) days prior to the relevant Subsequent Transfer Date.
4. The Supplier will provide (and will procure that the Sub-Contractors provide) the Authority (and any tenderer seeking to be a New Provider) with access to the Supplier's and Sub-Contractor's general employment terms and conditions applicable to those employees identified at Paragraph 1(a) of this Appendix 1 of Part 2 of Schedule 9.1.

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**Appendix 2 of Part 2 of Schedule 9.1**

**PERSONNEL INFORMATION TO BE RELEASED PURSUANT TO THIS CONTRACT**

**[Note to bidders: the Authority may generate a slightly amended version of this Appendix 2.]**

**Part A of Appendix 2 of Part 2 of Schedule 9.1**

1. The written statement of employment particulars as required by section 1 of the Employment Rights Act 1996 together with the following information (save where that information is included within that statement):

- 1.1 **Personal, Employment and Career**

- a) Age;
- b) Security Vetting Clearance;
- c) Job title;
- d) Work location;
- e) Conditioned hours of work;
- f) Employment Status;
- g) Details of training and operating licensing required for Statutory and Health and Safety reasons;
- h) Details of training or sponsorship commitments;
- i) Standard Annual leave entitlement and current leave year entitlement and record;
- j) Annual leave reckonable service date;
- k) Details of disciplinary or grievance proceedings taken by or against transferring employees in the last two (2) years;
- l) Information of any legal proceedings between employees and their employer within the previous two (2) years or such proceedings that the transferor has reasonable grounds to believe that an employee may bring against the transferee arising out of their employment with the transferor;
- m) Issue of Uniform/Protective Clothing;
- n) Working Time Directive opt-out forms; and
- o) Date from which the latest period of continuous employment began.

- 1.2 **Superannuation and Pay**

- a) Maternity leave or other long-term leave of absence (meaning more than four (4) weeks) planned or taken during the last two (2) years;

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- b) Annual salary and rates of pay band/grade;
- c) Shifts, unsociable hours or other premium rates of pay;
- d) Overtime history for the preceding twelve-month period;
- e) Allowances and bonuses for the preceding twelve-month period;
- f) Details of outstanding loan, advances on salary or debts;
- g) Civil Service Pension Scheme Membership (Opt-out of Civil Service Pension Scheme, Classic, Classic Plus, Premium, Defined Contribution) or, where relevant Supplier Scheme or other Supplier/Sub-Contractor pension scheme membership;
- h) For pension purposes, the notional reckonable service date;
- i) Pensionable pay history for three (3) years to date of transfer;
- j) Percentage of any pay currently contributed under additional voluntary contribution arrangements; and
- k) Percentage of pay currently contributed under any added years arrangements.

**1.3 Medical**

- a) Details of any period of sickness absence of three (3) months or more in the preceding period of twelve (12) months; and
- b) Details of any active restoring efficiency case for health purposes.

**1.4 Disciplinary**

- a) Details of any active restoring efficiency case for reasons of performance; and
- b) Details of any active disciplinary cases where corrective action is ongoing.

**1.5 Further information**

- a) Information about specific adjustments that have been made for an individual under the Equality Act 2010;
- b) Short term variations to attendance hours to accommodate a domestic situation;
- c) Individuals that are members of the Reserves, or staff that may have been granted special leave for public duties such as a School Governor; and
- d) Information about any maternity or other statutory leave or other absence from work.

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**Part B of Appendix 2 of Part 2 of Schedule 9.1**

1.6 Information to be provided twenty-eight (28) days prior to the Subsequent Transfer Date:

- a) Employee's full name;
- b) Date of Birth
- c) Home address;
- d) Bank/building society account details for payroll purposes Tax Code.

**PART C of Appendix 2 of Part 2 of Schedule 9.1**

1.7 Information to be provided within fourteen (14) days following a Relevant Transfer Date:

1.7.1 Performance Appraisal

- a) The current year's Performance Appraisal;
- b) Current year's training plan (if it exists); and
- c) Performance Pay Recommendations (PPR) forms completed in the current reporting year, or where relevant, any bonus entitlements;

1.7.2 Superannuation and Pay

- a) Cumulative pay for tax and pension purposes;
- b) Cumulative tax paid;
- c) National Insurance Number;
- d) National Insurance contribution rate;
- e) Other payments or deductions being made for statutory reasons;
- f) Any other voluntary deductions from pay.

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PART 3 OF SCHEDULE 9.1- PENSION MATTERS

The Parties agree to comply with Appendices 1 and 2 of this Part 3, as applicable.

[Note to bidders: it is anticipated that any Authority Employees and any Former Authority Employees will be entitled to membership of [REDACTED] or the [REDACTED] Pension Scheme. If any transferring employee is entitled to membership of the Local Government Pension Scheme or Teachers' Pension Scheme, appropriate drafting will be inserted.]

Appendix 1 to Part 3 of Schedule 9.1 - [REDACTED] Pension Scheme

- 1 In this Appendix 1 to Part 3 of Schedule 9.1, save where otherwise provided, words and terms defined in Schedule 1 (Definitions) or Schedule 9.1 Part 1 (or, if a term is not defined in those places, Schedule 9.1 Part 2) shall have the meaning ascribed to them in those places.

Without prejudice to Schedule 1 (Definitions), Schedule 9.1 Part 1, or Schedule 9.1, Part 2, in this Appendix 1 to Part 3 of Schedule 9.1 unless the context otherwise requires:

**“Active Member”** means an individual who has been admitted to and remains in active membership of any of the Schemes.

**“Admission Agreement”** means in relation to the Supplier or a Sub-contractor an agreement made (or to be made) between (1) The Minister for the Cabinet Office (2) the Supplier or the Sub-contractor, as the case may be, and (3) the Authority relating to the participation of the Supplier or the Sub-contractor, as applicable, in the Schemes for the benefit of those of the Former Authority Employees who are for the time being employed by the Supplier or the Sub-contractor, as applicable, and which is in the form set out in Annex A to this Appendix 1 to Part 3 of Schedule 9.1.

**“[REDACTED]”** means the public service pension scheme for civil servants established under the Public Services Pensions Act 2013 introduced with effect on and from 1 April 2015 (and includes, unless the context otherwise requires, any successor scheme).

**“Former Authority Employee”** means at any time any person whose employment with the Authority is transferred to the Supplier or a Sub-contractor pursuant to the Transfer Regulations and/or any person who is an ex-employee of the Authority and whose employment with a Previous Supplier is transferred to the Supplier or a Sub-contractor pursuant to the Transfer Regulations and who is for the time being employed by the Supplier or a Sub-contractor provided that since such person was employed by the Authority (a) he has not ceased to be eligible for membership of the Schemes; and (b) any change in his employer has been effected pursuant to the Transfer Regulations;

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**“Employer Contributions”** means the sums which are payable to the Pension Schemes in accordance with clauses [7.1.5, 7.1.7 and 7.2 of the Admission Agreement] in respect of the Former Authority Employees, whether by the Supplier, Sub-contractor or Sub-sub-contractor. [For the avoidance of doubt, the employee redundancy compensation payment amount which is taken into account under clause [7.2] of the Admission Agreement is not included as part of the pass-through under paragraph [2.1.4].]

**“New Fair Deal”** means the revised Fair Deal policy set out in HM Treasury’s guidance “Fair Deal for staff pensions: staff transfers from central government” issued in October 2013.

**“[REDACTED]”** means the [REDACTED] Scheme established under The Superannuation Act 1972.

**“Pension Schemes”** means [REDACTED] and/or the [REDACTED] whichever is or are relevant in the context (and includes, unless the context otherwise requires, the respective managers from time to time of such scheme or schemes).

**“Relevant Benefits”** means any benefit payable on retirement, on death, on reaching a particular age, on the onset of serious ill-health or incapacity or in similar circumstances (including the provision of medical, dental or similar benefits).

**“Relevant Transfer Date”** means the date on which a transfer to the Supplier or a Sub-contractor is effected pursuant to this Contract and the Transfer Regulations.

**“Schemes”** means the [REDACTED], the Partnership Pension Account and its (i) Ill-health Benefits Scheme and (ii) Death Benefits Scheme, the Civil Service Additional Voluntary Contribution Scheme, and [REDACTED] each as amended or replaced from time to time, or such one of them as is or are relevant in context. Any reference to the Schemes includes, unless the context otherwise requires, a reference to the respective managers from time to time of the Schemes.

**“Transfer Regulations”** means the means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time and/or the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006 (as amended from time to time), as appropriate.

## 2. Pensions

### 2.1 The Supplier shall:

- 2.1.1 comply with the Admission Agreement to which it is a party and shall not terminate the Admission Agreement while the Supplier is providing any of the Services;
- 2.1.2 ensure that on each occasion (including, but without limitation, on the termination of a contract between the Supplier and a Sub-contractor) any Former Authority Employee becomes an employee of the Supplier pursuant to the Transfer Regulations (and the date upon which he becomes such an employee is called the **“Employment Date”**) the Former Authority Employee if not already an Active Member of the Pension Schemes becomes such an Active Member with effect as on and from the Employment Date provided that this is permitted under

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the terms of the Pension Schemes and the Admission Agreement as applicable; and

- 2.1.3 ensure that in relation to each Former Authority Employee who immediately prior to the Employment Date is an Active Member or who becomes an Active Member with effect from that date and for so long as the Former Authority Employee is employed by the Supplier and is assigned to or otherwise engaged at least to the minimum extent specified in the Admission Agreement in the provision of the Services or any of them:
  - 2.1.3.1 it is an express term of the contract of employment of the Former Authority Employee with the Supplier that the Supplier shall ensure that (subject to the terms from time to time of the Schemes and the Admission Agreement) the Former Authority Employee may be and may continue to be an Active Member; and
  - 2.1.3.2 each such Former Authority Employee is able to be and remain such an Active Member.
- 2.1.4 The Supplier agrees that the Employer Contributions shall be priced on a pass-through basis in accordance with *[insert details of relevant clause/pricing schedule]*.
- 2.1.5 if it is in arrears in respect of any contributions or other amounts due to the Schemes in respect of any Former Authority Employee, agree (which agreement the Supplier hereby irrevocably gives) that the Authority may deduct an amount equal to that which is overdue from any monies due to the Supplier and pay that amount to the relevant Scheme.
- 2.2 The Supplier shall ensure that no Sub-contractor by whom any of the Former Authority Employees become employed pursuant to the Transfer Regulations is appointed unless the contract under which the Sub-contractor is to provide any of the Services (the “Contract”) contains terms which provide for the following:
  - 2.2.1 a condition precedent (which may not be waived) to such contract becoming effective is that there is in force an Admission Agreement between (1) The Minister for the Cabinet Office (2) the Sub-contractor, and (3) the Authority;
  - 2.2.2 the Sub-contractor must at all material times comply with the Admission Agreement and will not terminate the Admission Agreement while the Sub-contractor is providing any of the Services;
  - 2.2.3 a breach of the Admission Agreement which is not capable of remedy or which if it is capable of remedy is not remedied within [ten (10)] Working Days of the Sub-contractor being given notice of such breach by the Schemes, the Minister for the Cabinet Office (in respect of the Admission Agreement) or the Authority is an event of default by the Sub-contractor enabling the other party to the Contract to terminate the Contract or the Supplier to terminate the Sub-contract (which the Supplier undertakes to the Authority to do if directed to do so by the Authority) immediately on the giving of notice and no notice to waive the event of default or which states that termination is not immediate and reserves a future right to terminate may be given without the consent in writing of the Authority;
  - 2.2.4 on each occasion (including, but without limitation, the termination of any contract pursuant to which the Sub-contractor sub-subcontracts the provisions of

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any of the Services) any Former Authority Employee becomes an employee of the Sub-contractor pursuant to the Transfer Regulations the Former Authority Employee shall if he is not already an Active Member of the Pension Schemes become such an Active Member with effect as on and from the date upon which he becomes such an employee provided that this is permitted under the terms of the Pension Schemes and the Admission Agreement;

- 2.2.5 on each such occasion the Sub-contractor must make it a term of the contract of employment of each Former Authority Employee employed by the Sub-contractor that the Sub-contractor must ensure that the Former Authority Employee may be an Active Member at all times he is assigned to or otherwise engaged at least to the minimum extent specified in the Admission Agreement in the provision of any of the Services (subject to the terms of the Schemes from time to time and the Admission Agreement);
- 2.2.6 any contract pursuant to which the Sub-contractor sub-contracts to another person (the “**Sub-sub-contractor**”) and which results in any Former Authority Employee becoming an employee of the Sub-sub-contractor pursuant to the Transfer Regulations must contain the same terms as must be included in the Sub-contractor’s contract in accordance with this paragraph 2.2 and such contract shall not take effect unless and until there is in force an Admission Agreement to which the Sub-sub-contractor is a party; and
- 2.2.7 the Sub-contractor must use its best endeavours to enforce the terms of his contract with the Sub-sub-contractor which must be included in that contract in accordance with this paragraph 2.2.
- 2.3 The Supplier shall indemnify and at all times keep indemnified the Authority and/or any New Provider and/or any sub-contractor of a New Provider in respect of any costs, claims or liabilities in connection with any failure or alleged failure by the Supplier, the Sub-contractor or Sub-sub-contractor as the case may be, to comply with:
  - 2.3.1 the Schemes or the Admission Agreement to which the Supplier, the Sub-contractor or the Sub-sub-contractor as the case may be, is a party or to comply with (in the case of the Supplier) the provisions of this paragraph 2 or (in the case of a Sub-contractor or Sub-sub-contractor) the provisions to be included in the Contract pursuant to paragraph 2.2; and / or
  - 2.3.2 the provisions of this Part 3.
- 2.4 If the Sub-contractor or Sub-sub-contractor fails to pay by the due date any amount payable to any of the Schemes the Authority may deduct an amount equal to that which has not been paid from any money otherwise payable by the Authority to the Supplier and pay that amount to the Schemes.
- 2.5 Save with the approval of the Authority the Supplier shall not and shall procure any Sub-contractor and/or Sub-sub contractor as applicable shall not on or after the earliest of:
  - 2.5.1 the date which is eighteen (18) months before the Expiry Date;
  - 2.5.2 the Authority giving the Supplier a Termination Notice terminating the whole of this Agreement or any part of the Services;



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- 2.5.3 the Supplier giving notice under clause [*insert details of relevant clause*](termination for Force Majeure) and such notice is accepted by the Authority;
- 2.5.4 on notification to the Supplier by the Authority of a replacement contractor; and
- 2.5.5 on receipt by the Supplier of a written request by the Authority,
- allow (other than as required by law or an amendment to the Schemes) the grant or variation of any new or existing Relevant Benefits for or in respect of any employee of the Supplier to be made, announced or proposed.
- 2.6 The Supplier shall not and shall procure that the Sub-contractor and/or Sub-sub contractor shall not issue any announcements to Former Authority Employees prior to the Relevant Transfer Date concerning the matters in this clause 2 without the consent in writing of the Authority (such consent not to be unreasonably withheld or delayed) and the Authority shall not issue any such announcement without the consent of the Supplier (such consent not to be unreasonably withheld or delayed).
- 2.7 The Supplier shall procure, and shall ensure that any Sub-contractor or Sub-sub-contractor shall procure, that any information reasonably requested by the Authority in relation to the matters referred to in this Part 3 and/or to be provided to the Authority pursuant to the Admission Agreement is sent to: [*insert details*] as expeditiously as possible.
- 2.8 The Supplier shall not recover any costs and/or other payments in relation to New Fair Deal where such costs and/or payments are recoverable or have already been recovered by the Supplier elsewhere in this Contract or otherwise. If the Supplier does recover costs and/or other payments as set out in this paragraph 2.8 the Authority may deduct an amount equal to the amount of such costs and/or other payments from any money otherwise payable by the Authority to the Supplier.
- 2.9 The Supplier shall provide and shall procure each Sub-contractor or Sub-sub-contractor as appropriate provides all such co-operation and assistance as the Schemes and a New Provider or sub-contractor of a New Provider and/or the Authority may reasonably require to enable the New Provider or sub-contractor of a New Provider to participate in the Schemes in respect of any Former Authority Employee and to give effect to any transfer of accrued rights required as part of the participation under New Fair Deal.
- 2.10 The Supplier undertakes to the Authority to indemnify and keep indemnified the Authority on demand against any liability out of or attributable to or in any way connected with the transmission of information supplied to it by the Supplier, Sub-contractor or Sub-sub-contractor as in connection with a re-tendering or proposed re-tendering of all or any of the Services.
- 2.11 The Supplier undertakes to indemnify and keep indemnified the Authority and/or any New Provider and / or any sub-contractor of a New Provider from and against all claims (and any consequent costs and liabilities) by any Former Authority Employee or by any trade unions, elected employee representatives or staff associations in respect of all or any such Former Authority Employees which:

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- 2.11.1 relate to pension rights in respect of periods of employment on and after the applicable Employment Date until the date of termination or expiry of this Contract; and/or
- 2.11.2 arise out of the failure of the Supplier and/or any relevant Sub-Contractor to comply with the provisions of this Part 3 before the date of termination or expiry of this Contract.
- 2.12 The indemnities in this Part 3:
  - 2.12.1 shall survive termination of this Contract; and
  - 2.12.2 shall not be affected by the caps on liability contained in Clause ***[insert details of limitation of liability clause]*** (Limitation of Liability).

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**Annex A to Appendix 1 to Part 3 of Schedule 9.1**

***[Insert form of Admission Agreement]***

Appendix 2 to Part 3 of Schedule 9.1 - [REDACTED] Pension Scheme

1. DEFINITIONS

1.1 In this Appendix 2 to Part 3 of Schedule 9.1, the following definitions shall apply:

"Actuary"	a Fellow of the Institute and Faculty of Actuaries;
"Broadly Comparable"	<p>(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</p> <p>(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,</p> <p>and "Broad Comparability" shall be construed accordingly;</p>
"Direction Letter"	an [REDACTED] Pensions Direction or Determination (as appropriate) issued by the Secretary of State in exercise of the powers conferred by section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 or by section 25 of the Public Service Pensions Act 2013 (as appropriate) and issued to the Supplier or a Sub-contractor of the Supplier (as appropriate) relating to the terms of participation of the Supplier or Sub-contractor in the [REDACTED] in respect of the [REDACTED] Eligible Employees;
"New Fair Deal"	has the same meaning as in Appendix 1 to Part 3 of Schedule 9.1;
"[REDACTED] Eligible Employees"	<p>each of the Former Authority 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 [REDACTED] as a result of either:</p> <p>(a) their employment with the Authority, an [REDACTED] Body or other employer which participates automatically in the [REDACTED]; or</p>

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- (b) their employment with a Previous Supplier who provides access to the [REDACTED] pursuant to an [REDACTED] Pensions Direction or Determination (as appropriate) issued by the Secretary of State in exercise of the powers conferred by section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 or by section 25 of the Public Service Pensions Act 2013 (as appropriate) in respect of their employment with that Previous Supplier (on the basis that they are entitled to protection under New Fair Deal and were permitted to re-join the [REDACTED], having been formerly in employment with the Authority, an [REDACTED] Body or other employer who participated automatically in the [REDACTED] in connection with the Services, prior to being employed by the Previous 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 [REDACTED] as a result of being engaged in the Services and being covered by an "open" Direction Letter or other [REDACTED] "access" facility but who has never been employed directly by an [REDACTED] Body (or other body which participates automatically in the [REDACTED]) is not an [REDACTED] Eligible Employee;

**"[REDACTED] Body"** has the meaning given to it in section 275 of the [REDACTED] Act 2006 as amended by section 138(2)(c) of Schedule 4 to the Health and Social Care Act 2012;

**"[REDACTED] Pensions"** [REDACTED] Pensions as the administrators of the [REDACTED] or such other body as may from time to time be responsible for relevant administrative functions of the [REDACTED] ;

**"[REDACTED] "** the [REDACTED] for England and Wales, established pursuant to the Superannuation Act 1972 and governed by subsequent regulations under that Act including the [REDACTED] Pension Scheme Regulations;

**[REDACTED] Pension Scheme Arrears"** any failure on the part of the Supplier or its Sub-Contractors (if any) to pay employer's contributions or deduct and pay across employee's contributions to the [REDACTED] or meet any other financial obligations under the [REDACTED] or any Direction Letter in respect of the [REDACTED] Eligible Employees;

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<b>"[REDACTED] Pension Scheme Regulations"</b>	as appropriate, any or all of the [REDACTED] Pension Scheme Regulations 1995 (SI 1995/300), the [REDACTED] Pension Scheme Regulations 2008 (SI 2008/653), the [REDACTED] Pension Scheme Regulations 2015 (2015/94) and any subsequent regulations made in respect of the [REDACTED] , each as amended from time to time;
<b>"[REDACTED] Premature Retirement Rights"</b>	rights to which any Former Authority Employee (had they remained in the employment of the Authority, an [REDACTED] Body or other employer which participates automatically in the [REDACTED] ) would have been or are entitled under the [REDACTED] Pension Scheme Regulations, the [REDACTED] Compensation for Premature Retirement Regulations 2002 (SI 2002/1311), the [REDACTED] (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 [REDACTED] PENSION SCHEME**

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

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Eligible Employees for so long as it remains bound by the terms of any such Direction Letter.

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

### **3. ACCESS TO [REDACTED] PENSION SCHEMES AFTER TRANSFER**

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

### **4. CONTINUATION OF EARLY RETIREMENT RIGHTS AFTER TRANSFER**

From the Relevant Transfer Date until the Subsequent Transfer Date, the Supplier must provide (and/or must ensure that its Sub-contractors (if any) provide) [REDACTED] Premature Retirement Rights in respect of the [REDACTED] Eligible Employees that are identical to the benefits they would have received had they remained employees of the Authority, an [REDACTED] Body or other employer which participates automatically in the [REDACTED] .

### **5. WHAT THE AUTHORITY MAY DO IF THE SUPPLIER BREACHES ITS PENSION OBLIGATIONS**

- 5.1 The Supplier agrees that the Authority is entitled to make arrangements with [REDACTED] Pensions for the Authority to be notified if the Supplier (or its Sub-Contractor) breaches the terms of its Direction Letter. Notwithstanding the provisions of the foregoing, the Supplier shall notify the Authority in the event that it (or its Sub-Contractor) breaches the terms of its Direction Letter.
- 5.2 If the Authority is entitled to terminate this Contract or the Supplier (or its Sub-Contractor, if relevant) ceases to participate in the [REDACTED] for whatever other reason, the Authority may in its sole discretion, and instead of exercising its right to terminate this Contract where relevant, permit the Supplier (or any such Sub-Contractor, as appropriate) to offer Broadly Comparable Pension Benefits, on such terms as decided by the Authority. The provisions of Paragraph 6 of this Appendix shall apply in relation to any Broadly Comparable pension scheme established by the Supplier or its Sub-Contractors.
- 5.3 In addition to the Authority's right to terminate this Contract, if the Authority is notified by [REDACTED] Pensions of any [REDACTED] Pension Scheme Arrears, the

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Authority will be entitled to deduct all or part of those arrears from any amount due to be paid under this Contract or otherwise.

**6. COMPENSATION WHEN [REDACTED] OR OTHER PENSION SCHEME ACCESS CAN'T BE PROVIDED**

6.1 If paragraph 5.2 of this Appendix applies and/or the Authority agrees, having considered the exceptional cases provided for in New Fair Deal, (such agreement not to be unreasonably withheld) that the Supplier (and/or its Sub-contractors, if any) need not continue to provide the [REDACTED] Eligible Employees, who continue to qualify for protection under New Fair Deal, with access to the [REDACTED] , the Supplier must (and must, where relevant, procure that each of its Sub-Contractors will) ensure that, with effect from the Relevant Transfer Date or if later cessation of participation in the [REDACTED] until the day before the Subsequent Transfer Date, the relevant [REDACTED] Eligible Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided under the [REDACTED] , and then on such terms as may be decided by the Authority.

6.2 Where the Supplier has set up a Broadly Comparable pension scheme or schemes pursuant to the provisions of Paragraph 6.1, the Supplier shall (and shall procure that any of its Sub-Contractors shall):

6.2.1 supply to the Authority details of its (or its Sub-Contractor's) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability covering all relevant [REDACTED] Eligible Employees, as soon as it is able to do so and in any event no later than 28 days before the Relevant Transfer Date;

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

6.2.3 instruct any such Broadly Comparable pension scheme's Actuary to, and to provide all such co-operation and assistance in respect of any such Broadly Comparable pension scheme as the New Provider and/or [REDACTED] Pensions and/or the Authority may reasonably require, to enable the New Provider to participate in the [REDACTED] in respect of any [REDACTED] Eligible Employee that remains eligible protection under New Fair Deal following a Subsequent Relevant Transfer;

6.2.4 provide a replacement Broadly Comparable pension scheme with immediate effect for those [REDACTED] Eligible Employees who are still employed by the Supplier and/or relevant Sub-Contractor and are still eligible for protection under New Fair Deal in the event that the Supplier and/or Sub-Contractor's Broadly Comparable pension scheme is terminated;



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- 6.2.5 allow and make all necessary arrangements to effect, in respect of any [REDACTED] Eligible Employee that remains eligible for protection under New Fair Deal, following a Subsequent Relevant Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the [REDACTED] and as is relevant on a day for day service basis and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal. For the avoidance of doubt, should the amount offered by the Broadly Comparable pension scheme be less than the amount required by the [REDACTED] to fund day for day service ("Shortfall"), the Supplier or the Sub-Contractor (as agreed between them) must pay the [REDACTED] , as required, provided that in the absence of any agreement between the Supplier and any Sub-Contractor, the Shortfall shall be paid by the Supplier; and
- 6.2.6 indemnify the Authority and/or [REDACTED] Pensions on demand for any failure to pay the Shortfall as required under Paragraph 6.2.5 above.
- 6.3 If the Supplier (or its Sub-Contractor, if relevant) is unable to provide the [REDACTED] Eligible Employees with either:
- 6.3.1 membership of the [REDACTED] (having used its best endeavours to secure a Direction Letter); or
- 6.3.2 access to a Broadly Comparable pension scheme,
- the Authority may in its sole discretion permit the Supplier (or any of its Sub-Contractors) to compensate the [REDACTED] Eligible Employees in a manner that is Broadly Comparable or equivalent in cash terms, the Supplier (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 [REDACTED] Eligible Employees. The Supplier must meet (or must procure that the relevant Sub-Contractor meets) the costs of the Authority determining whether the level of compensation offered is reasonable in the circumstances.
- 6.4 This flexibility for the Authority to allow compensation in place of Pension Benefits is in addition to and not instead of the Authority's right to terminate this Contract.
- 7. INDEMNITIES THAT A SUPPLIER MUST GIVE**
- 7.1 The Supplier must indemnify and keep indemnified the Authority and any Replacement Supplier against all Losses arising out of any claim by any [REDACTED] Eligible Employee that the provision of (or failure to provide) Pension Benefits and [REDACTED] Premature Retirement Rights from the Relevant Transfer Date, or the level of such benefit provided, constitutes a breach of his or her employment rights.
- 7.2 The Supplier must indemnify and keep indemnified the Authority, [REDACTED] Pensions and any Replacement Supplier against all Losses arising out of the Supplier (or its Sub-Contractor) allowing anyone who is not an [REDACTED] Eligible

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Employee to join or claim membership of the [REDACTED] at any time during the provision of the Services under the Contract.

### 8. SUB-CONTRACTORS

8.1 If the Supplier enters into a Sub-Contract for the delivery of all or part or any component of the Services which will involve the transfer of employment of any [REDACTED] Eligible Employee it will impose obligations on its Sub-Contractor in identical terms as those imposed on the Supplier in relation to Pension Benefits and [REDACTED] Premature Retirement Rights by this Appendix, including requiring that:

8.1.1 if the Supplier has secured a Direction Letter, the Sub-Contractor also secures a Direction Letter in respect of the [REDACTED] Eligible Employees for their future service with the Sub-Contractor as a condition of being awarded the Sub-Contract and the Supplier shall be responsible for ensuring that the Authority receives a complete copy of each such Sub-Contractor Direction Letter as soon as reasonably practicable; or

8.1.2 if, in accordance with Paragraph 5 of this Appendix, the Supplier has offered the [REDACTED] Eligible Employees access to a pension scheme under which the benefits are Broadly Comparable to those provided under the [REDACTED], the Sub-contractor either secures a Direction Letter in respect of the [REDACTED] Eligible Employees or (with the prior consent of the Authority) provides [REDACTED] Eligible Employees with access to a scheme with Pension Benefits which are Broadly Comparable to those provided under the [REDACTED] whereupon the provisions of Paragraph 6 of this Appendix shall apply.

8.2 The Supplier shall procure that each Sub-Contractor provides indemnities to the Authority, [REDACTED] Pensions and/or any Replacement Supplier and/or Replacement Sub-Contractor that are identical to the indemnities set out in Paragraph 7 of this Appendix 2. Where a Sub-Contractor fails to satisfy any claim made under such one or more indemnities, the Supplier will be liable for satisfying any such claim as if it had provided the indemnity itself.