

PCSS Call-Off Terms
Schedule 6.1 (Staff Transfer)

Primary Care Support Services Call-Off Terms

Schedule 6.1

Staff Transfer

PCSS Call-Off Terms
Schedule 6.1 (Staff Transfer)

Staff Transfer

1. Definitions

Unless defined within this Schedule, or in the Call-Off Order Form applicable to this Call-Off Agreement, the definitions in Schedule 1 of the Framework Agreement shall apply.

2. Interpretation

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

PCSS Call-Off Terms
Schedule 6.1 (Staff Transfer)

PART A

Transferring Customer Employees at commencement of Services

1. Relevant Transfers

1.1 The Customer and the Supplier agree that:

1.1.1 the commencement of the provision of the Services or of each relevant part of the Services will be a Relevant Transfer in relation to the Transferring Customer Employees; and

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of regulation 10(2) of the Employment Regulations) will have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or any Notified Sub-contractor and each such Transferring Customer Employee.

1.2 The Customer shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Customer 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 Customer; and (ii) the Supplier and/or any Notified Sub-contractor (as appropriate).

2. Customer indemnities

2.1 Subject to Paragraph 2.2, the Customer shall indemnify the Supplier and any Notified Sub-contractor against any Employee Liabilities in respect of any Transferring Customer Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

2.1.1 any act or omission by the Customer occurring before the Relevant Transfer Date;

2.1.2 the breach or non-observance by the Customer before the Relevant Transfer Date of:

(a) any collective agreement applicable to the Transferring Customer Employees; and/or

(b) any custom or practice in respect of any Transferring Customer Employees which the Customer is contractually bound to honour;

2.1.3 any claim by any trade union or other body or person representing the Transferring Customer Employees arising from or connected with any failure by the Customer to comply with any legal obligation to such trade union, body or person arising before the Relevant Transfer Date;

PCSS Call-Off Terms
Schedule 6.1 (Staff Transfer)

- 2.1.4 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 Customer 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 Customer Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Customer to the Supplier 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.
- 2.1.5 a failure of the Customer 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 Customer Employees arising before the Relevant Transfer Date;
- 2.1.6 any claim made by or in respect of any person employed or formerly employed by the Customer other than a Transferring Customer Employee for whom it is alleged the Supplier and/or any Notified Sub-contractor as appropriate may be liable by virtue of the Employment Regulations and/or the Acquired Rights Directive; and
- 2.1.7 any claim made by or in respect of a Transferring Customer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Customer Employee relating to any act or omission of the Customer 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 Sub-contractor to comply with regulation 13(4) of the Employment Regulations.
- 2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier 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:
- 2.2.1 arising out of the resignation of any Transferring Customer Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier and/or any Sub-contractor to occur in the period from (and including) the Relevant Transfer Date; or
 - 2.2.2 arising from the failure by the Supplier or any Sub-contractor to comply with its obligations under the Employment Regulations.

PCSS Call-Off Terms
Schedule 6.1 (Staff Transfer)

- 2.3 If any person who is not identified by the Customer as a Transferring Customer Employee claims, or it is determined in relation to any person who is not identified by the Customer as a Transferring Customer Employee, that his/her contract of employment has been transferred from the Customer to the Supplier and/or any Notified Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- 2.3.1 the Supplier shall, or shall procure that the Notified Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Customer; and
- 2.3.2 the Customer may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of receipt of the notification by the Supplier and/or any Notified Sub-contractor, or take such other reasonable steps as the Customer 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 2.3.2 is accepted, or if the situation has otherwise been resolved by the Customer, the Supplier 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 fifteen (15) Working Day period specified in Paragraph 2.3.2:
- 2.5.1 no such offer of employment has been made;
- 2.5.2 such offer has been made but not accepted; or
- 2.5.3 the situation has not otherwise been resolved,
- the Customer shall give notice in writing to the Supplier to that effect and the Supplier and/or any Notified Sub-contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.
- 2.6 Subject to the Supplier and/or any Notified Sub-contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in applicable Law, the Customer shall indemnify the Supplier and/or any Notified Sub-contractor (as appropriate) against all Employee Liabilities arising out of the termination pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or procures that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.7 The indemnity in Paragraph 2.6:
- 2.7.1 shall not apply to:
- (a) any claim for:
- (i) 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
- (ii) 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 Supplier and/or any Sub-contractor; or

PCSS Call-Off Terms
Schedule 6.1 (Staff Transfer)

- (b) any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-contractor neglected to follow a fair dismissal procedure; and
- 2.7.2 shall apply only where the notification referred to in Paragraph 2.3.1 is made by the Supplier and/or any Notified Sub-contractor (as appropriate) to the Customer within 6 months of the Relevant Transfer Date.
- 2.8 If any such person as is referred to in Paragraph 2.3 is neither re-employed by the Customer nor dismissed by the Supplier and/or any Notified Sub-contractor within the time scales set out in Paragraph 2.5 such person shall be treated as having transferred to the Supplier and/or any Notified Sub-contractor and the Supplier shall, or shall procure that the Notified Sub-contractor shall, comply with such obligations as may be imposed upon it under applicable Law.
- 3. Supplier indemnities and obligations**
- 3.1 Subject to Paragraph 3.2, the Supplier shall indemnify the Customer against any Employee Liabilities in respect of any Transferring Customer Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
 - 3.1.1 any act or omission by the Supplier or any Sub-contractor whether occurring before, on or after the Relevant Transfer Date;
 - 3.1.2 the breach or non-observance by the Supplier or any Sub-contractor on or after the Relevant Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Customer Employees; and/or
 - (b) any custom or practice in respect of any Transferring Customer Employees which the Supplier or any Sub-contractor is contractually bound to honour;
 - 3.1.3 any claim by any trade union or other body or person representing any Transferring Customer Employees arising from or connected with any failure by the Supplier 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;
 - 3.1.4 any proposal by the Supplier 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 Customer Employees to their material detriment on or after their transfer to the Supplier 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 Customer 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 any Sub-contractor to, or in respect of, any Transferring Customer Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Customer in writing;

PCSS Call-Off Terms
Schedule 6.1 (Staff Transfer)

- 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 Customer 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 Customer Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Customer to the Supplier 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;
- 3.1.7 a failure of the Supplier 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 Customer Employees in respect of the period from (and including) the Relevant Transfer Date; and
- 3.1.8 any claim made by or in respect of a Transferring Customer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Customer Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to their obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Customer's failure to comply with its obligations under regulation 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 Customer whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Customer's failure to comply with its obligations under the Employment Regulations.
- 3.3 The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations (including its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of the Transferring Customer 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 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 Customer and the Supplier.

4. Information

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

PCSS Call-Off Terms
Schedule 6.1 (Staff Transfer)

necessary to enable the Supplier and each Notified Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

5. Principles of good employment practice

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

6. Pensions

The Supplier shall, and shall procure that each of its Sub-contractors shall, comply with the pensions provisions in the following Annex.

PCSS Call-Off Terms
Schedule 6.1 (Staff Transfer)

ANNEX TO PART A

PENSIONS

1. Direction letter

- 1.1 The Supplier shall take such action as is within its control and as soon as reasonably possible to secure a Direction Letter. The Supplier and the Customer undertake to do all such things as may be required so long as it is within their respective control to enable the Supplier to secure a Direction Letter in respect of the Fair Deal Employees. The Supplier will as soon as it is reasonably able to do so supply the Customer with a copy of the Direction Letter.
- 1.2 The Supplier undertakes to comply with the terms of the Direction Letter (including any terms which change as a result of changes in legislation) in respect of the Fair Deal Employees until the day before any Service Transfer or termination of the Contract so long as they are employed in the provision of the Services.
- 1.3 Where any Employee omitted from the Direction Letter supplied in accordance with 1.2 above is subsequently found to be a Fair Deal Employee the Supplier will ensure that person is treated as a Fair Deal Employee from the Relevant Transfer Date so that their pension and Premature Pension Rights are not adversely affected.
- 1.4 The Supplier undertakes to participate in any applicable data collection exercise and must ensure that all data relating to Fair Deal Employees and the NHS Scheme which is within its control or possession is up to date and is provided to the NHSBSA as requested from time to time.
- 1.5 The Supplier shall bear its own costs and all costs that the Customer reasonably incurs in connection with the Supplier participating in the NHS Scheme.

2. Future service benefits

- 2.1 The Supplier shall procure that, where it is within its control, the Fair Deal Employees, shall be either admitted into (at their request), offered continued membership or eligibility for the NHS Scheme and the Supplier shall procure that, where it is within its control, the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the NHS Scheme for pensionable service from (and including) the Relevant Transfer Date or from the date of admission (as the case may be).
- 2.2 The Supplier undertakes that should it cease to participate in the NHS Scheme for whatever reason at a time when it has Fair Deal Employees, that it will, at no extra cost to the Customer, provide to any Fair Deal Employee access to a Broadly Comparable Scheme.
- 2.3 The Supplier must provide Premature Retirement Rights in respect of the Fair Deal Employees that are the same as the benefits they would have received had they remained employees of the Customer or any other employer who participates in the NHS Scheme.

3. Funding

- 3.1 The Supplier undertakes to pay to the NHS Scheme all such amounts as are due under the Direction Letter and shall deduct and pay to the NHS Scheme such employee contributions as are required by the NHS Scheme.

PCSS Call-Off Terms
Schedule 6.1 (Staff Transfer)

- 3.2 If the employer standard contribution rate to the NHS Scheme as defined in the NHS Scheme (as a percentage of pensionable salaries) is increased or reduced from 14.3% the Customer shall bear the cost of such increase by way of adjustment to the charges it pays to the Supplier under this Contract or the Customer will reduce the amount it pays to the Supplier under this contract.
- 3.3 The Supplier shall indemnify and keep indemnified the Customer on demand against any claim by, payment to, or loss incurred by, the NHS Scheme in respect of the failure to account to the NHS Scheme for payments received and the non-payment or the late payment of any sum payable by the Supplier to the NHS Scheme pursuant to paragraph 3.1 above.

4. Cancellation of any Direction Letter(s) and Right of Set Off

- 4.1 If the Customer is entitled to terminate this Contract under Clause 47.1.4.17 of the Call Off Terms (Termination), the Customer may in its sole discretion instead of exercising its right under Clause 47.1.4.17 of the Call Off Terms (Termination) permit the Contractor to offer a Broadly Comparable Scheme.
- 4.2 If the Customer is notified by NHSBSA of any failure to comply with 3.1 above, the Customer will be entitled to deduct all or part of those arrears from any amount due to be paid by the Customer to the Supplier having given the Supplier five (5) days' notice of its intention to do so, and to pay any sum deducted to NHSBSA in full or partial settlement of such arrears. This set-off right is in addition to and not instead of the Customer's right to terminate the Contract under Clause 47.1.4.17 of the Call Off Terms (Termination).

5. Direct Enforceability by the Eligible Employees

- 5.1 Notwithstanding Clause 59 of the Call Off Terms, provisions of this Annex to Part A may be directly enforced by a Fair Deal Employee against the Supplier and the Parties agree that the Contracts (Rights of Third Parties) Act 1999 will apply to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to him or her by the Supplier under this Annex to Part A in his or her own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

6. Provision of information

The Supplier and the Customer respectively undertake to each other:

- 6.1.1 to provide all information which the other Party may reasonably request and which is within its possession or control concerning matters (i) referred to in this Annex and (ii) set out in the Direction Letter, and to supply the information as expeditiously as possible; and
- 6.1.2 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).

7. Indemnity

- 7.1 The Supplier undertakes to the Customer to indemnify and keep indemnified the Customer and any Replacement Supplier on demand from and against all and any losses whatsoever arising out of or in connection with:
- 7.1.1 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 (or failure of payment of) pension benefits under a Broadly Comparable Scheme or the NHS

PCSS Call-Off Terms
Schedule 6.1 (Staff Transfer)

Scheme or relate to the provision of (or failure to provide) Premature Retirement Rights;

- 7.1.2 any liability arising as a result of the Supplier allowing any Employee who is not a Fair Deal Employee to join and claim membership of the NHS Scheme at any time when providing the Services; and
- 7.1.3 any breach of the provisions of this Annex to Part A or the terms of the Direction Letter.

8. Employer obligation

The Supplier shall comply with the requirements of Part 1 of the Pensions Act 2008 and the Transfer of Employment (Pension Protection) Regulations 2005.

9. Subsequent transfers

The Supplier shall:

- 9.1.1 not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the date of the relevant future transfer save that this sub-paragraph shall not apply to any change made as a consequence of a term of the Direction Letter or any change in legislation affecting the NHS Scheme;
- 9.1.2 provide all such co-operation and assistance which is within its control as the NHS Scheme and the Replacement Supplier and/or the Customer may reasonably require to enable the Replacement Supplier to participate in the NHS Scheme in respect of any Fair Deal Employee and if the Supplier were to set up a Broadly Comparable Scheme in accordance with Paragraph 2.2 to give effect to any transfer of accrued rights required as part of participation under New Fair Deal; and
- 9.1.3 for the period either:
 - (a) after notice (for whatever reason) is given, in accordance with the other provisions of this Call-Off Agreement, to terminate the Call-Off Agreement or any part of the Services; and/or
 - (b) after the date which is two (2) years prior to the date of expiry of this Call-Off Agreement,

ensure that no change is made to pension, retirement and death benefits provided for or in respect of any Fair Deal Employee who will transfer to the Replacement Supplier or the Customer, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such Fair Deal Employees are not reduced without (in any case) the prior approval of the Customer (such approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of a term of the Direction Letter or change of legislation affecting the NHS Scheme.

PCSS Call-Off Terms
Schedule 6.1 (Staff Transfer)

PART B

Transferring Former Supplier Employees at commencement of Services

1. Relevant Transfers

- 1.1 The Customer 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 as a result of the operation of the Employment Regulations, the contracts of employment between each Former Supplier and the Transferring Former Supplier Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or Notified Sub-contractor and each such Transferring Former Supplier Employee.
- 1.2 The Customer shall procure that each Former Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Supplier Employees in respect of the period up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Supplier shall make, and the Customer shall procure that each Former Supplier makes, any necessary apportionments in respect of any periodic payments.
- 1.3 The Customer shall procure that each Former Supplier shall within twenty (20) Business Days of receipt of a notification from the Supplier provide in a suitably anonymised format so as to comply with the DPA, the Staffing Information in relation to the prospective Transferring Former Supplier Employees and shall provide updated Staffing Information at such intervals as are reasonably requested by the Supplier.

2. Former Supplier indemnities

- 2.1 Subject to Paragraph 2.2, the Customer shall procure that each Former Supplier shall indemnify the Supplier and any Notified Sub-contractor against any Employee Liabilities in respect of any Transferring Former Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
- 2.1.1 any act or omission by the Former Supplier arising 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 custom or practice in respect of any Transferring Former Supplier Employees which the Former Supplier is contractually bound to honour;

PCSS Call-Off Terms
Schedule 6.1 (Staff Transfer)

- 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 his/her employment from the Former Supplier to the Supplier 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;
- 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 to (but excluding) the Relevant Transfer Date;
- 2.1.5 any claim made by or in respect of any person employed or formerly employed by the Former Supplier other than a Transferring Former Supplier Employee for whom it is alleged the Supplier and/or any Notified Sub-contractor as appropriate may be liable by virtue of this Call-Off Agreement and/or the Employment Regulations and/or the Acquired Rights Directive; and
- 2.1.6 any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Former Supplier in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-contractor to comply with regulation 13(4) of the Employment Regulations.
- 2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-contractor 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 to his/her working conditions proposed by the Supplier or any Sub-contractor 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 Sub-contractor to comply with its obligations under the Employment Regulations.

PCSS Call-Off Terms
Schedule 6.1 (Staff Transfer)

- 2.3 If any person who is not identified by the Customer as a Transferring Former Supplier Employee claims, or it is determined in relation to any person who is not identified by the Customer as a Transferring Former Supplier Employee, that his/her contract of employment has been transferred from a Former Supplier to the Supplier and/or any Notified Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- 2.3.1 the Supplier shall, or shall procure that the Notified Sub-contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Customer and, where required by the Customer, to the Former Supplier; and
- 2.3.2 the Former Supplier may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of the notification by the Supplier and/or the Notified Sub-contractor or take such other reasonable steps as the Former Supplier considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 2.4 If an offer referred to in Paragraph 2.3.2 is accepted, or if the situation has otherwise been resolved by the Former Supplier and/or the Customer, the Supplier 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 fifteen (15) Working Day period specified in Paragraph 2.3.2:
- 2.5.1 no such offer of employment has been made;
- 2.5.2 such offer has been made but not accepted; or
- 2.5.3 the situation has not otherwise been resolved,
- the Customer or the Former Supplier shall give notice in writing to the Supplier to that effect and the Supplier and/or any Notified Sub-contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.
- 2.6 Subject to the Supplier and/or any Notified Sub-contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in Law, the Customer shall procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-contractor (as appropriate) against all Employee Liabilities arising out of the termination pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.7 The indemnity in Paragraph 2.6:
- 2.7.1 shall not apply to:
- (a) any claim for:
- (i) 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
- (ii) 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 Supplier and/or any Sub-contractor; or

PCSS Call-Off Terms
Schedule 6.1 (Staff Transfer)

- (b) any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-contractor neglected to follow a fair dismissal procedure; and
- 2.7.2 shall apply only where the notification referred to in Paragraph 2.3.1 is made by the Supplier and/or any Notified Sub-contractor (as appropriate) to the Customer and, if applicable, the Former Supplier, within 6 months of the Relevant Transfer Date.
- 2.8 If any such person as is described in Paragraph 2.3 is neither re-employed by the Former Supplier nor dismissed by the Supplier and/or any Notified Sub-contractor within the time scales set out in Paragraph 2.5, such person shall be treated as having transferred to the Supplier or Notified Sub-contractor and the Supplier shall, or shall procure that the Notified Sub-contractor shall, comply with such obligations as may be imposed upon it under the Law.
- 3. Supplier indemnities and obligations**
- 3.1 Subject to Paragraph 3.2, the Supplier shall indemnify the Customer and/or the Former Supplier against any Employee Liabilities in respect of any Transferring Former Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
 - 3.1.1 any act or omission by the Supplier or any Sub-contractor whether occurring before, on or after the Relevant Transfer Date;
 - 3.1.2 the breach or non-observance by the Supplier or any Sub-contractor 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 Sub-contractor 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 Sub-contractor 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 Sub-contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Supplier Employees to their material detriment on or after their transfer to the Supplier or a Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
 - 3.1.5 any statement communicated to or action undertaken by the Supplier or a Sub-contractor to, or in respect of, any Transferring Former Supplier Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Customer and/or the Former Supplier in writing;

PCSS Call-Off Terms
Schedule 6.1 (Staff Transfer)

- 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 his/her employment from the Former Supplier to the Supplier 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;
- 3.1.7 a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period from (and including) the Relevant Transfer Date; and
- 3.1.8 any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Supplier's failure to comply with its obligations under regulation 13 of the Employment Regulations.
- 3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Supplier's failure to comply with its obligations under the Employment Regulations.
- 3.3 The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Former Supplier Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions 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 shall, and shall procure that each Sub-contractor shall, promptly provide to the Customer and/or at the Customer's direction, the Former Supplier, in writing such information as is necessary to enable the Customer and/or the Former Supplier to carry out their respective duties under regulation 13 of the Employment Regulations. The Customer shall procure that the Former Supplier shall promptly provide to the Supplier and each Notified

PCSS Call-Off Terms
Schedule 6.1 (Staff Transfer)

Sub-contractor in writing such information as is necessary to enable the Supplier and each Notified Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

5. Principles of good employment practice

5.1 The Supplier shall, and shall procure that each Sub-contractor shall, comply with any requirement notified to it by the Customer 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 2007;

5.1.2 HM Treasurys guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;

5.1.3 HM Treasurys guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or

5.1.4 the New Fair Deal.

5.2 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 5.1 shall be agreed in accordance with the Change Control Procedure.

6. Procurement obligations

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

7. Pensions

The Supplier shall, and shall procure that each Sub-contractor shall, comply with the pensions provisions in the following Annex in respect of any Transferring Former Supplier Employees who transfer from the Former Supplier to the Supplier.

PCSS Call-Off Terms
Schedule 6.1 (Staff Transfer)

ANNEX TO PART B PENSIONS

1. Direction letter

- 1.1 The Supplier shall take such action as is within its control and as soon as reasonably possible to secure a Direction Letter. The Supplier and the Customer undertake to do all such things as may be required so long as it is within their respective control to enable the Supplier to secure a Direction Letter in respect of the Fair Deal Employees.
- 1.2 The Supplier must supply the Customer with a copy of the Direction Letter as soon as it is reasonably able to do so.
- 1.3 The Supplier undertakes to comply with the terms of the Direction Letter (including any terms which change as a result of changes in legislation) in respect of the Fair Deal Employees until the day before any Service Transfer or termination of the contract so long as they are employed in providing the Services.
- 1.4 Where any Employee omitted from the Direction Letter supplied in accordance with 1.2 above is subsequently found to be a Fair Deal Employee the Supplier will ensure that person is treated as a Fair Deal Employee from the Relevant Transfer Date so that their pension and Premature Pension Rights are not adversely affected.
- 1.5 The Supplier undertakes to participate in any applicable data collection exercise and must ensure that all data relating to Fair Deal Employees and the NHS Scheme which is within its control or possession is up to date and is provided to the NHSBSA as requested from time to time.
- 1.6 The Supplier shall bear its own costs and all costs that the Customer reasonably incurs in connection with the Supplier participating in the NHS Scheme.

2. Future service benefits

- 2.1 The Supplier shall procure that, where it is within its control, the Fair Deal Employees, shall be either admitted into (at their request), offered continued membership or eligibility for the NHS Scheme and the Supplier shall procure that, where it is within its control, the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the NHS Scheme for pensionable service from (and including) the Relevant Transfer Date or from the date of admission (as the case may be).
- 2.2 The Supplier undertakes that should it cease to participate in the NHS Scheme for whatever reason at a time when it has Fair Deal Employees, that it will, at no extra cost to the Customer, provide to any Fair Deal Employee access to a Broadly Comparable Scheme.
- 2.3 The Supplier shall procure that the Former Supplier will within a reasonable timescale not longer than 40 days of the Relevant Transfer offer the Fair Deal Employees the option to transfer to the NHS Scheme any benefits that they have accrued under the Former Supplier's Broadly Comparable Scheme prior to the Relevant Transfer Date. The Supplier will procure day for day service credits in the NHS Scheme (or if Paragraph 2.2 above applies to the Supplier's Broadly Comparable Scheme) as agreed by the actuaries appointed by the Customer and the NHS Scheme. The Customer shall indemnify and keep indemnified the Supplier on demand against any additional contributions or payments to the NHS Scheme arising in relation to any shortfall in any bulk transfer payment to the NHS Scheme from the pension scheme of any Former Supplier.

PCSS Call-Off Terms
Schedule 6.1 (Staff Transfer)

- 2.4 The Supplier must provide Premature Retirement Rights in respect of the Fair Deal Employees that are the same as the benefits they would have received had they remained employees of the Customer or any other employer who participates in the NHS Scheme.

3. Funding

- 3.1 The Supplier undertakes to pay to the NHS Scheme all such amounts as are due under the Direction Letter and shall deduct and pay to the NHS Scheme such employee contributions as are required by the NHS Scheme.

- 3.2 If the employer standard contribution rate to the NHS Scheme as defined in the NHS Scheme (as a percentage of pensionable salaries) is increased or reduced from 14.3% the Customer shall bear the cost of such increase by way of adjustment to the charges it pays to the Supplier under this Contract or the Customer will reduce the amount it pays to the Supplier under this contract.

- 3.3 The Supplier shall indemnify and keep indemnified the Customer on demand against any claim by, payment to, or loss incurred by, the NHS Scheme in respect of the failure to account to the NHS Scheme for payments received and the non-payment or the late payment of any sum payable by the Supplier to or in respect of the NHS Scheme pursuant to paragraph 3.1 above.

4. Cancellation of any Direction Letter(s) and Right of Set Off

- 4.1 If the Customer is entitled to terminate this Contract under Clause 47.1.4.17 of the Call Off Terms (Termination), the Customer may in its sole discretion instead of exercising its right under Clause 47.1.4.17 of the Call Off Terms (Termination) permit the Contractor to offer Broadly Comparable pension benefits.

- 4.2 If the Customer is notified by NHSBSA of any failure to comply with 3.1 above, the Customer will be entitled to deduct all or part of those arrears from any amount due to be paid by the Customer to the Supplier having given the Supplier 5 days' notice of its intention to do so, and to pay any sum deducted to NHSBSA in full or partial settlement of such arrears. This set-off right is in addition to and not instead of the Customer's right to terminate the Contract under Clause 47.1.4.17 of the Call Off Terms (Termination).

5. Direct Enforceability by the Eligible Employees

- 5.1 Notwithstanding Clause 59 (Third Party Rights) of the Call Off Terms, the provisions of this Annex to Part B may be directly enforced by a Fair Deal Employee against the Supplier and the Parties agree that the Contracts (Rights of Third Parties) Act 1999 will apply to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to him or her by the Supplier under this Annex to Part B in his or her own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

6. Provision of information

The Supplier and the Customer respectively undertake to each other:

- 6.1.1 to provide all information which the other Party may reasonably request and which is within its possession or control concerning matters (i) referred to in this Annex and (ii) set out in the Direction Letter, and to supply the information as expeditiously as possible; and

PCSS Call-Off Terms
Schedule 6.1 (Staff Transfer)

- 6.1.2 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).

7. Indemnity

The Supplier undertakes to the Customer to indemnify and keep indemnified the Customer and any Replacement Supplier: on demand from and against all and any Losses whatsoever arising out of or in connection with:

- 7.1.1 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 (or failure of payment of) pension benefits under a Broadly Comparable Scheme or the NHS Scheme or relate to the provision of (or failure to provide) Premature Retirement Rights but not which relate to
- 7.1.2 any liability arising as a result of the Supplier allowing any Employee who is not a Fair Deal Employee to join and claim membership of the NHS Scheme at any time when providing the Services; and
- 7.1.3 any breach of the provisions of this Annex to Part B or the terms of the Direction Letter.
- 7.2 For the period from the Relevant Transfer Date until the Transformation Completion Date the Authority shall indemnify and keep indemnified the Contractor on demand and from and against all and any Losses whatsoever arising out of or in connection with any requirement of the Contractor to provide:
- 7.2.1 to any Fair Deal Employee or any Transferring Former Supplier Employee with a Transferred Liability.
- 7.2.2 to or in respect of the Transferring Former Supplier Employee who is not a Fair Deal Employee with any pension or like benefits which are greater than that required of the Contractor under sections 257 and 258 of the Pensions Act 2004

Provided that this indemnity shall only apply to any Fair Deal Employee or Transferring Former Supplier Employee who are employed by Serco Limited and NHS Shared Business Services Limited.

8. Employer obligation

The Supplier shall comply with the requirements of Part 1 of the Pensions Act 2008 and the Transfer of Employment (Pension Protection) Regulations 2005.

9. Subsequent transfers

The Supplier shall:

- 9.1.1 not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the date of the relevant future transfer save that this subparagraph shall not apply to any change made as a consequence of a term in the Direction Letter or any change in legislation affecting the NHS Scheme;
- 9.1.2 provide all such co-operation and assistance which is within its control as the NHS Scheme and the Replacement Supplier and/or the Customer may reasonably require to enable the Replacement Supplier to participate in the NHS

PCSS Call-Off Terms
Schedule 6.1 (Staff Transfer)

Scheme in respect of any Fair Deal Employee if the Supplier were to set up a Broadly Comparable Scheme under paragraph 2.2; and

9.1.3 for the period either:

- (a) after notice (for whatever reason) is given, in accordance with the other provisions of this Call-Off Agreement, to terminate the Call-Off Agreement or any part of the Services; and/or
- (b) after the date which is two (2) years prior to the date of expiry of this Call-Off Agreement,

ensure that no change is made to pension, retirement and death benefits provided for or in respect of any Employee who will transfer to the Replacement Supplier or the Customer, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such Employee are not reduced without (in any case) the prior approval of the Customer (such approval not to be unreasonably withheld). Save that this subparagraph shall not apply to any change made as a consequence of a term of the Direction Letter or change in legislation affecting the NHS Scheme.

PCSS Call-Off Terms
Schedule 6.1 (Staff Transfer)

PART C

No transfer of employees at commencement of Services

1. Procedure in the event of transfer

1.1 The Customer and the Supplier agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Customer and/or any Former Supplier.

1.2 If any employee of the Customer and/or a Former Supplier claims, or it is determined in relation to any employee of the Customer and/or a Former Supplier, that his/her contract of employment has been transferred from the Customer and/or the Former Supplier to the Supplier and/or any Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:

1.2.1 the Supplier 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 Customer and, where required by the Customer, give notice to the Former Supplier; and

1.2.2 the Customer and/or the Former Supplier may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of the notification by the Supplier or the Sub-contractor (as appropriate) or take such other reasonable steps as the Customer or Former Supplier (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.

1.3 If an offer referred to in Paragraph 1.2.2 is accepted (or if the situation has otherwise been resolved by the Customer and/or the Former Supplier), the Supplier 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 fifteen (15) Working Day period specified in Paragraph 1.2.2:

1.4.1 no such offer of employment has been made;

1.4.2 such offer has been made but not accepted; or

1.4.3 the situation has not otherwise been resolved,

the Supplier and/or the Sub-contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

2. Indemnities

2.1 Subject to the Supplier 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 Customer shall:

2.1.1 indemnify the Supplier and/or the relevant Sub-contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Customer referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities; and

PCSS Call-Off Terms
Schedule 6.1 (Staff Transfer)

- 2.1.2 procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier made pursuant to the provisions of Paragraph 1.4 provided that the Supplier 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 Customer and/or the Former Supplier as appropriate nor dismissed by the Supplier and/or any Sub-contractor within the timescales set out in Paragraph 1.4 such person shall be treated as having transferred to the Supplier and/or the Sub-contractor (as appropriate) and the Supplier shall, or shall procure that the Sub-contractor shall, comply with such obligations as may be imposed upon it under Law.
- 2.3 Where any person remains employed by the Supplier and/or any Sub-contractor pursuant to Paragraph 2.2, all Employee Liabilities in relation to such employee shall remain with the Supplier and/or the Sub-contractor and the Supplier shall indemnify the Customer and any Former Supplier, and shall procure that the Sub-contractor shall indemnify the Customer and any Former Supplier, against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Sub-contractor.
- 2.4 The indemnities in Paragraph 2.1:
- 2.4.1 shall not apply to:
- (a) any claim for:
 - (i) 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
 - (ii) 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 Supplier and/or any Sub-contractor; or
 - (b) any claim that the termination of employment was unfair because the Supplier and/or any Sub-contractor neglected to follow a fair dismissal procedure; and
- 2.4.2 shall apply only where the notification referred to in Paragraph 1.2.1 is made by the Supplier and/or any Sub-contractor to the Customer and, if applicable, Former Supplier within 6 months of the Relevant Transfer Date.

3. Procurement obligations

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

PCSS Call-Off Terms
Schedule 6.1 (Staff Transfer)

PART D

Employment Exit Provisions

1. Pre-service transfer obligations

- 1.1 The Supplier agrees that within twenty (20) Working Days of the earliest of:
- 1.1.1 receipt of a notification from the Customer of a Service Transfer or intended Service Transfer;
 - 1.1.2 receipt of the giving of notice of early termination or any Partial Termination of this Call-Off Agreement;
 - 1.1.3 the date which is twelve (12) months before the end of the Term; and
 - 1.1.4 receipt of a written request of the Customer at any time (provided that the Customer shall only be entitled to make one such request in any 6 month period), it shall provide in a suitably anonymised format so as to comply with the DPA, the Supplier's Provisional Supplier Personnel List, together with the Staffing Information in relation to the Supplier's Provisional Supplier Personnel List and it shall provide an updated Supplier's Provisional Supplier Personnel List at such intervals as are reasonably requested by the Customer.
- 1.2 At least twenty eight (28) days prior to the Service Transfer Date, the Supplier shall provide to the Customer or at the direction of the Customer to any Replacement Supplier and/or any Replacement Sub-contractor:
- 1.2.1 the Supplier's Final Supplier Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and
 - 1.2.2 the Staffing Information in relation to the Supplier's Final Supplier Personnel List (insofar as such information has not previously been provided).
- 1.3 The Customer shall be permitted to use and disclose information provided by the Supplier under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-contractor.
- 1.4 The Supplier warrants, for the benefit of the Customer, any Replacement Supplier, and any Replacement Sub-contractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.
- 1.5 From the date of the earliest event referred to in Paragraph 1.1.1, 1.1.2 and 1.1.3, the Supplier 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 Supplier's Provisional Supplier Personnel List and shall not without the approval of the Customer (not to be unreasonably withheld or delayed):
- 1.5.1 replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Supplier Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;
 - 1.5.2 make, promise, propose or permit any material changes to the terms and conditions of employment of the Supplier Personnel (including any payments connected with the termination of employment), save for any changes in pay or

PCSS Call-Off Terms
Schedule 6.1 (Staff Transfer)

benefits arising in the ordinary course of business as a result of the Supplier's annual pay review process;

- 1.5.3 increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;
- 1.5.4 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Personnel List;
- 1.5.5 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
- 1.5.6 terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Personnel List save by due disciplinary process,

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

- 1.6 During the Term, the Supplier shall provide, and shall procure that each Sub-contractor shall provide, to the Customer any information the Customer may reasonably require relating to the manner in which the Services are organised, which shall include:
 - 1.6.1 the numbers of employees engaged in providing the Services;
 - 1.6.2 the percentage of time spent by each employee engaged in providing the Services; and
 - 1.6.3 a description of the nature of the work undertaken by each employee by location.
- 1.7 The Supplier shall provide, and shall procure that each Sub-contractor shall provide, all reasonable cooperation and assistance to the Customer, any Replacement Supplier and/or any Replacement Sub-contractor 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 five (5) Working Days following the Service Transfer Date, the Supplier shall provide, and shall procure that each Sub-contractor shall provide, to the Customer or, at the direction of the Customer, to any Replacement Supplier and/or any Replacement Sub-contractor (as appropriate), in respect of each person on the Supplier's Final Supplier Personnel List who is a Transferring Supplier Employee:
 - 1.7.1 the most recent month's copy pay slip data;
 - 1.7.2 details of cumulative pay for tax and pension purposes;
 - 1.7.3 details of cumulative tax paid;
 - 1.7.4 tax code;
 - 1.7.5 details of any voluntary deductions from pay; and

PCSS Call-Off Terms
Schedule 6.1 (Staff Transfer)

1.7.6 bank/building society account details for payroll purposes.

2. Employment regulations exit provisions

- 2.1 The Customer 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 Call-Off Agreement or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Sub-contractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Customer and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant 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 Sub-contractor (as the case may be) and each such Transferring Supplier Employee.
- 2.2 The Supplier shall, and shall procure that each Sub-contractor 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 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 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 which in any case are attributable in whole or in part to the period ending on (but excluding) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Sub-contractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Sub-contractor.
- 2.3 Subject to Paragraph 2.4, the Supplier shall indemnify the Customer and/or the Replacement Supplier and/or any Replacement Sub-contractor against any Employee Liabilities in respect of any Transferring Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
- 2.3.1 any act or omission of the Supplier or any Sub-contractor whether occurring before, on or after the Service Transfer Date;
- 2.3.2 the breach or non-observance by the Supplier or any Sub-contractor 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 with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Sub-contractor is contractually bound to honour;
- 2.3.3 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 Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;

PCSS Call-Off Terms
Schedule 6.1 (Staff Transfer)

- 2.3.4 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 a Transferring Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier to the Customer and/or Replacement Supplier 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;
- 2.3.5 a failure of the Supplier 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 Supplier Employees in respect of the period up to the Service Transfer Date);
- 2.3.6 any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-contractor other than a Transferring Supplier Employee for whom it is alleged the Customer and/or the Replacement Supplier and/or any Replacement Sub-contractor may be liable by virtue of this Call-Off Agreement and/or the Employment Regulations and/or the Acquired Rights Directive; and
- 2.3.7 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 Sub-contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Customer and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.
- 2.4 The indemnities in Paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Sub-contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:
- 2.4.1 arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or any Replacement Sub-contractor to occur in the period on or after the Service Transfer Date); or
 - 2.4.2 arising from the Replacement Supplier's failure, and/or Replacement Sub-contractor's failure, to comply with its obligations under the Employment Regulations.
- 2.5 If any person who is not a Transferring Supplier Employee claims, or it is determined in relation to any person who is not a Transferring Supplier Employee, that his/her contract of employment has been transferred from the Supplier or any Sub-contractor to the

PCSS Call-Off Terms
Schedule 6.1 (Staff Transfer)

Replacement Supplier and/or Replacement Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:

- 2.5.1 the Customer shall procure that the Replacement Supplier shall, or any Replacement Sub-contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Supplier; and
 - 2.5.2 the Supplier may offer (or may procure that a Sub-contractor may offer) employment to such person within fifteen (15) Working Days of the notification by the Replacement Supplier and/or any 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 Supplier or a Sub-contractor, the Customer shall procure that the Replacement Supplier shall, or procure that the Replacement Sub-contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.
- 2.7 If after the 15 Working Day period specified in Paragraph 2.5.2 has elapsed:
- 2.7.1 no such offer of employment has been made;
 - 2.7.2 such offer has been made but not accepted; or
 - 2.7.3 the situation has not otherwise been resolved
- the Customer shall advise the Replacement Supplier and/or Replacement Sub-contractor, as appropriate that it may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.
- 2.8 Subject to the Replacement Supplier and/or Replacement Sub-contractor acting in accordance with the provisions of Paragraphs 2.5 to 2.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Supplier shall indemnify the Replacement Supplier and/or Replacement Sub-contractor against all Employee Liabilities arising out of the termination pursuant to the provisions of Paragraph 2.7 provided that the Replacement Supplier takes, or shall procure that the Replacement Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.9 The indemnity in Paragraph 2.8:
- 2.9.1 shall not apply to:
 - (a) any claim for:
 - (i) 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
 - (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
- in any case in relation to any alleged act or omission of the Replacement Supplier and/or Replacement Sub-contractor; or

PCSS Call-Off Terms
Schedule 6.1 (Staff Transfer)

- (b) any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Sub-contractor neglected to follow a fair dismissal procedure; and
- 2.9.2 shall apply only where the notification referred to in Paragraph 2.5.1 is made by the Replacement Supplier and/or Replacement Sub-contractor to the Supplier within six (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 Supplier or any Sub-contractor nor dismissed by the Replacement Supplier and/or Replacement Sub-contractor within the time scales set out in Paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Supplier Employee and the Replacement Supplier and/or Replacement Sub-contractor shall comply with such obligations as may be imposed upon it under applicable Law.
- 2.11 The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of the Transferring Supplier Employees 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 which in any case are attributable in whole or in part in respect of the period up to the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:
 - 2.11.1 the Supplier and/or any Sub-contractor; and
 - 2.11.2 the Replacement Supplier and/or the Replacement Sub-contractor.
- 2.12 The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to the Customer and any Replacement Supplier and/or Replacement Sub-contractor, in writing such information as is necessary to enable the Customer, the Replacement Supplier and/or Replacement Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Customer shall procure that the Replacement Supplier and/or Replacement Sub-contractor, shall promptly provide to the Supplier and each Sub-contractor in writing such information as is necessary to enable the Supplier and each Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.
- 2.13 Subject to Paragraph 2.14, the Customer shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-contractor and its sub-contractors against any Employee Liabilities in respect of each Transferring Supplier Employee (or, where applicable any employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee) arising from or as a result of:
 - 2.13.1 any act or omission of the Replacement Supplier and/or Replacement Sub-contractor;
 - 2.13.2 the breach or non-observance by the Replacement Supplier and/or Replacement Sub-contractor on or after the Service Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Supplier Employees; and/or

PCSS Call-Off Terms
Schedule 6.1 (Staff Transfer)

- (b) any custom or practice in respect of any Transferring Supplier Employees which the Replacement Supplier and/or Replacement Sub-contractor is contractually bound to honour;
- 2.13.3 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 Replacement Supplier and/or Replacement Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;
- 2.13.4 any proposal by the Replacement Supplier and/or Replacement Sub-contractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees on or after their transfer to the Replacement Supplier or Replacement Sub-contractor (as the case may be) on the Service Transfer Date, or to change the terms and conditions of employment or working conditions of any person 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;
- 2.13.5 any statement communicated to or action undertaken by the Replacement Supplier or Replacement Sub-contractor to, or in respect of, any Transferring Supplier Employee on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;
- 2.13.6 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, 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, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier or Sub-contractor, to the Replacement Supplier or Replacement Sub-contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Service Transfer Date;
- 2.13.7 a failure of the Replacement Supplier or Replacement Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period from (and including) the Service Transfer Date; and
- 2.13.8 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 Replacement Supplier or Replacement Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations.

PCSS Call-Off Terms
Schedule 6.1 (Staff Transfer)

- 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 Supplier 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 Supplier and/or any Sub-contractor (as applicable) to comply with its obligations under the Employment Regulations.