

## **SCHEDULE 13 - STAFF TRANSFER**

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## **1 INTERPRETATION**

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

## **PART A: TRANSFERRING AUTHORITY EMPLOYEES AT THE COMMENCEMENT OF THE SERVICES**

### **1 RELEVANT TRANSFERS**

- 1.1 The Authority and the Service Provider agree that:
- (a) the commencement of the provision of the Services or of each relevant part of the Services will be a Relevant Transfer in relation to the Transferring Authority Employees; and
  - (b) as a result of the operation of TUPE, the contracts of employment between the Authority and the Transferring Authority Employees (except in relation to any terms disapplied through operation of regulation 10(2) of TUPE) will have effect on and from the Relevant Transfer Date as if originally made between the Service Provider and/or the relevant Notified Sub-Contractor and each such Transferring Authority Employee.
- 1.2 The Authority shall comply with all its obligations under TUPE and shall perform and discharge all its obligations in respect of the Transferring Authority Employees in respect of the period arising up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period up to (but not including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Authority; and (ii) the Service Provider and/or the relevant Notified Sub-Contractor (as appropriate).

### **2 AUTHORITY INDEMNITIES**

- 2.1 Subject to Paragraph 2.2, the Authority shall indemnify the Service Provider and any relevant Notified Sub-Contractor against any Employee Liabilities arising from or as a result of:
- (a) any act or omission by the Authority in respect of any Transferring Authority Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Authority Employee occurring before the Relevant Transfer Date;
  - (b) the breach or non-observance by the Authority before the Relevant Transfer Date of:
    - (i) any collective agreement applicable to the Transferring Authority Employees; and/or
    - (ii) any custom or practice in respect of any Transferring Authority Employees which the Authority is contractually bound to honour;
  - (c) any claim by any trade union or other body or person representing the Transferring Authority Employees arising from or connected with any failure by the Authority to comply with any legal obligation to such trade union, body or person arising before the Relevant Transfer Date;

- (d) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (i) in relation to any Transferring Authority 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
  - (ii) in relation to any employee who is not a Transferring Authority Employee and in respect of whom it is later alleged or determined that TUPE applied so as to transfer his/her employment from the Authority to the Service Provider and/or any Notified Sub-Contractor as appropriate, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date.
- (e) a failure of the Authority 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 Authority Employees arising before the Relevant Transfer Date;
- (f) any claim made by or in respect of any person employed or formerly employed by the Authority other than a Transferring Authority Employee for whom it is alleged the Service Provider and/or any Notified Sub-Contractor as appropriate may be liable by virtue of TUPE; and
- (g) any claim made by or in respect of a Transferring Authority Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Authority Employee relating to any act or omission of the Authority in relation to its obligations under regulation 13 of TUPE, except to the extent that the liability arises from the failure by the Service Provider or any Sub-Contractor to comply with regulation 13(4) of TUPE.

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 Service Provider or any Sub-Contractor (whether or not a Notified Sub-Contractor) whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities:

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

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

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

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

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

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

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

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

2.7 The indemnity in Paragraph 2.6:

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

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

- (ii) any claim that the termination of employment was unfair because the Service Provider and/or Notified Sub-Contractor neglected to follow a fair dismissal procedure; and
  - (b) shall apply only where the notification referred to in Paragraph 2.3(a) is made by the Service Provider and/or the relevant Notified Sub-Contractor (as appropriate) to the Authority within 6 months of the Commencement Date.
- 2.8 If any such person as is referred to in Paragraph 2.3 is neither re-employed by the Authority nor dismissed by the Service Provider and/or the relevant Notified Sub-Contractor within the time scales set out in Paragraph 2.5 such person shall be treated as having transferred to the Service Provider and/or the relevant Notified Sub-Contractor and the Service Provider shall, or shall procure that the relevant Notified Sub-Contractor shall, comply with such obligations as may be imposed upon it under applicable Law.

### **3 SERVICE PROVIDER INDEMNITIES AND OBLIGATIONS**

- 3.1 Subject to Paragraph 3.2, the Service Provider shall indemnify the Authority against any Employee Liabilities arising from or as a result of:
- (a) any act or omission by the Service Provider or any Sub-Contractor in respect of any Transferring Authority Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Authority Employee whether occurring before, on or after the Relevant Transfer Date;
  - (b) the breach or non-observance by the Service Provider or any Sub-Contractor on or after the Relevant Transfer Date of:
    - (i) any collective agreement applicable to the Transferring Authority Employees; and/or
    - (ii) any custom or practice in respect of any Transferring Authority Employees which the Service Provider or any Sub-Contractor is contractually bound to honour;
  - (c) any claim by any trade union or other body or person representing any Transferring Authority Employees arising from or connected with any failure by the Service Provider or any Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
  - (d) any proposal by the Service Provider or a Sub-Contractor made before the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Authority Employees to their material detriment on or after their transfer to the Service Provider or the relevant Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Authority Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of TUPE) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;

- (e) any statement communicated to or action undertaken by the Service Provider or any Sub-Contractor to, or in respect of, any Transferring Authority Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Authority in writing;
- (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (i) in relation to any Transferring Authority 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
  - (ii) in relation to any employee who is not a Transferring Authority Employee, and in respect of whom it is later alleged or determined that TUPE applied so as to transfer his/her employment from the Authority to the Service Provider or a Sub-Contractor, 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;
- (g) a failure of the Service Provider or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Authority Employees in respect of the period from (and including) the Relevant Transfer Date;
- (h) any claim made by or in respect of a Transferring Authority Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Authority Employee relating to any act or omission of the Service Provider or any Sub-Contractor in relation to their obligations under regulation 13 of TUPE, except to the extent that the liability arises from the Authority's failure to comply with its obligations under regulation 13 of TUPE; and
- (i) a failure by the Service Provider or any Sub-Contractor to comply with its obligations under Paragraph 2.8 above.

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

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

#### **4 INFORMATION**

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

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

- 5.1 The Parties agree that the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the Service Provider of employees whose employment begins after the Relevant Transfer Date, and the Service Provider undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.
- 5.2 The Service Provider shall, and shall procure that each Sub-Contractor shall, comply with any requirement notified to it by the Authority relating to pensions in respect of any Transferring Authority Employee as set down in:
- (a) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
  - (b) HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
  - (c) HM Treasury's guidance "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
  - (d) the New Fair Deal.
- 5.3 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraphs 5.1 or 5.2 shall be agreed in accordance with the CCN.

#### **6 PENSIONS**

The Service Provider shall, and/or shall procure that each of its Sub-Contractors shall, comply with the pensions provisions in the following Annex.



## **ANNEX TO PART A: PENSIONS**

### **1 PARTICIPATION**

- 1.1 The Service Provider undertakes to enter into the Admission Agreement.
- 1.2 The Service Provider and the Authority undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Service Provider to participate in the Schemes in respect of the Fair Deal Employees;
- 1.3 The Service Provider and the Authority agree:
- (a) that the arrangements under Paragraph 1.1 of this Annex include the body responsible for the Schemes notifying the Authority if the Service Provider breaches any obligations it has under the Admission Agreement;
  - (b) notwithstanding sub-paragraph 1.3(a) of this Annex, the Service Provider shall notify the Authority in the event that it breaches any obligations it has under the Admission Agreement and when it intends to remedy such breaches; and
  - (c) that the Authority shall be entitled to terminate this Agreement in the event that the Service Provider:
    - (i) commits an irremediable breach of the Admission Agreement; or
    - (ii) commits a breach of the Admission Agreement 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 giving particulars of the breach and requiring the Service Provider to remedy it.
- 1.4 The Service Provider shall bear its own costs and all costs that the Authority reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Service Provider participating in the Schemes, including without limitation MyCSP's on-boarding costs.

### **2 FUTURE SERVICE BENEFITS**

- 2.1 The Service Provider shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Service Provider shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of Schemes for service from (and including) the Relevant Transfer Date.

- 2.2 The Service Provider undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the Authority, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the Authority in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes on the date the Eligible Employees ceased to participate in the Schemes.
- 2.3 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

### **3 FUNDING**

- 3.1 The Service Provider undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.
- 3.2 The Service Provider shall indemnify and keep indemnified the Authority on demand against any claim by, payment to, or loss incurred by, the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Service Provider to or in respect of the Schemes.

### **4 PROVISION OF INFORMATION**

The Service Provider and the Authority respectively undertake to each other:

- (a) to provide all information which the other Party may reasonably request concerning matters (i) referred to in this Annex and (ii) set out in the Admission Agreement, and to supply the information as expeditiously as possible; and
- (b) not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

### **5 INDEMNITY**

The Service Provider undertakes to the Authority to indemnify and keep indemnified the Authority on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under and/or participation in an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

## **6 EMPLOYER OBLIGATION**

The Service Provider shall comply with the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff.

## **7 SUBSEQUENT TRANSFERS**

The Service Provider shall:

- (a) not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the date of the Service Transfer Date;
- (b) provide all such co-operation and assistance as the Schemes and the Replacement Service Provider and/or the Authority may reasonably require to enable the Replacement Service Provider to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal; and
- (c) for the period either
  - (i) after notice (for whatever reason) is given, in accordance with the other provisions of this Agreement, to terminate the Agreement or any part of the Services; or
  - (ii) after the date which is two (2) years prior to the date of expiry of this Agreement,

ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Service Provider or the Authority, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of the Authority (such approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

## **8 Bulk Transfer**

Where the Service Provider has set up a broadly comparable pension scheme in accordance with the provisions of paragraph 2.2 above of this Annex, the Service Provider agrees to:

- (a) 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;
- (b) instruct any such broadly comparable pension scheme's actuary to, and to provide all such co-operation and assistance in respect of any such broadly comparable pension scheme as the Replacement Service Provider and/or the Authority may reasonably require, to enable the Replacement Service Provider to participate in the Schemes in respect of any Fair Deal Employee that remain eligible for New Fair Deal protection following a Service Transfer;

- (c) allow, 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 Schemes 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 Schemes to fund day for day service ("**the Shortfall**"), the Service Provider agrees to pay the Shortfall to the Schemes;
- (d) indemnify the Authority on demand for any failure to pay the Shortfall as required under Paragraph 8(c) above.

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

### **1 RELEVANT TRANSFERS**

- 1.1 The Authority and the Service Provider agree that:
- (a) the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Service Provider Employees; and
  - (b) as a result of the operation of TUPE, the contracts of employment between each Former Service Provider and the Transferring Former Service Provider Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of TUPE) shall have effect on and from the Relevant Transfer Date as if originally made between the Service Provider and/or the relevant Notified Sub-Contractor and each such Transferring Former Service Provider Employee.
- 1.2 The Authority shall procure that each Former Service Provider shall comply with all its obligations under TUPE and shall perform and discharge all its obligations in respect of all the Transferring Former Service Provider Employees in respect of the period up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Service Provider shall make, and the Authority shall procure that each Former Service Provider makes, any necessary apportionments in respect of any periodic payments.

### **2 FORMER SERVICE PROVIDER INDEMNITIES**

- 2.1 Subject to Paragraph 2.2, the Authority shall procure that each Former Service Provider shall indemnify the Service Provider and any relevant Notified Sub-Contractor against any Employee Liabilities arising from or as a result of:
- (a) any act or omission by the Former Service Provider in respect of any Transferring Former Service Provider Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Former Service Provider Employee arising before the Relevant Transfer Date;
  - (b) the breach or non-observance by the Former Service Provider arising before the Relevant Transfer Date of:
    - (i) any collective agreement applicable to the Transferring Former Service Provider Employees; and/or
    - (ii) any custom or practice in respect of any Transferring Former Service Provider Employees which the Former Service Provider is contractually bound to honour;

- (c) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (i) in relation to any Transferring Former Service Provider 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
  - (ii) in relation to any employee who is not a Transferring Former Service Provider Employee and in respect of whom it is later alleged or determined that TUPE applied so as to transfer his/her employment from the Former Service Provider to the Service Provider and/or any Notified Sub-Contractor 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;
- (d) a failure of the Former Service Provider 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 Service Provider Employees in respect of the period to (but excluding) the Relevant Transfer Date;
- (e) any claim made by or in respect of any person employed or formerly employed by the Former Service Provider other than a Transferring Former Service Provider Employee for whom it is alleged the Service Provider and/or any Notified Sub-Contractor as appropriate may be liable by virtue of this Agreement and/or TUPE; and
- (f) any claim made by or in respect of a Transferring Former Service Provider Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Former Service Provider Employee relating to any act or omission of the Former Service Provider in relation to its obligations under regulation 13 of TUPE, except to the extent that the liability arises from the failure by the Service Provider or any Sub-Contractor to comply with regulation 13(4) of TUPE.

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 Service Provider or any Sub-Contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:

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

- 2.3 If any person who is not identified by the Authority as a Transferring Former Service Provider Employee claims, or it is determined in relation to any person who is not identified by the Authority as a Transferring Former Service Provider Employee, that his/her contract of employment has been transferred from a Former Service Provider to the Service Provider and/or any Notified Sub-Contractor pursuant to TUPE then:
- (a) the Service Provider shall, or shall procure that the Notified Sub-Contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, to the Former Service Provider; and
  - (b) the Former Service Provider may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Service Provider and/or the Notified Sub-Contractor or take such other reasonable steps as the Former Service Provider considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 2.4 If an offer referred to in Paragraph 2.3(b) is accepted, or if the situation has otherwise been resolved by the Former Service Provider and/or the Authority, the Service Provider shall, or shall procure that the Notified Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.
- 2.5 If by the end of the 15 Working Day period specified in Paragraph 2.3(b):
- (a) no such offer of employment has been made;
  - (b) such offer has been made but not accepted; or
  - (c) the situation has not otherwise been resolved,
- the Service Provider and/or the relevant Notified Sub-Contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
- 2.6 Subject to the Service Provider and/or the relevant Notified Sub-Contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in Law, the Authority shall procure that the Former Service Provider indemnifies the Service Provider and/or the relevant Notified Sub-Contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.5 provided that the Service Provider takes, or shall procure that the relevant Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.7 The indemnity in Paragraph 2.6:
- (a) shall not apply to:
    - (i) any claim for:
      - (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

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

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

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

(b) shall apply only where the notification referred to in Paragraph 2.3(a) is made by the Service Provider and/or the relevant Notified Sub-Contractor (as appropriate) to the Authority and, if applicable, the Former Service Provider, within 6 months of the Commencement Date.

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

### **3 SERVICE PROVIDER INDEMNITIES AND OBLIGATIONS**

3.1 Subject to Paragraph 3.2, the Service Provider shall indemnify the Authority and/or the Former Service Provider against any Employee Liabilities arising from or as a result of:

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

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

(i) any collective agreement applicable to the Transferring Former Service Provider Employee; and/or

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

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



- (d) any proposal by the Service Provider or a Sub-Contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Service Provider Employees to their material detriment on or after their transfer to the Service Provider or a Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Service Provider Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of TUPE) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- (e) any statement communicated to or action undertaken by the Service Provider or a Sub-Contractor to, or in respect of, any Transferring Former Service Provider Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Authority and/or the Former Service Provider in writing;
- (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (i) in relation to any Transferring Former Service Provider 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
  - (ii) in relation to any employee who is not a Transferring Former Service Provider Employee, and in respect of whom it is later alleged or determined that TUPE applied so as to transfer his/her employment from the Former Service Provider to the Service Provider or a Sub-Contractor, 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;
- (g) a failure of the Service Provider or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Service Provider Employees in respect of the period from (and including) the Relevant Transfer Date;
- (h) any claim made by or in respect of a Transferring Former Service Provider Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Former Service Provider Employee relating to any act or omission of the Service Provider or any Sub-Contractor in relation to obligations under regulation 13 of TUPE, except to the extent that the liability arises from the Former Service Provider's failure to comply with its obligations under regulation 13 of TUPE; and
- (i) a failure by the Service Provider or any Sub-Contractor to comply with its obligations under Paragraph 2.8 above.

- 3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Service Provider whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Service Provider's failure to comply with its obligations under TUPE.
- 3.3 The Service Provider shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under TUPE (including without limitation its obligation to inform and consult in accordance with regulation 13 of TUPE) and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Former Service Provider Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and any other sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Service Provider and the Former Service Provider.

#### **4 INFORMATION**

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

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

- 5.1 The Service Provider shall, and shall procure that each Sub-Contractor shall, comply with any requirement notified to it by the Authority relating to pensions in respect of any Transferring Former Service Provider Employee as set down in:
- (a) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
  - (b) HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
  - (c) HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
  - (d) the New Fair Deal.
- 5.2 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 5.1 shall be agreed in accordance with the CCN.

## **6 PROCUREMENT OBLIGATIONS**

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

## **7 PENSIONS**

The Service Provider shall, and shall procure that each Sub-Contractor shall, comply with the pensions provisions in the following Annex.

## **ANNEX TO PART B**

### **PENSIONS**

#### **1 PARTICIPATION**

- 1.1 The Service Provider undertakes to enter into the Admission Agreement.
- 1.2 The Service Provider and the Authority undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Service Provider to participate in the Schemes in respect of the Fair Deal Employees;
- 1.3 The Service Provider and the Authority agree:
- (a) that the arrangements under Paragraph 1.1 of this Annex include the body responsible for the Schemes notifying the Authority if the Service Provider breaches any obligations it has under the Admission Agreement;
  - (b) notwithstanding sub-paragraph 1.3 (a) of this Annex, the Service Provider shall notify the Authority in the event that it breaches any obligations it has under the Admission Agreement and when it intends to remedy such breaches; and
  - (c) that the Authority shall be entitled to terminate this Agreement in the event that the Service Provider:
    - (i) commits an irremediable breach of the Admission Agreement; or
    - (ii) commits a breach of the Admission Agreement 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 giving particulars of the breach and requiring the Service Provider to remedy it.
- 1.4 The Service Provider shall bear its own costs and all costs that the Authority reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Service Provider participating in the Schemes including without limitation MyCSP's on-boarding costs.

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

- 2.1 If the Service Provider is rejoining the Schemes for the first time, the Service Provider shall procure that the Fair Deal Employees shall be either admitted to or offered continued membership of the relevant section of the Schemes that they became eligible to join on the Relevant Transfer Date and shall continue to accrue or accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.

- 2.2 If staff have already been readmitted to the Schemes, the Service Provider shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Service Provider shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.
- 2.3 The Service Provider undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the Authority, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the Authority in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes on the date the Eligible Employees ceased to participate in the Schemes.
- 2.1 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

### **3 FUNDING**

- 3.1 The Service Provider undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.
- 3.2 The Service Provider shall indemnify and keep indemnified the Authority on demand against any claim by, payment to, or loss incurred by the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Service Provider to or in respect of the Schemes.

### **4 PROVISION OF INFORMATION**

The Service Provider and the Authority respectively undertake to each other:

- (a) to provide all information which the other Party may reasonably request concerning matters (i) referred to in this Annex and (ii) set out in the Admission Agreement, and to supply the information as expeditiously as possible; and
- (b) not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

### **5 INDEMNITY**

The Service Provider undertakes to the Authority to indemnify and keep indemnified the Authority on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on

or after the Relevant Transfer Date which relate to the payment of benefits under and/or participation in an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

## **6 EMPLOYER OBLIGATION**

The Service Provider shall comply with the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff.

## **7 SUBSEQUENT TRANSFERS**

The Service Provider shall:

- (a) not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the date of the Service Transfer Date;
- (b) provide all such co-operation and assistance as the Schemes and the Replacement Service Provider and/or the Authority may reasonably require to enable the Replacement Service Provider to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under the New Fair Deal; and
- (c) for the period either:
  - (i) after notice (for whatever reason) is given, in accordance with the other provisions of this Agreement, to terminate the Agreement or any part of the Services; or
  - (ii) after the date which is two (2) years prior to the date of expiry of this Agreement,

ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Service Provider or the Authority, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of the Authority (such approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

## **8 Bulk Transfer**

Where the Service Provider has set up a broadly comparable pension scheme in accordance with the provisions of paragraph 2.2 above of this Annex, the Service Provider agrees to:

- (a) 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;

- (b) instruct any such broadly comparable pension scheme's actuary to, and to provide all such co-operation and assistance in respect of any such broadly comparable pension scheme as the Replacement Service Provider and/or the Authority may reasonably require, to enable the Replacement Service Provider to participate in the Schemes in respect of any Fair Deal Employee that remain eligible for New Fair Deal protection following a Service Transfer;
- (c) allow, 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 Schemes 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 Schemes to fund day for day service ("**the Shortfall**"), the Service Provider agrees to pay the Shortfall to the Schemes;
- (d) indemnify the Authority on demand for any failure to pay the Shortfall as required under Paragraph 8(c) above.

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

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

- 1.1 The Authority and the Service Provider agree that the commencement of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Authority and/or any Former Service Provider.
- 1.2 If any employee of the Authority and/or a Former Service Provider claims, or it is determined in relation to any employee of the Authority and/or a Former Service Provider, that his/her contract of employment has been transferred from the Authority and/or the Former Service Provider to the Service Provider and/or any Sub-Contractor pursuant to TUPE then:
- (a) the Service Provider shall, and shall procure that the relevant Sub-Contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, give notice to the Former Service Provider; and
  - (b) the Authority and/or the Former Service Provider may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Service Provider or the Sub-Contractor (as appropriate) or take such other reasonable steps as the Authority or Former Service Provider (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 1.3 If an offer referred to in Paragraph 1.2(b) is accepted (or if the situation has otherwise been resolved by the Authority and/or the Former Service Provider), the Service Provider shall, or shall procure that the Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.
- 1.4 If by the end of the 15 Working Day period specified in Paragraph 1.2(b):
- (a) no such offer of employment has been made;
  - (b) such offer has been made but not accepted; or
  - (c) the situation has not otherwise been resolved,
- the Service Provider and/or the Sub-Contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

### **2 INDEMNITIES**

- 2.1 Subject to the Service Provider and/or the relevant Sub-Contractor acting in accordance with the provisions of Paragraphs 1.2 to 1.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 2.4, the Authority shall:
- (a) indemnify the Service Provider and/or the relevant Sub-Contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Authority referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Service Provider takes, or shall



procure that the relevant Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities; and

- (b) procure that the Former Service Provider indemnifies the Service Provider and/or any relevant Notified Sub-Contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Service Provider referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Service Provider takes, or shall procure that the relevant Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.2 If any such person as is described in Paragraph 1.2 is neither re-employed by the Authority and/or the Former Service Provider as appropriate nor dismissed by the Service Provider and/or the relevant Sub-Contractor within the 15 Working Day period referred to in Paragraph 1.4 such person shall be treated as having transferred to the Service Provider and/or the relevant Sub-Contractor (as appropriate) and the Service Provider shall, or shall procure that the relevant Sub-Contractor shall, comply with such obligations as may be imposed upon it under Law.
- 2.3 Where any person remains employed by the Service Provider and/or any Sub-Contractor pursuant to Paragraph 2.2, all Employee Liabilities in relation to such employee shall remain with the Service Provider and/or the relevant Sub-Contractor and the Service Provider shall indemnify the Authority and any Former Service Provider, and shall procure that the relevant Sub-Contractor shall indemnify the Authority and any Former Service Provider, against any Employee Liabilities that either of them may incur in respect of any such employees of the Service Provider and/or employees of the relevant Sub-Contractor.
- 2.4 The indemnities in Paragraph 2.1:
- (a) shall not apply to:
    - (i) any claim for:
      - (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
      - (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,in any case in relation to any alleged act or omission of the Service Provider and/or any Sub-Contractor; or
    - (ii) any claim that the termination of employment was unfair because the Service Provider and/or any Sub-Contractor neglected to follow a fair dismissal procedure; and
  - (b) shall apply only where the notification referred to in Paragraph 1.2(a) is made by the Service Provider and/or any Sub-Contractor to the Authority and, if applicable, Former Service Provider within 6 months of the Commencement Date.

### **3 PROCUREMENT OBLIGATIONS**

Where in this Part C the Authority accepts an obligation to procure that a Former Service Provider does or does not do something, such obligation shall be limited so that it extends only to the extent that the Authority's contract with the Former Service Provider contains a contractual right in that regard which the Authority may enforce, or otherwise so that it requires only that the Authority must use reasonable endeavours to procure that the Former Service Provider does or does not act accordingly.

## **PART D: EMPLOYMENT EXIT PROVISIONS**

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

- 1.1 The Service Provider agrees that within 20 Working Days of the earliest of:
- (a) receipt of a notification from the Authority of a Service Transfer or intended Service Transfer;
  - (b) receipt of the giving of notice of early termination or any partial termination of this Agreement;
  - (c) the date which is 12 months before the end of the term of the Contract; and
  - (d) receipt of a written request of the Authority at any time (provided that the Authority shall only be entitled to make one such request in any 6 month period),
- it shall provide in a suitably anonymised format so as to comply with the Data Protection Laws, the Service Provider's Provisional Service Provider Staff List, together with the Staffing Information in relation to the Service Provider's Provisional Service Provider Staff List and it shall provide an updated Service Provider's Provisional Service Provider Staff List at such intervals as are reasonably requested by the Authority.
- 1.2 At least 20 Working Days prior to the Service Transfer Date, the Service Provider shall provide to the Authority or at the direction of the Authority to any Replacement Service Provider and/or any Replacement Sub-Contractor:
- (a) the Service Provider's Final Service Provider Staff List, which shall identify which of the Service Provider Staff are Transferring Service Provider Employees; and
  - (b) the Staffing Information in relation to the Service Provider's Final Service Provider Staff List (insofar as such information has not previously been provided).
- 1.3 The Authority shall be permitted to use and disclose information provided by the Service Provider under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Service Provider and/or Replacement Sub-Contractor.
- 1.4 The Service Provider warrants, for the benefit of the Authority, any Replacement Service Provider, and any Replacement Sub-Contractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.
- 1.5 From the date of the earliest event referred to in Paragraph 1.1(a), 1.1(b) and 1.1(c), the Service Provider agrees, that it shall not, and agrees to procure that each Sub-Contractor shall not, assign any person to the provision of the Services who is not listed on the Service Provider's Provisional Service Provider Staff List and shall not without the approval of the Authority (not to be unreasonably withheld or delayed):

- (a) replace or re-deploy any Staff listed on the Service Provider Provisional Service Provider 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;
- (b) make, promise, propose, permit or implement any material changes to the terms and conditions of employment of the Staff (including any payments connected with the termination of employment);
- (c) increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Staff save for fulfilling assignments and projects previously scheduled and agreed;
- (d) introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Service Provider's Provisional Service Provider Staff List;
- (e) increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
- (f) terminate or give notice to terminate the employment or contracts of any persons on the Service Provider's Provisional Service Provider Staff List save by due disciplinary process,

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

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

- (a) the numbers of employees engaged in providing the Services;
- (b) the percentage of time spent by each employee engaged in providing the Services;
- (c) the extent to which each employee qualifies for membership of any of the Schemes or any broadly comparable scheme set up pursuant to the provisions of paragraph 2.2 of the Annex (Pensions) to Part A of this Schedule or paragraph 2.3 of the Annex (Pensions) to Part B of this Schedule (as appropriate); and
- (d) a description of the nature of the work undertaken by each employee by location.

- 1.7 The Service Provider shall provide, and shall procure that each Sub-Contractor shall provide, all reasonable cooperation and assistance to the Authority, any Replacement Service Provider and/or any Replacement Sub-Contractor to ensure the smooth transfer of the Transferring Service Provider 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 Service Provider Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Service Transfer Date, the Service Provider shall provide, and shall procure that each Sub-Contractor shall provide, to the Authority or, at the direction of the Authority, to any Replacement Service Provider and/or any Replacement Sub-Contractor (as appropriate), in respect of each person on the Service Provider's Final Service Provider Staff List who is a Transferring Service Provider Employee:
- (a) the most recent month's copy pay slip data;
  - (b) details of cumulative pay for tax and pension purposes;
  - (c) details of cumulative tax paid;
  - (d) tax code;
  - (e) details of any voluntary deductions from pay; and
  - (f) bank/building society account details for payroll purposes.

## **2 EMPLOYMENT REGULATIONS EXIT PROVISIONS**

- 2.1 The Authority and the Service Provider acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or partial termination of this Agreement or otherwise) resulting in the Services being undertaken by a Replacement Service Provider and/or a Replacement Sub-Contractor. Such change in the identity of the Service Provider of such services may constitute a Relevant Transfer to which TUPE will apply. The Authority and the Service Provider further agree that, as a result of the operation of TUPE, where a Relevant Transfer occurs, the contracts of employment between the Service Provider and the Transferring Service Provider Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of TUPE) will have effect on and from the Service Transfer Date as if originally made between the Replacement Service Provider and/or the relevant Replacement Sub-Contractor (as the case may be) and each such Transferring Service Provider Employee.

- 2.2 The Service Provider shall, and shall procure that each Sub-Contractor shall, comply with all its obligations in respect of the Transferring Service Provider Employees arising under TUPE in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Service Provider Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Schemes which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Service Provider and/or the relevant Sub-Contractor (as appropriate); and (ii) the Replacement Service Provider and/or the relevant Replacement Sub-Contractor.
- 2.3 Subject to Paragraph 2.4, the Service Provider shall indemnify the Authority and/or the Replacement Service Provider and/or any Replacement Sub-Contractor against any Employee Liabilities arising from or as a result of:
- (a) any act or omission of the Service Provider or any Sub-Contractor in respect of any Transferring Service Provider Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Service Provider Employee whether occurring before, on or after the Service Transfer Date;
  - (b) the breach or non-observance by the Service Provider or any Sub-Contractor occurring on or before the Service Transfer Date of:
    - (i) any collective agreement applicable to the Transferring Service Provider Employees; and/or
    - (ii) any other custom or practice with a trade union or staff association in respect of any Transferring Service Provider Employees which the Service Provider or any Sub-Contractor is contractually bound to honour;
  - (c) any claim by any trade union or other body or person representing any Transferring Service Provider Employees arising from or connected with any failure by the Service Provider or any Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
  - (d) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
    - (i) in relation to any Transferring Service Provider Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and

- (ii) in relation to any employee who is not identified in the Service Provider's Final Service Provider Staff List, and in respect of whom it is later alleged or determined that TUPE applied so as to transfer his/her employment from the Service Provider to the Authority and/or Replacement Service Provider and/or any Replacement Sub-Contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
- (e) a failure of the Service Provider or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Service Provider Employees in respect of the period up to (and including) the Service Transfer Date);
- (f) any claim made by or in respect of any person employed or formerly employed by the Service Provider or any Sub-Contractor other than a Transferring Service Provider Employee identified in the Service Provider's Final Service Provider Staff List for whom it is alleged the Authority and/or the Replacement Service Provider and/or any Replacement Sub-Contractor may be liable by virtue of this Agreement and/or TUPE; and
- (g) any claim made by or in respect of a Transferring Service Provider Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Service Provider Employee relating to any act or omission of the Service Provider or any Sub-Contractor in relation to its obligations under regulation 13 of TUPE, except to the extent that the liability arises from the failure by the Authority and/or Replacement Service Provider to comply with regulation 13(4) of TUPE.

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

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

2.5 If any person who is not identified in the Service Provider's Final Service Provider Staff List claims, or it is determined in relation to any person who is not identified in the Service Provider's Final Service Provider Staff List that his/her contract of employment has been transferred from the Service Provider or any Sub-Contractor to the Replacement Service Provider and/or any Replacement Sub-Contractor pursuant to TUPE, then:

- (a) the Authority shall procure that the Replacement Service Provider shall, or the relevant Replacement Sub-Contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Service Provider; and

- (b) the Service Provider may offer (or may procure that a Sub-Contractor may offer) employment to such person within 15 Working Days of the notification by the Replacement Service Provider and/or the relevant Replacement Sub-Contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
- 2.6 If such offer is accepted, or if the situation has otherwise been resolved by the Service Provider or a Sub-Contractor, the Authority shall procure that the Replacement Service Provider shall, or procure that the relevant Replacement Sub-Contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.
- 2.7 If after the 15 Working Day period specified in Paragraph 2.5(b) has elapsed:
  - (a) no such offer of employment has been made;
  - (b) such offer has been made but not accepted; or
  - (c) the situation has not otherwise been resolvedthe Replacement Service Provider and/or the relevant Replacement Sub-Contractor, as appropriate, may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
- 2.8 Subject to the Replacement Service Provider and/or the relevant Replacement Sub-Contractor acting in accordance with the provisions of Paragraphs 2.5 to 2.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Service Provider shall indemnify the Replacement Service Provider and/or the relevant Replacement Sub-Contractor against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.7 provided that the Replacement Service Provider takes, or shall procure that the relevant Replacement Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.9 The indemnity in Paragraph 2.8:
  - (a) shall not apply to:
    - (i) any claim for:
      - (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
      - (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,in any case in relation to any alleged act or omission of the Replacement Service Provider and/or any Replacement Sub-Contractor; or



- (ii) any claim that the termination of employment was unfair because the Replacement Service Provider and/or Replacement Sub-Contractor neglected to follow a fair dismissal procedure; and
  - (b) shall apply only where the notification referred to in Paragraph 2.5(a) is made by the Replacement Service Provider and/or the relevant Replacement Sub-Contractor to the Service Provider within 6 months of the Service Transfer Date.
- 2.10 If any such person as is described in Paragraph 2.5 is neither re-employed by the Service Provider or any Sub-Contractor nor dismissed by the Replacement Service Provider and/or the relevant Replacement Sub-Contractor within the time scales set out in Paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Service Provider Employee.
- 2.11 The Service Provider shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under TUPE and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of any person identified in the Service Provider's Final Service Provider 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 Schemes and any requirement to set up a broadly comparable pension scheme which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:
- (a) the Service Provider and/or any relevant Sub-Contractor; and
  - (b) the Replacement Service Provider and/or the relevant Replacement Sub-Contractor.
- 2.12 The Service Provider shall, and shall procure that each Sub-Contractor shall, promptly provide to the Authority and any Replacement Service Provider and/or Replacement Sub-Contractor, in writing such information as is necessary to enable the Authority, the Replacement Service Provider and/or Replacement Sub-Contractor to carry out their respective duties under regulation 13 of TUPE. The Authority shall procure that the Replacement Service Provider and/or Replacement Sub-Contractor, shall promptly provide to the Service Provider and each Sub-Contractor in writing such information as is necessary to enable the Service Provider and each Sub-Contractor to carry out their respective duties under regulation 13 of TUPE.
- 2.13 Subject to Paragraph 2.14, the Authority shall procure that the Replacement Service Provider indemnifies the Service Provider on its own behalf and on behalf of any relevant Replacement Sub-Contractor and its sub-contractors against any Employee Liabilities arising from or as a result of:
- (a) any act or omission of the Replacement Service Provider and/or any Replacement Sub-Contractor in respect of any Transferring Service Provider Employee identified in the Service Provider's Final Service Provider Staff List or any appropriate employee representative (as defined in TUPE) of any such Transferring Service Provider Employee;

- (b) the breach or non-observance by the Replacement Service Provider and/or any Replacement Sub-Contractor on or after the Service Transfer Date of:
  - (i) any collective agreement applicable to the Transferring Service Provider Employees identified in the Service Provider's Final Service Provider Staff List ; and/or
  - (ii) any custom or practice in respect of any Transferring Service Provider Employees identified in the Service Provider's Final Service Provider Staff List which the Replacement Service Provider and/or any relevant Replacement Sub-Contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Service Provider Employees identified in the Service Provider's Final Service Provider Staff List arising from or connected with any failure by the Replacement Service Provider and/or any Replacement Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;
- (d) any proposal by the Replacement Service Provider and/or any Replacement Sub-Contractor to change the terms and conditions of employment or working conditions of any Transferring Service Provider Employees identified in the Service Provider's Final Service Provider Staff List on or after their transfer to the Replacement Service Provider or the relevant Replacement Sub-Contractor (as the case may be) on the Service Transfer Date, or to change the terms and conditions of employment or working conditions of any person identified in the Service Provider's Final Service Provider Staff List who would have been a Transferring Service Provider Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of TUPE) before the Service Transfer Date as a result of or for a reason connected to such proposed changes;
- (e) any statement communicated to or action undertaken by the Replacement Service Provider or any Replacement Sub-Contractor to, or in respect of, any Transferring Service Provider Employee identified in the Service Provider's Final Service Provider Staff List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Service Provider in writing;
- (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (i) in relation to any Transferring Service Provider Employee identified in the Service Provider's Final Service Provider Staff List, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and

- (ii) in relation to any employee who is not a Transferring Service Provider Employee identified in the Service Provider's Final Service Provider Staff List, and in respect of whom it is later alleged or determined that TUPE applied so as to transfer his/her employment from the Service Provider or any Sub-Contractor, to the Replacement Service Provider or any Replacement Sub-Contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;
- (g) a failure of the Replacement Service Provider or any Replacement Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Service Provider Employees identified in the Service Provider's Final Service Provider Staff List in respect of the period from (and including) the Service Transfer Date; and
- (h) any claim made by or in respect of a Transferring Service Provider Employee identified in the Service Provider's Final Service Provider Staff List or any appropriate employee representative (as defined in TUPE) of any such Transferring Service Provider Employee relating to any act or omission of the Replacement Service Provider or any Replacement Sub-Contractor in relation to obligations under regulation 13 of TUPE.

2.14 The indemnities in Paragraph 2.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Service Provider and/or any Sub-Contractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Service Provider and/or any Sub-Contractor (as applicable) to comply with its obligations under TUPE.

## ANNEX: LIST OF NOTIFIED SUB-CONTRACTORS

<b>Key Sub-contractor name</b>	<b>Registered office and company number</b>	<b>Related product/Service description</b>	<b>Key role in delivery of the Services</b>
Liberata UK Limited	5th Floor Knollys House, 17 Addiscombe Road, Croydon, England, CR0 6SR  Number: 01238274	Contact Centre Services	Provision of staff and premises.