

Schedule 7 (Staff Transfer)

1. Definitions

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

**"Employee
Liability"**

all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:

- (a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- (b) unfair, wrongful or constructive dismissal compensation;
- (c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- (d) compensation for less favourable treatment of part-time workers or fixed term employees;
- (e) outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions in relation to payments made by the Buyer or the Replacement Supplier to a Transferring Supplier Employee which would have been payable by the Supplier or the Subcontractor if such payment should have been made prior to the Service Transfer Date and also

including any payments arising in respect of pensions;

- (f) claims whether in tort, contract or statute or otherwise;
- (g) any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

“Fair Deal Employees”

as defined in Part D;

"Former Supplier"

a supplier supplying the Services to the Buyer before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any subcontractor of such supplier (or any subcontractor of any such subcontractor);

“New Fair Deal”

the revised Fair Deal position set out in the HM Treasury guidance: *“Fair Deal for staff pensions: staff transfer from central government”* issued in October 2013 including:

- (a) any amendments to that document immediately prior to the Relevant Transfer Date;
- (b) any similar pension protection as notified to the Supplier by the Buyer (including in the context where pension protection is to be applied overseas);

“Old Fair Deal”

HM Treasury Guidance *“Staff Transfers from Central Government: A Fair Deal for Staff Pensions”* issued in June 1999 including the supplementary guidance *“Fair Deal for Staff pensions: Procurement of Bulk Transfer Agreements and Related Issues”* issued in June 2004;

"Partial Termination"

the partial termination of the relevant Contract to the extent that it relates to the provision of any part of the Services as further provided for

in Clause 14.4 (When the Buyer can end this contract) or 14.6 (When the Supplier can end the contract);

“Replacement Subcontractor”

a subcontractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any subcontractor of any such subcontractor);

"Relevant Subsequent Transfer"

a transfer of employment from the Supplier to which the Employment Regulations applies or to which the parties agree to treat the Employment Regulations as applying;

"Relevant Transfer"

a transfer of employment from the Former Supplier to which the Employment Regulations applies or to which the parties agree to treat the Employment Regulations as applying;

"Relevant Transfer Date"

in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place, and for the purposes of Part D where the Supplier or a Subcontractor was the Former Supplier and there is no Relevant Transfer of the Fair Deal Employees because they remain continuously employed by the Supplier (or Subcontractor), references to the Relevant Transfer Date shall become references to the Start Date;

“Service Transfer”

any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Subcontractor to a Replacement Supplier or a Replacement Subcontractor to which the Employment Regulations applies;

“Service Transfer Date”

the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires;

"Staffing Information"	in relation to all persons identified on the Supplier's Provisional Supplier Staff List or Supplier's Final Supplier Staff List, as the case may be, all information required in 0 (<i>Table of Staffing Information</i>) in the format specified and with the identities of Data Subjects anonymised where possible. The Buyer may acting reasonably make changes to the format or information requested in 0 from time to time.
"Statutory Schemes"	means the public service pension scheme(s) applicable to the Fair Deal Employees;
"Supplier's Final Supplier Staff List"	a list provided by the Supplier of all Supplier Staff whose will transfer under the terms of this Contract and/or the Employment Regulations on the Service Transfer Date;
"Supplier's Provisional Supplier Staff List"	a list prepared and updated by the Supplier of all Supplier Staff who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier;
"Transferring Former Supplier Employees"	means those individuals named in Annex 1 to this Schedule but excluding any of such individuals who cease to be engaged in or assigned to the Services between the date of this Agreement and the Relevant Transfer Date but including any new employee engaged in or assigned to the provision of the services which are identical or substantially similar to any of the Services
"Transferring Supplier Employees"	those employees of the Supplier and/or the Supplier's Subcontractors to whom the Employment Regulations will apply on the Relevant Subsequent Transfer Date.

2. Interpretation

Where a provision in this Schedule imposes any obligation on the Supplier including to comply with a requirement or provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Subcontractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the

Buyer, Former Supplier, Replacement Supplier or Replacement Subcontractor, as the case may be and where the Subcontractor fails to satisfy any claims under such indemnities the Supplier will be liable for satisfying any such claim as if it had provided the indemnity itself.

3. Which parts of this Schedule apply

Only the following parts of this Schedule shall apply to this Contract:

- 3.1 Part B (Staff Transfer At Start Date – Transfer From Former Supplier)
- 3.2 Part D (Pensions)
- 3.3 Part E (Staff Transfer on Exit)
 - 3.3.1 Annex E1 (Staffing Information)

Part A: Staff Transfer at the Start Date

Transferring Employees from the Buyer to the Supplier

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Part B: Staff transfer at the Start Date

Transfer from a Former Supplier on Re-procurement

1. What is a relevant transfer

1.1 The Buyer and the Supplier agree that:

- 1.1.1 the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Supplier Employees; and
- 1.1.2 the Employment Regulations shall be deemed by both parties to apply in respect of all of the Transferring Former Supplier Employees and therefore the Buyer and Supplier shall comply with their respective obligations under the Employment Regulations;
- 1.1.3 as a result of the terms of this Contract and/or the operation of the Employment Regulations, the contracts of employment between the Former Supplier and the Transferring Former Supplier Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or any Subcontractor and each such Transferring Former Supplier Employee.

1.2 In the event the Employment Regulations do not apply to all or some of the Transferring Former Supplier Employees, the Buyer and the Supplier will nevertheless act as if they apply and will take all steps necessary to facilitate the transfer of the contracts of employment of the Transferring Former Supplier Employees. The Supplier agrees that in such circumstances it shall offer all of the Transferring Former Supplier Employees employment on the same terms and conditions of employment that applied prior to the Relevant Transfer Date, as if the Employment Regulations applied.

1.3 The Buyer shall procure that the Former Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Supplier Employees in respect of the period up to (but not including) the Relevant Transfer Date including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and such sums due as a result of any Fair Deal Employees' participation in the Fair Deal Schemes and any requirement to set up a broadly comparable pension scheme which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Supplier shall make, and the

Buyer shall procure that the Former Supplier makes, any necessary apportionments in respect of any periodic payments.

2. Indemnities given by the Former Supplier

- 2.1 Subject to Paragraph 2.2, the Buyer shall procure that the Former Supplier shall indemnify the Supplier and any Subcontractor against any Employee Liabilities arising from or as a result of:
- 2.1.1 any act or omission by the Former Supplier in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee arising on or before the Relevant Transfer Date;
 - 2.1.2 the breach or non-observance by the Former Supplier arising before the Relevant Transfer Date of:
 - a) any collective agreement applicable to the Transferring Former Supplier Employees; and/or
 - b) any other custom or practice in respect of any Transferring Former Supplier Employees which the Former Supplier is contractually bound to honour;
 - 2.1.3 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - a) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
 - b) in relation to any employee who is not a Transferring Former Supplier Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer their employment from the Former Supplier to the Supplier and/or any Subcontractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;
 - 2.1.4 a failure of the Former Supplier to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period up to (but excluding) the Relevant Transfer Date; and
 - 2.1.5 any claim made by or on behalf of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Former

Supplier in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Subcontractor to comply with regulation 13(4) of the Employment Regulations.

- 2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Subcontractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:
- 2.2.1 arising out of the resignation of any Transferring Former Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes made or proposed to their working conditions proposed by the Supplier or any Subcontractor to occur in the period from (and including) the Relevant Transfer Date; or
 - 2.2.2 arising from the failure by the Supplier and/or any Subcontractor to comply with its obligations under this Contract and/or the Employment Regulations.
- 2.3 Subject to Paragraphs 2.4, if any employee of a Former Supplier who is not identified as a Transferring Former Supplier Employee and claims, and/or it is determined, in relation to such person that their contract of employment has been transferred or should have transferred from the Former Supplier to the Supplier and/or any Subcontractor pursuant to the Employment Regulations then:
- 2.3.1 the Supplier shall, or shall procure that the Subcontractor shall, within 5 Working Days of becoming aware of that fact notify the Buyer and the Former Supplier in writing; and
 - 2.3.2 the Former Supplier may offer (or may procure that a third party may offer) employment to such person, or take such other steps as it considers appropriate to resolve the matter provided always that such steps are in compliance with applicable Law, within 15 Working Days of receipt of notice from the Supplier;
 - 2.3.3 if such offer of employment is accepted, or if the situation has otherwise been resolved by the Former Supplier and/or the Buyer, the Supplier shall, or shall procure that the Subcontractor shall immediately release the person from its employment or alleged employment;
 - 2.3.4 if after the period referred to in Paragraph 2.3.2:
 - a) no such offer has been made;
 - b) such offer has been made but not accepted; or
 - c) the situation has not otherwise been resolvedthe Supplier and/or any Subcontractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person;

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

- 2.4 The indemnity in Paragraph 2.3 shall not apply to any termination of employment occurring later than 6 Months from the Relevant Transfer Date.
- 2.5 If the Supplier and/or any Subcontractor at any point accept the employment of any person as is described in Paragraph 2.3, such person shall be treated as having transferred to the Supplier and/or any Subcontractor and Paragraph 2.3 shall cease to apply to such person and the Supplier shall comply with such obligations as may be imposed upon it under applicable Law.

3. Indemnities the Supplier must give and its obligations

- 3.1 Subject to Paragraph 3.2, the Supplier shall indemnify the Buyer, and the Former Supplier against any Employee Liabilities arising from or as a result of:
 - 3.1.1 any act or omission by the Supplier or any Subcontractor in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee whether occurring before, on or after the Relevant Transfer Date;
 - 3.1.2 the breach or non-observance by the Supplier or any Subcontractor on or after the Relevant Transfer Date of:
 - a) any collective agreement applicable to the Transferring Former Supplier Employee; and/or
 - b) any custom or practice in respect of any Transferring Former Supplier Employees which the Supplier or any Subcontractor is contractually bound to honour;
 - 3.1.3 any claim by any trade union or other body or person representing any Transferring Former Supplier Employees arising from or connected with any failure by the Supplier or a Subcontractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
 - 3.1.4 any proposal by the Supplier or a Subcontractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Supplier Employees to their material detriment on or after their transfer to the Supplier or a Subcontractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Supplier Employee but for

their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;

- 3.1.5 any statement communicated to or action undertaken by the Supplier or a Subcontractor to, or in respect of, any Transferring Former Supplier Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Buyer and/or the Former Supplier in writing;
 - 3.1.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - a) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
 - b) in relation to any employee who is not a Transferring Former Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer their employment from the Former Supplier to the Supplier or a Subcontractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
 - 3.1.7 a failure of the Supplier or any Subcontractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period from (and including) the Relevant Transfer Date; and
 - 3.1.8 any claim made by or on behalf of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Supplier or any Subcontractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Supplier's failure to comply with its obligations under regulation 11 or 13 of the Employment Regulations.
- 3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities arising from the Former Supplier's failure to comply with its obligations under the Employment Regulations, or to the extent the Employee Liabilities arise out

of the termination of employment of any person who is not identified in the Supplier's Final Supplier Staff List in accordance with Paragraph 2.3 (and subject to the limitations set out in Paragraphs 2.4 above).

- 3.3 The Supplier shall comply, and shall procure that each Subcontractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations). The Supplier agrees that it shall comply, and shall procure that each Subcontractor shall comply, with such obligations even if it is determined by any party that the Employment Regulations do not apply.
- 3.4 The Supplier shall perform and discharge, and shall procure that each Subcontractor shall perform and discharge, all its obligations in respect of all the Transferring Former Supplier Employees, on and from the Relevant Transfer Date including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and all such sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Supplier and the Former Supplier.

4. Information the Supplier must give

The Supplier shall, and shall procure that each Subcontractor shall, promptly provide to the Buyer and/or at the Buyer's direction, the Former Supplier, in writing such information as is necessary to enable the Buyer and/or the Former Supplier to carry out their respective duties under regulation 13 of the Employment Regulations (even if it is determined by any party that the Employment Regulations do not apply). The Buyer shall procure that the Former Supplier shall promptly provide to the Supplier and each Subcontractor in writing such information as is necessary to enable the Supplier and any Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations.

5. Cabinet Office requirements

- 5.1 The Supplier shall comply with any requirement notified to it by the Buyer relating to pensions in respect of any Transferring Former Supplier Employee as set down in
- 5.1.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised December 2013;
 - 5.1.2 Old Fair Deal; and/or
 - 5.1.3 the New Fair Deal.
- 5.2 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in

Paragraph 5.1 shall be agreed in accordance with the Change Control Procedure.

6. Limits on the Former Supplier's obligations

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

7. Pensions

- 7.1 The Supplier shall, and shall procure that each Subcontractor shall, comply with:
 - 7.1.1 the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff; and
 - 7.1.2 the provisions in Part D: Pensions to this Staff Transfer Schedule.
- 7.2 The requirements of the Employment Regulations and those requirements described in paragraph 7.1.1 (relating to section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005)) and in 7.1.2 shall be applied equally on a Relevant Transfer and where the Employment Regulations have been deemed to apply for the purposes of this Schedule 7.

Part C: No Staff Transfer on the Start Date (Intentionally left Blank)

Part D: Pensions

8. Definitions

In this Part D and Part E, the following words have the following meanings and they shall supplement Schedule 1 (Definitions):

- "Actuary"** a Fellow of the Institute and Faculty of Actuaries;
- "Best Value Direction"** the Best Value Authorities Staff Transfers (Pensions) Direction 2007 or the Welsh Authorities Staff Transfers (Pensions) Direction 2012 (as appropriate);
- "Broadly Comparable"** (a) in respect of a pension scheme, a status satisfying the condition that there are no identifiable employees who will suffer material detriment overall in terms of future accrual of pension benefits as assessed in accordance with Annex A of New Fair Deal and demonstrated by the issue by the Government Actuary's Department of a broad comparability certificate; and
- (b) in respect of benefits provided for or in respect of a member under a pension scheme, benefits that are consistent with that pension scheme's certificate of broad comparability issued by the Government Actuary's Department,
- and **"Broad Comparability"** shall be construed accordingly;
- "Fair Deal Employees"** those:
- (a) Transferring Buyer Employees; and/or
- (b) Transferring Former Supplier Employees; and/or
- (c) employees who are not Transferring Buyer Employees or Transferring Former Supplier Employees but to whom the Employment Regulations apply on the Relevant Transfer Date to transfer their employment to the Supplier or a Subcontractor, and whose employment is not terminated in accordance with the provisions of Paragraph 3.1 of Part B;
- (d) where the Former Supplier becomes the Supplier those employees;

who at the Start Date or Relevant Transfer Date (as appropriate) are or become entitled to New Fair Deal protection in respect of any of the Fair Deal Schemes as notified by the Buyer;

"Fair Deal Schemes" means the relevant Statutory Scheme or a Broadly Comparable pension scheme.

9. Supplier obligations to participate in the pension schemes

- 9.1 The Supplier undertakes to comply with New Fair Deal and do all such things and execute any documents as may be required to enable the Supplier to participate in the appropriate Statutory Scheme in respect of the Fair Deal Employees and shall bear its own costs in such regard.
- 9.2 The Supplier undertakes:
 - 9.2.1 to pay to the appropriate Statutory Schemes all such amounts as are due under the relevant admission documentation or otherwise and shall deduct and pay to the Statutory Schemes such employee contributions as are required; and
 - 9.2.2 to be fully responsible for all other costs, contributions, payments and other amounts relating to its participation in the Statutory Schemes, including for the avoidance of doubt any exit payments and the costs of providing any bond, indemnity or guarantee required in relation to such participation.
- 9.3 Where the Supplier is the Former Supplier (or a Subcontractor is a subcontractor of the Former Supplier) and there is no Relevant Transfer of the Fair Deal Employees because they remain continuously employed by the Supplier (or Subcontractor) at the Start Date, this **Error! Reference source not found.** shall be modified accordingly so that the Supplier (or Subcontractor) shall comply with its requirements from the Start Date or, where it previously provided a Broadly Comparable pension scheme, from the date it is able to close accrual of its Broadly Comparable pension scheme (following appropriate consultation and contractual changes as appropriate) if later. The Supplier (or Subcontractor) shall make arrangements for a bulk transfer from its Broadly Comparable pension scheme to the relevant Statutory Scheme in accordance with the requirements of the previous contract with the Buyer.

10. Supplier obligation to provide information

- 10.1 The Supplier undertakes to the Buyer:
 - 10.1.1 to provide all information which the Buyer may reasonably request concerning matters referred to in this Part D as expeditiously as possible; and

- 10.1.2 not to issue any announcements to any Fair Deal Employee prior to the Relevant Transfer Date concerning the matters stated in this Part D without the consent in writing of the Buyer (such consent not to be unreasonably withheld or delayed); and
- 10.1.3 retain such records as would be necessary to manage the pension aspects in relation to any current or former Fair Deal Employees arising on expiry or termination of this Contract.

11. Indemnities the Supplier must give

11.1 The Supplier undertakes to the Buyer to indemnify and keep indemnified the Buyer and/or any Replacement Supplier and/or any Replacement Subcontractor on demand from and against all and any Losses whatsoever suffered or incurred by it or them which:

- 11.1.1 arise out of or in connection with any liability towards all and any Fair Deal Employees in respect of service on or after the Relevant Transfer Date which arises from any breach by the Supplier of this Part D;
- 11.1.2 relate to the payment of benefits under and/or participation in a pension scheme (as defined in section 150(1) Finance Act 2004) provided by the Supplier or a Subcontractor on and after the Relevant Transfer Date until the date of termination or expiry of this Contract, including the Fair Deal Schemes provided in accordance with Paragraphs **Error! Reference source not found.** or 18 of this **Error! Reference source not found.**;
- 11.1.3 relate to claims by Fair Deal Employees of the Supplier and/or of any Subcontractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such Fair Deal Employees which Losses:
 - a) relate to any rights to benefits under a pension scheme (as defined in section 150(1) Finance Act 2004) in respect of periods of employment on and after the Relevant Transfer Date until the date of termination or expiry of this Contract;
 - b) arise out of the failure of the Supplier and/or any relevant Subcontractor to comply with the provisions of this **Error! Reference source not found.** before the date of termination or expiry of this Contract.

11.2 The indemnities in this Part D:

- 11.2.1 shall survive termination of this Contract; and
- 11.2.2 shall not be affected by the caps on liability contained in Clause 15 (How much you can be held responsible for).

12. What happens if there is a dispute

- 12.1 The Dispute Resolution Procedure will not apply to this Part D and any dispute (i) between the Buyer and the Supplier or (ii) between their respective actuaries about any of the actuarial matters referred to in this Part D shall in the absence of agreement between the Buyer and the Supplier be referred to an independent Actuary:
- 12.1.1 who will act as an expert and not as an arbitrator;
 - 12.1.2 whose decision will be final and binding on the Buyer and the Supplier; and
 - 12.1.3 whose expenses shall be borne equally by the Buyer and the Supplier unless the independent Actuary shall otherwise direct.
- 12.2 The independent Actuary shall be agreed by the Parties or, failing such agreement the independent Actuary shall be appointed by the President for the time being of the Institute and Faculty of Actuaries on the application by the Parties.

13. Other people's rights

- 13.1 The Parties agree Clause 23 (Other people's rights in this contract) does not apply and that the CRTPA applies to this Part D to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to him or her or it by the Supplier under this Part D, in his or her or its own right under section 1(1) of the CRTPA.
- 13.2 Further, the Supplier must ensure that the CRTPA will apply to any Sub-Contract to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to them by the Subcontractor in his or her or its own right under section 1(1) of the CRTPA.

14. What happens if there is a breach of this Part D

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

15. Transferring Fair Deal Employees

- 15.1 Save on expiry or termination of this Contract, if the employment of any Fair Deal Employee transfers to another employer (by way of a transfer under the Employment Regulations or other form of compulsory transfer of

employment), the Supplier shall and shall procure that any relevant Subcontractor shall:

- 15.1.1 notify the Buyer as far as reasonably practicable in advance of the transfer to allow the Buyer to make the necessary arrangement for participation with the relevant Fair Deal Scheme(s);
- 15.1.2 consult with about, and inform those Fair Deal Employees of, the pension provisions relating to that transfer; and
- 15.1.3 procure that the employer to which the Fair Deal Employees are transferred (the "**New Employer**") complies with the provisions of this Part D provided that references to the "Supplier" will become references to the New Employer, references to "Relevant Transfer Date" will become references to the date of the transfer to the New Employer and references to "Fair Deal Employees" will become references to the Fair Deal Employees so transferred to the New Employer.

16. What happens to pensions if this Contract ends

- 9.1. The provisions of Part E: Staff Transfer On Exit (Mandatory) apply in relation to pension issues on expiry or termination of this Contract.
- 9.2. The Supplier shall (and shall procure that any of its Subcontractors shall) prior to the termination of this Contract provide all such co-operation and assistance (including co-operation and assistance from the Broadly Comparable pension scheme's Actuary) as the Replacement Supplier and/or the scheme managers or administrators of the Fair Deal Schemes and/or the Buyer may reasonably require, to enable the Replacement Supplier to participate in the appropriate Fair Deal Scheme in respect of any Fair Deal Employee that remains eligible for New Fair Deal protection following a Service Transfer.

17. Broadly Comparable Pension Schemes On The Relevant Transfer Date

- 17.1 If the terms of Paragraph 2.1 of this Part D cannot be complied with for any reason the Supplier must (and must, where relevant, procure that each of its Subcontractors will) ensure that, with effect from the Relevant Transfer Date until the day before the Service Transfer Date, the relevant Fair Deal Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided under the relevant Statutory Scheme, and then on such terms as may be decided by the Buyer.
- 17.2 Such Broadly Comparable pension scheme must be:
 - 17.2.1 established by the Relevant Transfer Date;
 - 17.2.2 a registered pension scheme for the purposes of Part 4 of the Finance Act 2004;
 - 17.2.3 capable of receiving a bulk transfer payment from the relevant Statutory Scheme or from a Former Supplier's Broadly Comparable pension scheme (unless otherwise instructed by the Buyer);

- 17.2.4 capable of paying a bulk transfer payment to the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (unless otherwise instructed by the Buyer); and
 - 17.2.5 maintained until such bulk transfer payments have been received or paid (unless otherwise instructed by the Buyer).
- 17.3 Where the Supplier has provided a Broadly Comparable pension pursuant to the provisions of this Paragraph 17, the Supplier shall (and shall procure that any of its Subcontractors shall):
- 17.3.1 supply to the Buyer details of its (or its Subcontractor's) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability (which remains valid as at the Relevant Transfer Date) covering all relevant Fair Deal Employees, as soon as it is able to do so before the Relevant Transfer Date (where possible) and in any event no later than seven (7) days after receipt of the certificate;
 - 17.3.2 be fully responsible for all costs, contributions, payments and other amounts relating to the setting up, certification of, ongoing participation in and/or withdrawal and exit from the Broadly Comparable pension scheme, including for the avoidance of doubt any debts arising under section 75 or 75A of the Pensions Act 1995;
 - 17.3.3 instruct any such Broadly Comparable pension scheme's Actuary to provide all such co-operation and assistance in agreeing bulk transfer process with the Actuary to the Former Supplier's Broadly Comparable pension scheme or the Actuary to the relevant Statutory Scheme (as appropriate) and to provide all such co-operation and assistance with any other Actuary appointed by the Buyer (where applicable). This will be with a view to the bulk transfer terms providing day for day and/or pound for pound (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) credits in the Broadly Comparable pension scheme in respect of any Fair Deal Eligible Employee who consents to such a transfer; and
 - 17.3.4 provide a replacement Broadly Comparable pension scheme in accordance with this Paragraph 17 with immediate effect for those Fair Deal Eligible Employees who are still employed by the Supplier and/or relevant Subcontractor and are still eligible for New Fair Deal protection in the event that the Supplier and/or Subcontractor's Broadly Comparable pension scheme is closed to future accrual and/or terminated. The relevant Fair Deal Employees must be given the option to transfer their accrued benefits from the previous Broadly Comparable pension scheme to the new Broadly Comparable pension scheme on day for day and/or pound for pound terms (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes).

17.4 Where the Supplier has provided a Broadly Comparable pension scheme pursuant to the provisions of this Paragraph 17, the Supplier shall (and shall procure that any of its Subcontractors shall) prior to the termination of this Contract:

- 17.4.1 allow and make all necessary arrangements to effect, in respect of any Fair Deal Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable). The bulk transfer terms provided shall be on a past service reserve basis which should be calculated allowing for projected final salary at the assumed date of retirement, leaving service or death (in the case of final salary benefits). The actuarial basis for this past service reserve basis should be aligned to the funding requirements of the Broadly Comparable pension scheme in place at the time the bulk transfer terms are offered. The bulk transfer terms shall be subject to an underpin in relation to any service credits awarded in the Broadly Comparable pension scheme in accordance with Paragraph 17.3.3 such that the element of the past service reserve amount which relates to such service credits shall be no lower than that required by the bulk transfer terms that were agreed in accordance with Paragraph 17.3.3 but using the last day of the Fair Deal Employees' employment with the Supplier or Subcontractor (as appropriate) as the date used to determine the actuarial assumptions; and
- 17.4.2 if the transfer payment paid by the trustees of the Broadly Comparable pension scheme is less (in the opinion of the Actuary to the Replacement Supplier's Broadly Comparable pension scheme (or to the relevant Statutory Scheme if applicable)) than the transfer payment which would have been paid had Paragraph 17.4.1 been complied with, the Supplier shall (or shall procure that the Subcontractor shall) pay the amount of the difference to the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable) or as the Buyer shall otherwise direct. The Supplier shall indemnify the Buyer or the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (as the Buyer directs) for any failure to pay the difference as required under this Paragraph.

18. Broadly Comparable Pension Schemes In Other Circumstances

18.1 If the admission to any of the Statutory Schemes in respect of the Supplier (or, where relevant any of its sub-contractors) is terminated for any reason, the Supplier must (and must, where relevant, procure that each of its Subcontractors will) ensure that, with effect from the cessation of participation in the Statutory Scheme, until the day before the Service Transfer Date, the relevant Fair Deal Eligible Employees will be eligible for membership of a pension scheme under which the benefits are Broadly

Comparable to those provided under the relevant Statutory Scheme at the date of cessation of participation in the relevant Statutory Scheme, and then on such terms as may be decided by the Buyer.

18.2 Such Broadly Comparable pension scheme must be:

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

18.3 Where the Supplier has provided a Broadly Comparable pension scheme pursuant to the provisions of this Paragraph 18, the Supplier shall (and shall procure that any of its Subcontractors shall):

- 18.3.1 supply to the Buyer details of its (or its Subcontractor's) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability (which remains valid as at the date of cessation of participation in the Statutory Scheme) covering all relevant Fair Deal Employees, as soon as it is able to do so before the cessation of participation in the Statutory Scheme (where possible) and in any event no later than seven (7) days after receipt of the certificate;
- 18.3.2 be fully responsible for all costs, contributions, payments and other amounts relating to the setting up, certification of, ongoing participation in and/or withdrawal and exit from the Broadly Comparable pension scheme, including for the avoidance of doubt any debts arising under section 75 or 75A of the Pensions Act 1995; and
- 18.3.3 where required to do so by the Buyer, instruct any such Broadly Comparable pension scheme's Actuary to provide all such co-operation and assistance in agreeing a bulk transfer process with the Actuary to the relevant Statutory Scheme and to provide all such co-operation and assistance with any other Actuary appointed by the Buyer (where applicable). The Supplier must ensure that day for day and/or pound for pound (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) credits in the Broadly Comparable pension scheme are provided in respect of any Fair Deal Employee who consents to such a transfer from the Statutory Scheme and the Supplier shall be fully responsible for any costs of providing those credits in excess of the

bulk transfer payment received by the Broadly Comparable pension scheme; and

- 18.3.4 provide a replacement Broadly Comparable pension scheme in accordance with this Paragraph 18 with immediate effect for those Fair Deal Employees who are still employed by the Supplier and/or relevant Subcontractor and are still eligible for New Fair Deal protection in the event that the Supplier and/or Subcontractor's Broadly Comparable pension scheme is closed to future accrual and/or terminated. The relevant Fair Deal Employees must be given the option to transfer their accrued benefits from the previous Broadly Comparable pension scheme to the new Broadly Comparable pension scheme on day for day and/or pound for pound terms (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes).
- 18.4 Where the Supplier has provided a Broadly Comparable pension scheme pursuant to the provisions of this Paragraph 18, the Supplier shall (and shall procure that any of its Subcontractors shall) prior to the termination of this Contract allow and make all necessary arrangements to effect, in respect of any Fair Deal Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable). The bulk transfer terms provided shall be sufficient to secure day for day and/or pound for pound credits (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) in the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable). For the avoidance of doubt, should the amount offered by the Broadly Comparable pension scheme be less than the amount required by the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) to fund the required credits ("**the Shortfall**"), the Supplier or the Subcontractor (as agreed between them) must pay the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable) the Shortfall as required, provided that in the absence of any agreement between the Supplier and any Subcontractor, the Shortfall shall be paid by the Supplier. The Supplier shall indemnify the Buyer or the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (as the Buyer directs) for any failure to pay the Shortfall under this Paragraph.

19. Right Of Set-Off

- 19.1 The Buyer shall have a right to set off against any payments due to the Supplier under this Contract an amount equal to any unpaid employer's contributions or employee's contributions or any other financial obligations under the relevant Statutory Scheme whether due from the Supplier or from any relevant Subcontractor or due from any indemnity, bond or guarantee and shall pay such set off amount to the relevant Statutory Scheme.

19.2 The Buyer shall also have a right to set off against any payments due to the Supplier under this Contract all reasonable costs and expenses incurred by the Buyer as result of Paragraphs 19.1 above.

Annex D4: Other Schemes

Stakeholder pension provision for UK based staff

Part E: Staff Transfer on Exit

20. Obligations before a Staff Transfer

- 20.1 The Supplier agrees that within 20 Working Days of the earliest of:
- 20.1.1 receipt of a notification from the Buyer of a Service Transfer or intended Service Transfer;
 - 20.1.2 receipt of the giving of notice of early termination or any Partial Termination of the relevant Contract;
 - 20.1.3 the date which is 12 Months before the end of the Term; and
 - 20.1.4 receipt of a written request of the Buyer at any time (provided that the Buyer shall only be entitled to make one such request in any 6 Month period),
- it shall provide in a suitably anonymised format so as to comply with the Data Protection Legislation, the Supplier's Provisional Supplier Staff List, together with the Staffing Information in relation to the Supplier's Provisional Supplier Staff List and it shall provide an updated Supplier's Provisional Supplier Staff List at such intervals as are reasonably requested by the Buyer.
- 20.2 At least 20 Working Days prior to the Service Transfer Date, the Supplier shall provide to the Buyer or at the direction of the Buyer to any Replacement Supplier and/or any Replacement Subcontractor
- 20.2.1 the Supplier's Final Supplier Staff List, which shall identify the basis upon which they are Transferring Supplier Employees and
 - 20.2.2 the Staffing Information in relation to the Supplier's Final Supplier Staff List (insofar as such information has not previously been provided).
- 20.3 The Buyer shall be permitted to use and disclose information provided by the Supplier under Paragraphs 20.1 and 20.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Subcontractor.
- 20.4 The Supplier warrants, for the benefit of the Buyer, any Replacement Supplier, and any Replacement Subcontractor that all information provided pursuant to Paragraphs 20.1 and 20.2 shall be true and accurate in all material respects at the time of providing the information.
- 20.5 From the date of the earliest event referred to in Paragraphs 20.1.1 20.1.2 and 20.1.3, the Supplier agrees that it shall not assign any person to the provision of the Services who is not listed on the Supplier's Provisional Supplier Staff List and shall, unless otherwise instructed by the Buyer (acting reasonably):
- 20.5.1 not replace or re-deploy any Supplier Staff listed on the Supplier Provisional Supplier Staff List other than where any replacement is of equivalent grade, skills, experience and expertise and is

employed on the same terms and conditions of employment as the person he/she replaces

- 20.5.2 not make, promise, propose, permit or implement any material changes to the terms and conditions of (i) employment and/or (ii) pensions, retirement and death benefits (including not to make pensionable any category of earnings which were not previously pensionable or reduce the pension contributions payable) of the Supplier Staff (including any payments connected with the termination of employment);
- 20.5.3 not increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Staff save for fulfilling assignments and projects previously scheduled and agreed;
- 20.5.4 not introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Staff List;
- 20.5.5 not increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services);
- 20.5.6 not terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Staff List save by due disciplinary or capability process;
- 20.5.7 not dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Buyer and/or the Replacement Supplier and/or Replacement Subcontractor;
- 20.5.8 give the Buyer and/or the Replacement Supplier and/or Replacement Subcontractor reasonable access to Supplier Staff and/or their consultation representatives to inform them of the intended transfer and consult any measures envisaged by the Buyer, Replacement Supplier and/or Replacement Subcontractor in respect of persons expected to be Transferring Supplier Employees;
- 20.5.9 co-operate with the Buyer and the Replacement Supplier to ensure an effective consultation process and smooth transfer in respect of Transferring Supplier Employees in line with good employee relations and the effective continuity of the Services, and to allow for participation in any pension arrangements to be put in place to comply with New Fair Deal;
- 20.5.10 promptly notify the Buyer or, at the direction of the Buyer, any Replacement Supplier and any Replacement Subcontractor of any notice to terminate employment given by the Supplier or received from any persons listed on the Supplier's Provisional Supplier Staff List regardless of when such notice takes effect;

- 20.5.11 not for a period of 12 Months from the Service Transfer Date re-employ or re-engage or entice any employees, suppliers or Subcontractors whose employment or engagement is transferred to the Buyer and/or the Replacement Supplier (unless otherwise agreed with the Buyer (acting reasonably));
 - 20.5.12 not to adversely affect pension rights accrued by all and any Fair Deal Employees in the period ending on the Service Transfer Date;
 - 20.5.13 fully fund any Broadly Comparable pension schemes set up by the Supplier;
 - 20.5.14 maintain such documents and information as will be reasonably required to manage the pension aspects of any onward transfer of any person engaged or employed by the Supplier or any Subcontractor in the provision of the Services on the expiry or termination of this Contract (including identification of the Fair Deal Employees);
 - 20.5.15 promptly provide to the Buyer such documents and information which the Buyer may reasonably request in advance of the expiry or termination of this Contract; and
 - 20.5.16 fully co-operate (and procure that the trustees of any Broadly Comparable pension scheme shall fully co-operate) with the reasonable requests of the Supplier relating to any administrative tasks necessary to deal with the pension aspects of any onward transfer of any person engaged or employed by the Supplier or any Subcontractor in the provision of the Services on the expiry or termination of this Contract.
- 20.6 On or around each anniversary of the Start Date and up to four times during the last 12 Months of the Term, the Buyer may make written requests to the Supplier for information relating to the manner in which the Services are organised. Within 20 Working Days of receipt of a written request the Supplier shall provide such information as the Buyer may reasonably require which shall include:
- 20.6.1 the numbers of employees engaged in providing the Services;
 - 20.6.2 the percentage of time spent by each employee engaged in providing the Services;
 - 20.6.3 the extent to which each employee qualifies for membership of any of the Fair Deal Schemes (as defined in Part D: Pensions); and
 - 20.6.4 a description of the nature of the work undertaken by each employee by location.
- 20.7 The Supplier shall provide all reasonable cooperation and assistance to the Buyer, any Replacement Supplier and/or any Replacement Subcontractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees

to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Service Transfer Date, the Supplier shall provide to the Buyer or, at the direction of the Buyer, to any Replacement Supplier and/or any Replacement Subcontractor (as appropriate), in respect of each person on the Supplier's Final Supplier Staff List who is a Transferring Supplier Employee:

- 20.7.1 the most recent month's copy pay slip data;
- 20.7.2 details of cumulative pay for tax and pension purposes;
- 20.7.3 details of cumulative tax paid;
- 20.7.4 tax code;
- 20.7.5 details of any voluntary deductions from pay; and
- 20.7.6 bank/building society account details for payroll purposes.

21. Staff Transfer when the contract ends

- 21.1 The Buyer and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Contract or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Subcontractor. Such change in the identity of the supplier of such services may constitute a Relevant Subsequent Transfer to which the Employment Regulations will apply. The Buyer and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Subsequent Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Subcontractor (as the case may be) and each such Transferring Supplier Employee.
- 21.2 To the extent the Employment Regulations do not apply, the Supplier agrees, and shall procure that each Subcontractor agrees, that, on request by the Buyer, it shall waive the Transferring Supplier Employees' notice periods, such that they may commence employment with Replacement Supplier and/or any Replacement Subcontractor on such date as the Buyer may notify.
- 21.3 The Supplier shall, and shall procure that each Subcontractor shall, comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Subcontractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses,

commissions, payments of PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Fair Deal Schemes which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Subcontractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Subcontractor.

21.4 Subject to Paragraph 21.5, the Supplier shall indemnify the Buyer and/or the Replacement Supplier and/or any Replacement Subcontractor against any Employee Liabilities arising from or as a result of:

21.4.1 any act or omission of the Supplier or any Subcontractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee whether occurring before, on or after the Service Transfer Date.

21.4.2 the breach or non-observance by the Supplier or any Subcontractor occurring on or before the Service Transfer Date of:

- a) any collective agreement applicable to the Transferring Supplier Employees; and/or
- b) any other custom or practice in respect of any Transferring Supplier Employees which the Supplier or any Subcontractor is contractually bound to honour;

21.4.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Subcontractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;

21.4.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

- a) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
- b) in relation to any employee who is not identified in the Supplier's Final Supplier Staff List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer their employment from the Supplier to the Buyer and/or Replacement Supplier and/or any Replacement Subcontractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;

- 21.4.5 a failure of the Supplier or any Subcontractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (and including) the Service Transfer Date); and
 - 21.4.6 any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Subcontractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Buyer and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.
- 21.5 The indemnity in Paragraph 21.4 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Subcontractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities
- 21.5.1 arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to their working conditions made or proposed by the Replacement Supplier and/or any Replacement Subcontractor to occur in the period on or after the Service Transfer Date); or
 - 21.5.2 arising from the Replacement Supplier's failure, and/or Replacement Subcontractor's failure, to comply with its obligations under the Contract and/or the Employment Regulations.
- 21.6 Subject to Paragraphs **Error! Reference source not found.** and 21.7, if any employee of the Supplier or a Subcontractor who is not identified in the Supplier's Final Transferring Supplier Employee List claims, or it is determined in relation to any employees of the Supplier, that their contract of employment has been transferred or should have been transferred from the Supplier to the Buyer and/or Replacement Supplier and/or Replacement Subcontractor pursuant to the Employment Regulations then:
- 21.6.1 the Buyer and/or Replacement Supplier and/or Replacement Subcontractor will, within 5 Working Days of becoming aware of that fact, notify the Buyer and the Supplier in writing;
 - 21.6.2 the Supplier may offer (or may procure that a third party may offer) employment to such person, or take such other steps as it considered appropriate to resolve the matter, within 15 Working Days of receipt of notice from the Buyer and/or Replacement Supplier and/or Replacement Subcontractor or take such other

reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law;

- 21.6.3 if such offer of employment is accepted, or if the situation has otherwise been resolved by the Supplier or a Subcontractor, the Buyer and/or Replacement Supplier and/or Replacement Subcontractor shall immediately release the person from its employment or alleged employment;
- 21.6.4 if after the period referred to in Paragraph 21.6.2 no such offer has been made, or such offer has been made but not accepted, or the situation has not otherwise been resolved, the Buyer and/or Replacement Supplier and/or Replacement Subcontractor may within 5 Working Days give notice to terminate the employment of such person;

and subject to the Buyer's and/or Replacement Supplier's and/or Replacement Subcontractor's compliance with Paragraphs 21.6.1 to 21.6.4 the Supplier will indemnify the Buyer and/or Replacement Supplier and/or Replacement Subcontractor against all Employee Liabilities arising out of the termination of the employment of any of the Supplier's employees referred to in Paragraph 21.6 provided that the Replacement Supplier takes, or shall procure that the Replacement Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities.

- 21.7 The indemnity in Paragraph 21.6 shall not apply to any termination of employment occurring later than 6 Months from the Service Transfer Date.
- 21.8 If at any point the Replacement Supplier and/or Replacement Subcontractor accepts the employment of any such person as is described in Paragraph 21.6, such person shall be treated as a Transferring Supplier Employee and Paragraph 21.6 shall cease to apply to such person and the Replacement Supplier and/or Replacement Subcontractor shall comply with such obligations as may be imposed upon them under applicable Law.
- 21.9 The Supplier shall comply, and shall procure that each Subcontractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Subcontractor shall perform and discharge, all its obligations in respect of any person identified in the Supplier's Final Supplier Staff list before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and such sums due as a result of any Fair Deal Employees' participation in the Fair Deal Schemes and any requirement to set up a broadly comparable pension scheme which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:
- 21.9.1 the Supplier and/or any Subcontractor; and
- 21.9.2 the Replacement Supplier and/or the Replacement Subcontractor.

- 21.10 The Supplier shall promptly provide the Buyer and any Replacement Supplier and/or Replacement Subcontractor, in writing such information as is necessary to enable the Buyer, the Replacement Supplier and/or Replacement Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Buyer shall use reasonable endeavours to procure that the Replacement Supplier and/or Replacement Subcontractor, shall promptly provide to the Supplier and each Subcontractor in writing such information as is necessary to enable the Supplier and each Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations.
- 21.11 Subject to Paragraph 21.9, the Buyer shall use reasonable endeavours to procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Subcontractor and its Subcontractors against any Employee Liabilities arising from or as a result of:
- 21.11.1 any act or omission, whether occurring before, on or after the Service Transfer Date, of the Replacement Supplier and/or Replacement Subcontractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee.
- 21.11.2 the breach or non-observance by the Replacement Supplier and/or Replacement Subcontractor on or after the Service Transfer Date of:
- a) any collective agreement applicable to the Transferring Supplier Employees identified in the Supplier's Final Supplier Staff List; and/or
 - b) any custom or practice in respect of any Transferring Supplier Employees identified in the Supplier's Final Supplier Staff List which the Replacement Supplier and/or Replacement Subcontractor is contractually bound to honour;
- 21.11.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees identified in the Supplier's Final Supplier Staff List arising from or connected with any failure by the Replacement Supplier and/or Replacement Subcontractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;
- 21.11.4 any proposal by the Replacement Supplier and/or Replacement Subcontractor to make changes to the terms and conditions of employment or working conditions of any Transferring Supplier Employees identified in the Supplier's Final Supplier Staff List on or after their transfer to the Replacement Supplier or Replacement Subcontractor (as the case may be) on the Service Transfer Date, or to change the terms and conditions of employment or working conditions of any person identified in the Supplier's Final Supplier

Staff List who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Service Transfer Date as a result of or for a reason connected to such proposed changes;

- 21.11.5 any statement communicated to or action undertaken by the Replacement Supplier or Replacement Subcontractor to, or in respect of, any Transferring Supplier Employee identified in the Supplier's Final Supplier Staff List on or before the Service Transfer Date regarding the Relevant Subsequent Transfer which has not been agreed in advance with the Supplier in writing;
- 21.11.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- a) in relation to any Transferring Supplier Employee identified in the Supplier's Final Supplier Staff List, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Service Transfer Date; and
 - b) in relation to any employee who is not a Transferring Supplier Employee identified in the Supplier's Final Supplier Staff List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer their employment from the Supplier or Subcontractor, to the Replacement Supplier or Replacement Subcontractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Service Transfer Date;
- 21.11.7 a failure of the Replacement Supplier or Replacement Subcontractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees identified in the Supplier's Final Supplier Staff List in respect of the period from (and including) the Service Transfer Date; and
- 21.11.8 any claim made by or in respect of a Transferring Supplier Employee identified in the Supplier's Final Supplier Staff List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or Replacement Subcontractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Supplier's failure to comply with its obligations under regulation 11 or 13 of the Employment Regulations.

21.12 The indemnity in Paragraph 21.10 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Subcontractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Subcontractor (as applicable) to comply with its obligations under the Employment Regulations, or to the extent the Employee Liabilities arise out of the termination of employment of any person who is not identified in the Supplier's Final Supplier Staff List in accordance with Paragraph 21.6 (and subject to the limitations set out in Paragraph 21.7 above).

ANNEX E1: STAFFING INFORMATION
EMPLOYEE INFORMATION (ANONYMISED)**[REDACTED]**

Name of Transferor:

Number of Employees in-scope to transfer:

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

Annex 1

	Age	Registe red Disable d	Date Cotinu ous employ ment commen ced	Leave entitle ment/ Rotatio n	Compa ny Sick Pay Entitle ment	Notice Period	Job Description and conditioned hours of work		Shift, unsoci able hours and other premiu m rates of pay	Health Insuran ce	Compa ny car	Annual Salary	Pensio n Contrib ution Employ er / Employ ee	Life Assura nce	Discipli nary Action
								Workin g Hours							
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EMPLOYEE DETAILS & KEY TERMS							
Details	Job Title	Grade / band	Work Location	Age	Employment status (for example, employee, fixed-term employee, self-employed, agency worker)?	Continuous service date (dd/mm/yy)	Date employment started with existing employer
Emp No 1							
Emp No 2							
Emp No							
Emp No							

Emp No							
Emp No							
Emp No							
Emp No							

EMPLOYEE DETAILS & KEY TERMS							
Details	Contract end date (if fixed term contract or temporary contract)	Contractual notice period	Contractual weekly hours	Regular overtime hours per week	Mobility or flexibility clause in contract?	Previously TUPE transferred to organisation? If so, please specify (i) date of transfer, (ii) name of transferor, and (iii) whether ex public sector	Any collective agreements?
Emp No 1							
Emp No 2							
Emp No							
Emp No							
Emp No							
Emp No							
Emp No							
ASSIGNMENT		CONTRACTUAL PAY AND BENEFITS					

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

CONTRACTUAL PAY AND BENEFITS								
Details	Any existing or future commitment to training that has a time-off or	Car allowance (£ per year)	Lease or company car details	Any other allowances paid (e.g. shift allowance, standby)	Private medical insurance (please specify whether)	Life assurance (xSalary)	Long Term Disability	Any other benefits in kind

	financial implication			allowance, travel allowance)	single or family cover)		/ PHI (%) of Salary	
Emp No 1								
Emp No 2								
Emp No								
Emp No								
Emp No								
Emp No								
Emp No								

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

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

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

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