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Schedule 5.1 (Staff Transfer)

Crown Hosting Standard Terms

Schedule 5.1

Staff Transfers

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Staff Transfer

1. DEFINITIONS

In this Schedule, the following definitions shall apply:

“Acquired Rights Directive”	means the European Council Directive 2001/23/EC on the approximation of laws of European Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended;
“Administering Authority”	means the administering authority (within the meaning of Schedule 1 of the LGPS Regulations) of the Fund;
“Admission Body”	means an admission body within paragraph 1(d) of Part 3 of Schedule 2 of the LGPS Regulations;
“Admission Agreement”	The agreement to be entered into by which the supplier agrees to participate in the PCSPS as amended from time to time;
“Compensation Regulations”	The Local Government (Early Termination of Employment) (Discretionary Compensation) (England & Wales) Regulations (SI 2006/2914), as amended from time to time;
“Customer Staffing Information”	in relation to all persons identified on the Transferring Customer's Employees List, such information as the Supplier may reasonably request (subject to all applicable provisions of the DPA), but including in an anonymised format: (a) their ages, dates of commencement of employment or engagement and gender; (b) details of whether they are employed, self employed contractors or consultants, agency workers or otherwise; (c) the identity of the employer or relevant contracting Party; (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments; (e) their wages, salaries and profit sharing arrangements as applicable; (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them; (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims); (h) details of any such individuals on long term sickness

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absence, parental leave, maternity leave or other authorised long term absence;

- (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and

any other “employee liability information” as such term is defined in regulation 11 of the Employment Regulations;

“Eligible Employee”

any Fair Deal Employee who at the relevant time is an eligible employee as defined in the Admission Agreement;

“Fair Deal Employees”

those Transferring Customer Employees who are on the Relevant Transfer Date entitled to the protection of New Fair Deal and any Transferring Former Supplier Employees who originally transferred pursuant to a Relevant Transfer under the Employment Regulations (or the predecessor legislation to the Employment Regulations), from employment with a public sector employer and who were once eligible to participate in a relevant public service pension scheme and who at the Relevant Transfer Date become entitled to the protection of New Fair Deal;

“Former Supplier”

a supplier supplying services to the Customer before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor);

“Former Supplier Staffing Information”

in relation to all persons identified on the Transferring Former Supplier's Employees List, such information as the Supplier may reasonably request (subject to all applicable provisions of the DPA), but including in an anonymised format:

- (a) their ages, dates of commencement of employment or engagement and gender;
 - (b) details of whether they are employed, self employed contractors or consultants, agency workers or otherwise;
 - (c) the identity of the employer or relevant contracting Party;
 - (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
 - (e) their wages, salaries and profit sharing arrangements as applicable;
 - (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
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- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and

any other “employee liability information” as such term is defined in regulation 11 of the Employment Regulations;

“Fund”	means the section of the LGPS of which the LGPS Pensionable Employees are members;
“Fund Actuary”	means the actuary to the Fund appointed by the Administering Authority;
“LGPS”	means the Local Government Pension Scheme as governed by the LGPS Regulations, and the Compensation Regulations, and any other regulations (in each case as amended from time to time) which are from time to time applicable to the Local Government Pension Scheme;
“LGPS Admission Agreement”	means an admission agreement within the meaning of Schedule 1 of the LGPS Regulations in such form as the Administering Authority shall require;
“LGPS Pensionable Employee”	means any Transferring Customer Employee or Transferring Former Supplier Employee (as the case may be) who immediately before the Relevant Transfer Date is an active member of the LGPS or is eligible to be an active member of the LGPS or is an active member of a scheme certified by the Government Actuary's Department as providing benefits broadly comparable to that provided under the LGPS Regulations;
“LGPS Regulations”	means the Local Government Pension Scheme Regulations 2013 (SI 2013/2356), as amended from time to time;
“New Fair Deal”	the revised Fair Deal position set out in the HM Treasury guidance: <i>“Fair Deal for staff pensions: staff transfer from central government”</i> issued in October 2013;
“Notice Payment”	means payments and benefits made in lieu of the minimum statutory or contractual period of notice to which a Redundant Employee is entitled or part thereof provided that the Supplier is able to demonstrate to the Customer's reasonable satisfaction that: (a) it has not been reasonably practicable to redeploy those Redundant Employees during the relevant notice period,

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or part thereof; and

- (b) it has not been reasonably practicable to utilise those Redundant Employees during the relevant notice period, or part thereof;

“Notified Sub-contractor” a Sub-contractor notified to the Customer by the Supplier to whom Transferring Customer Employees and/or Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;

“PCSPS” the Principal Civil Service Pension Scheme available to employees of the civil service and employees of bodies under the Superannuation Act 1972, as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Scheme and (ii) Death Benefits Scheme; the Civil Service Additional Voluntary Contribution Scheme; and the 2015 New Scheme (with effect from a date to be notified to the Supplier by the Minister for the Cabinet Office);

“PCSPS Fair Deal Employees” those Transferring Customer Employees who are on the Relevant Transfer Date entitled to the protection of New Fair Deal in respect of their membership of (or eligibility for membership of) the PCSPS and any Transferring Former Supplier Employees who originally transferred pursuant to a Relevant Transfer under the Employment Regulations (or the predecessor legislation to the Employment Regulations), from employment with a public sector employer and who were once eligible to participate in the PCSPS and who at the Relevant Transfer Date become entitled to the protection of New Fair Deal;

“Redundancy” has the meaning set out in section 139 (1) of the Employment Rights Act 1996;

“Redundancy Costs” means:

- (a) any statutory redundancy payment and/or any enhanced contractual redundancy payment and/or any enhanced pension benefits payable as a consequence of Redundancy to which a Redundant Employee is legally entitled; and/or
- (b) any Notice Payment in respect of any Redundant Employee

but excluding all other costs, liabilities or expenses, including without limitation all those which arise from the failure of the Supplier or Notified Sub-contractor or Replacement Supplier or Replacement Supplier's Sub-contractor (as the case may be) to establish a potentially fair reason for the dismissal and those arising from the manner or mode of dismissal;

“Redundant Employee” means:

- (a) an employee of the Customer or the Former Supplier (as the case may be) who become an
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employee of the Supplier or Notified Sub-contractor pursuant to the Employment Regulations and whose employment with the Supplier or Notified Sub-contractor is terminated by reason of Redundancy within 3 months following the Relevant Transfer Date; and/or

- (b) those employees of the Supplier who become employees of the Replacement Supplier and/or the Replacement Supplier's Sub-contractor pursuant to the Employment Regulations and whose employment with the Replacement Supplier and/or the Replacement Supplier's Sub-contractor is terminated by reason of Redundancy within 3 months following the Service Transfer Date

as the case may be;

"Replacement Services"	any services which are the same as or substantially similar to any of the Services and which the Customer or a Service Recipient receives in substitution for any of the Services following the expiry or termination or Partial Termination of this Call-Off Agreement, whether those services are provided by the Customer or a Service Recipient internally and/or by any third party;
"Replacement Sub-contractor"	a sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);
"Replacement Supplier"	any third party service provider of Replacement Services appointed by the Customer from time to time (or where the Customer or a Service Recipient is providing replacement Services for its own account, the Customer or Service Recipient);
"Relevant Transfer"	a transfer of employment to which the Employment Regulations applies;
"Relevant Transfer Date"	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
"Service Transfer"	any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-contractor to a Replacement Supplier or a Replacement Sub-contractor;
"Service Transfer Date"	the date of a Service Transfer;
"Supplier Staffing Information"	in relation to all persons identified on the Supplier's Provisional Personnel List or Supplier's Final Personnel List, as the case may be, such information as the Customer may reasonably request (subject to all applicable provisions of the DPA), but including in an anonymised format: (a) their ages, dates of commencement of employment or

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engagement and gender;

- (b) details of whether they are employed, self employed contractors or consultants, agency workers or otherwise;
- (c) the identity of the employer or relevant contracting Party;
- (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (e) their wages, salaries and profit sharing arrangements as applicable;
- (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- (j) any other "employee liability information" as such term is defined in regulation 11 of the Employment Regulations;

"Supplier's Final Supplier Personnel List"

a list provided by the Supplier of all Supplier Personnel who will transfer under the Employment Regulations on the Relevant Transfer Date;

"Supplier's Provisional Supplier Personnel List"

a list prepared and updated by the Supplier of all Supplier Personnel who are engaged in or wholly or mainly assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier;

"Transferring Customer Employees"

those employees of the Customer to whom the Employment Regulations will apply on the Relevant Transfer Date;

"Transferring Customer Employees List"

has the meaning given at paragraph 2.3 of Part A of schedule 5.1

"Transferring Former Supplier Employees"

in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date;

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“Transferring Former Supplier Employees List”	has the meaning given at paragraph 2.3 of Part B of schedule 5.1; and
“Transferring Supplier Employees”	those employees of the Supplier and/or the Supplier’s Sub-contractors to whom the Employment Regulations will apply on the Service Transfer Date.

2. INTERPRETATION

- 2.1 References in this Schedule to the Supplier shall include any relevant Sub-contractor providing any of the Services.
- 2.2 References in this Schedule to the Replacement Supplier shall include any relevant Sub-contractor providing any services which are the same as or similar to the Services.
- 2.3 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. Where any provision of the Admission Agreement or the LGPS Admission Agreement allows for amounts to be deducted from charges for non-payment of sums in relation to LGPS, non-payment by a Sub-contractor shall be treated as non-payment by the Supplier.
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PART A

Relevant Transfer of Transferring Customer Employees at commencement of Services/entering into a Service Request

1. RELEVANT TRANSFERS

- 1.1 The Customer and the Supplier agree that:
- (a) where the commencement of the provision of the Services or of each relevant part of the Services or the entering into of a Service Request (as the case may be) constitutes a Relevant Transfer in relation to any Transferring Customer Employees, the provisions of this Part A will apply; and
 - (b) as a result of the operation of the Employment Regulations, subject to regulation 4(7) 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).
- 1.3 The Customer agrees that as soon as reasonably practicable following the date of this Agreement (and at least 20 Working Days prior to the Relevant Transfer Date) it shall provide in a suitably anonymised format so as to comply with the DPA, to the Supplier or at the direction of the Supplier to any Notified Sub-contractor a final list of the names of all Transferring Customer Employees which shall be complete, accurate and up to date in all material respects (the “**Transferring Customer Employees List**”) together with the Customer Staffing Information and the Customer shall notify the Supplier or if so directed any Notified Sub-contractor of any changes to the Transferring Customer Employees List prior to the Relevant Transfer Date.
- 1.4 The Customer agrees that it shall not, on or after the date of this Agreement, assign any person to the provision of the Services who is not listed as a Transferring Customer Employee and shall not without the approval of the Supplier (not to be unreasonably withheld or delayed):
- (a) replace or re-deploy any such Transferring Customer Employee 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 or permit any material changes to the terms and conditions of employment of the Transferring Customer Employees (including any payments connected with the termination of employment);
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- (c) increase the proportion of working time spent on the Services (or the relevant part of the Services) by any person 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 such Transferring Customer Employee;
- (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 such Transferring Customer Employee save by due disciplinary process,

and shall promptly notify the Supplier or, at the direction of the Supplier, any Sub-contractor of any notice to terminate employment given by the Customer or received from any such Transferring Customer Employee regardless of when such notice takes effect.

- 1.5 The Customer shall provide all reasonable cooperation and assistance to the Supplier and/or any Sub-contractor to ensure the smooth transfer of the Transferring Customer Employees on the Relevant Transfer Date including providing sufficient information in advance of the Relevant Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Customer Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Relevant Transfer Date, the Customer shall provide to the Supplier or, at the direction of the Supplier, to any Sub-contractor (as appropriate), in respect of each Transferring Customer 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. **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:

- (a) any act or omission by the Customer whether occurring before on or after the Relevant Transfer Date;
 - (b) the breach or non-observance by the Customer before the Relevant Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Customer Employees; and/or
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- (ii) any custom or practice in respect of any Transferring Customer Employees which the Customer is contractually bound to honour;
 - (c) 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;
 - (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 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
 - (ii) 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.
 - (e) 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;
 - (f) 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
 - (g) 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:
- (a) 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
 - (b) arising from the failure by the Supplier or any Sub-contractor to comply with its obligations under the Employment Regulations.
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- 2.3 If any person who is not identified by the Customer as a Transferring Customer Employee on the Transferring Customer Employees List 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:
- (a) the Supplier shall, or shall procure that the Notified Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Customer; and
 - (b) the Customer 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 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(b) 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 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 Supplier and/or any Notified Sub-contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
- 2.6 Subject to the 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 (including, for the avoidance of doubt, the costs incurred by the Supplier and/or any Notified Sub-contractor in employing such persons from the Relevant Transfer Date up to the date of termination) 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:
- (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,
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in any case in relation to any alleged act or omission of the Supplier and/or any Sub-contractor; or

- (ii) 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
 - (b) shall apply only where the notification referred to in paragraph 2.3(a) is made by the Supplier and/or any Notified Sub-contractor (as appropriate) to the Customer within 6 months of the applicable Relevant Transfer Date; and
 - (c) shall not apply where any employee transferring in accordance with paragraph 2.3 above is able to be designated as a Redundant Employee and therefore treated in accordance with the provisions of paragraph 5 below.
- 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, or otherwise dismissed in accordance with the provisions of paragraph 5 below, 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:
- (a) any act or omission by the Supplier or any Sub-contractor whether occurring before, on or after the Relevant Transfer Date;
 - (b) the breach or non-observance by the Supplier or any Sub-contractor on or after the Relevant Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Customer Employees; and/or
 - (ii) any custom or practice in respect of any Transferring Customer Employees which the Supplier or any Sub-contractor is contractually bound to honour;
 - (c) 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;
 - (d) 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;
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- (e) 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;
 - (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 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
 - (ii) subject to paragraph 2.6 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;
 - (g) 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
 - (h) 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.
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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 necessary to enable the Supplier and each Notified Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

5. **REDUNDANT EMPLOYEES**

- 5.1 The Supplier shall, and shall procure that any Notified Sub-contractor shall, as soon as reasonably practicable following the Relevant Transfer Date, provide details to the Customer of any Transferring Customer Employee whom the Supplier and/or the relevant Notified Sub-contractor reasonably anticipates may be a Redundant Employee.
- 5.2 The Customer shall, subject to the remaining provisions of this paragraph 5, pay or reimburse to the Supplier and/or the Notified Sub-contractor the Redundancy Costs.
- 5.3 The Customer shall, subject to the Supplier's and/or the Notified Sub-contractor's compliance with the provisions of paragraph 5, make available the funds to cover the Redundancy Costs within an appropriate timeframe agreed by the parties to enable the Redundancy Costs to be paid to the Redundant Employees in a timely manner. Where the Customer is reimbursing the Supplier and/or the Notified Sub-contractor in respect of Redundancy Costs already paid by the Supplier and/or the Notified Sub-contractor, the Customer shall make such payment within 60 days of the Customer confirming to the Supplier and/or the Notified Sub-contractor that it is satisfied that the payments requested fall within the category of Redundancy Costs under paragraph 5.6 below. The Customer shall not unreasonably withhold or delay the making of its confirmation in accordance with this paragraph 5.3.
- 5.4 The Customer shall not be liable for any increase in the Redundancy Costs payable to any Redundant Employee where the increase to the Redundancy Costs results from any changes made by the Supplier or the Notified Sub-contractor to the terms and conditions of employment of any Redundant Employee which take effect on or after the Relevant Transfer Date.
- 5.5 The Supplier shall and shall procure that the Notified Sub-contractor shall comply with Law and applicable procedures in respect of implementing any redundancies and shall have a duty to mitigate its or their Redundancy Costs.
- 5.6 When claiming payment for any sums under this paragraph 5, the Supplier shall and shall procure that the Notified Sub-contractor shall forward to the Customer such evidence as the Customer reasonably requests to evidence to the Customer's reasonable satisfaction that the payments claimed by the Supplier and/or the Notified Sub-contractor fall within the category of Redundancy Costs and shall include (but not be limited to) providing evidence:
- (a) of the identity of the Redundant Employees
 - (b) that the Redundant Employees were dismissed by reason of Redundancy;
 - (c) of the contractual entitlements of any Redundant Employee;
 - (d) to demonstrate that the Notice Payments claimed are payable;
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- (e) such information relating to pay, benefits and other entitlements as may be necessary for the Customer to verify the Redundancy Costs.

6. **PRINCIPLES OF GOOD EMPLOYMENT PRACTICE**

- 6.1 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 and any of its Sub-contractors of employees whose employment begins after the Relevant Transfer Date, and the Supplier undertakes, and shall procure that each Sub-contractor undertakes, to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.
- 6.2 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:
 - (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.
- 6.3 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in paragraphs 6.1 or 6.2 shall be agreed in accordance with the Change Control Procedure.

7. **PENSIONS**

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

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ANNEX TO PART A

PENSIONS

1 PURPOSE OF THIS ANNEX

- 1.1 This Annex sets out the Parties' respective rights and obligations in relation to the provision of pension benefits and treatment of pension benefits deriving from past service for Fair Deal Employees who are involved in the delivery of the Services
- 1.2 In respect of any employees who are Fair Deal Employees but are not PCSPS Fair Deal Employees or LGPS Pensionable Employees, the Supplier shall comply with the Principles of Good Employment Practice set out in paragraph 6 of part A above and shall enter into such specific terms relating to the provisions of pension benefits and treatment of pension benefits deriving from past service as may be reasonably required by the Customer to give effect to New Fair Deal, as applicable.
- 1.3 This Annex is comprised of two parts:
- (a) Part 1 of this Annex is applicable to PCSPS Fair Deal Employees; and
 - (b) Part 2 of this Annex is applicable to LGPS Pensionable Employees.

PART 1 - PCSPS

2 PARTICIPATION

- 1.4 The Supplier undertakes to enter into the Admission Agreement.
- 1.5 The Supplier and the Customer undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Supplier to participate in the PCSPS in respect of the PCSPS Fair Deal Employees.
- 1.6 The Supplier shall bear its own costs and all costs that the Customer reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Supplier participating in the PCSPS.

2 FUTURE SERVICE BENEFITS

- 2.1 The Supplier shall procure that the PCSPS Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the PCSPS that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Supplier shall procure that the PCSPS Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of PCSPS for service from (and including) the Relevant Transfer Date.
- 2.2 The Supplier undertakes that should it cease to participate in the PCSPS for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the Customer, provide to any PCSPS 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 Customer in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the PCSPS at the relevant date.
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- 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 Supplier undertakes to pay to the PCSPS all such amounts as are due under the Admission Agreement and shall deduct and pay to the PCSPS such employee contributions as are required by the PCSPS.
- 3.2 The Supplier shall indemnify and keep indemnified the Customer on demand against any claim by, payment to, or loss incurred by, the PCSPS in respect of the failure to account to the PCSPS for payments received and the non-payment or the late payment of any sum payable by the Supplier to or in respect of the PCSPS.

4 PROVISION OF INFORMATION

The Supplier and the Customer respectively undertake to each other:

- (a) to provide all information which the other Party may reasonably request concerning matters (i) referred to in Part 1 of 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 PCSPS 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 (such consent not to be unreasonably withheld or delayed).

5 INDEMNITY

- 5.1 The Supplier undertakes to the Customer to indemnify and keep indemnified the Customer on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the PCSPS Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the PCSPS.
- 5.2 The Customer undertakes to the Supplier to indemnify and keep indemnified the Supplier on demand from and against all and any Losses whatsoever arising out of or in connection with any failure by the Customer to comply with its obligations during any period of its participation in the PCSPS prior to the Relevant Transfer Date.

6 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.

7 SUBSEQUENT TRANSFERS

The Supplier shall:

- (a) not adversely affect pension rights accrued by any PCSPS Fair Deal Employee in the period ending on the date of the relevant future transfer;
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- (b) provide all such co-operation and assistance as the PCSPS and the Replacement Supplier and/or the Customer may reasonably require to enable the Replacement Supplier to participate in the PCSPS in respect of any PCSPS Fair Deal Employees; 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 Supplier or the Customer, 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 Customer (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.

PART 2 - LGPS

1 PARTICIPATION IN LGPS

1.1 Before the Relevant Transfer Date, the Supplier shall:

- (a) undertake a risk assessment to the satisfaction of the Customer and the Administering Authority (in accordance with the requirements of paragraph 6 of Part 3 of Schedule 2 of the LGPS Regulations) to identify the level of risk arising whilst an admitted body by reason of the Supplier's insolvency, winding up or liquidation; and
- (b) procure that it shall as soon as reasonably practicable obtain and implement any indemnity or bond or guarantee required by the Administering Authority.

1.2 Subject to the Supplier complying with its obligations under paragraph 1.1, the Customer undertakes to the Supplier that it shall procure that the Administering Authority shall execute an LGPS Admission Agreement so that the Supplier will become an Admission Body with effect on and from the Relevant Transfer Date.

1.3 The Supplier and the Customer undertake to do all such things and execute any documents (including the LGPS Admission Agreement) as may be required to enable the Supplier to participate in the LGPS in respect of all of the Supplier's LGPS Pensionable Employees, including where necessary documents with retroactive terms for membership of the LGPS for the period, if any, after the Relevant Transfer Date and prior to the effective date of such documents.

1.4 The costs the Parties reasonably incurred in connection with the negotiation, preparation and execution of documents to facilitate the Supplier participating in the LGPS shall be borne by the Supplier.

2 FUTURE SERVICE BENEFITS IN LGPS

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- 2.1 The Supplier shall procure that, on and from the Relevant Transfer Date, each LGPS Pensionable Employee shall be either automatically enrolled in or offered continued membership of the Fund and shall continue to accrue or, as the case may be, accrue benefits in accordance with the provisions governing the Fund for service on or after the Relevant Transfer Date. The Supplier shall not automatically enrol for the purposes of the Pensions Act 2008 any LGPS Pensionable Employee who is eligible to join the Fund in any pension scheme other than the Fund.
- 2.2 The Supplier undertakes that should it cease to participate in the Fund for whatever reason at a time when it employs LGPS Pensionable Employees, that it will, at no extra cost to the Customer, provide to any LGPS Pensionable Employee who immediately prior to such cessation remained an LGPS Pensionable Employee with:
- (a) access to a registered occupational pension scheme (the "**Supplier's Scheme**") certified by the Government Actuary's Department or any actuary nominated by the Customer in accordance with relevant guidance produced by the Government Actuary's Department as providing future service benefits which are broadly comparable to those provided by the Fund at the relevant date; and
 - (b) the opportunity, where relevant, to transfer pension rights which are fully funded on a past service reserve basis from the LGPS to the Supplier's Scheme.
- 2.3 The Supplier shall procure that so long as it remains an Admission Body in the Fund it shall:
- (a) award to the Transferring Employees who are LGPS Pensionable Employees discretionary benefits (where permitted) under the LGPS Regulations in circumstances where those Transferring Employees would have received such benefits had they still been employed by the Customer on the basis of the Customer's written policy in relation to such benefits effective from time to time (which shall be provided by the Customer to the Supplier upon request);
 - (b) award to the Transferring Employees who are LGPS Pensionable Employees benefits (where permitted) under the Compensation Regulations in circumstances where those Transferring Employees would have received such benefits had they still been employed by the Customer. Where such benefits under this paragraph 2.3(b) are of a discretionary nature, they shall be awarded on the basis of the Customer's written policy in relation to such benefits effective from time to time (which shall be provided by the Customer to the Supplier upon request). Where the payment of such benefits is not, for whatever reason, possible the Supplier shall compensate the Transferring Employees in a manner which is broadly comparable or equivalent in cash terms.
- 2.4 The Supplier shall be responsible for meeting all costs associated with the award of the benefits referred to in paragraphs 2.3.

3 FUNDING

- 3.1 The Supplier undertakes to pay to the Fund all such sums, including employer contributions, as are provided for in the LGPS Admission Agreement and shall deduct and pay to the Fund such employee contributions as are required by the Fund. For the purposes of calculating the employer's contribution rate, any termination payment and any other sums due to the Administering Authority under the LGPS Admission Agreement, the Customer shall ensure
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that the LGPS Pensionable Employees' past service benefits accrued before the Relevant Transfer Date are fully funded as at the Relevant Transfer Date, as determined by the Relevant Actuary.

- 3.2 The Supplier shall not without the agreement in writing of the Customer consent to, instigate, encourage or assist any event which could impose on the Customer, the Administering Authority or the Fund a cost in respect of any LGPS Pensionable Employee which would not have arisen otherwise or which is greater than the cost which would have been payable had that consent, instigation, encouragement or assistance not been given by the Customer.
- 3.3 The Supplier shall indemnify and keep indemnified the Customer on demand against any claim by, payment to, or loss incurred by the Fund in respect of the non-payment or the late payment or the failure to account for any sum payable by the Supplier to or in respect of the Fund.
- 3.4 Where the LGPS Admission Agreement is terminated or otherwise ceases to have effect, the Supplier shall be responsible for any unpaid sums, including contributions due under the LGPS Admission Agreement up to the date of termination of the LGPS Admission Agreement.

[Drafting note: Funding arrangements in addition to Clause 3 above relating to LGPS pension costs (for example, employer contribution rates and/or termination costs etc) to be negotiated between the Supplier and the Customer. Any special terms that are agreed should be documented accordingly in advance of the contract being executed.]

4 PROVISION OF INFORMATION

- 4.1 The Supplier undertakes to the Customer:
- (a) to provide all information which the Customer or the Administering Authority may reasonably request from the Supplier concerning matters referred to in Part 2 of this Annex and the information shall be supplied as expeditiously as possible; and
 - (b) it shall not issue any announcements to the LGPS Pensionable Employees concerning the matters stated in this Part 2 of this Annex without the consent in writing of the Customer or the Administering Authority (such consent not to be unreasonably withheld or delayed).

5 INDEMNITIES

- 5.1 The Supplier undertakes to the Customer to indemnify and keep indemnified the Customer on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the LGPS Pensionable Employees arising in respect of any failure by the Supplier to comply with its obligations during any period of its actual or retrospective deemed participation in the Fund on or after the Relevant Transfer Date.
- 5.2 The Customer undertakes to the Supplier to indemnify and keep indemnified the Supplier on demand from and against all and any Losses whatsoever arising out of or in connection with any failure by the Customer to comply with its obligations during any period of its participation in the Fund prior to the Relevant Transfer Date.

6 SUPPLIER OBLIGATIONS

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- 6.1 The Supplier shall comply with the requirements of the Pensions Act 2008 and the Transfer of Employment (Pension Protection) Regulations 2005 in relation to all relevant employees and with the LGPS Admission Agreement in relation to re-enrolment in the LGPS of any relevant employees who are LGPS Pensionable Employees.
- 6.2 The obligations of the Supplier under Part 2 of this Annex shall be directly enforceable by an affected employee against the Supplier to the extent required by the Best Value Authorities Staff Transfers (Pensions) Direction 2007, and the Customer and the Supplier agree that any affected employee shall have the right to enforce in his own right any obligation owed to him by the Supplier under the Contracts (Rights of Third Parties) Act 1999.

7 TERMINATION OF THIS AGREEMENT

- 7.1 The Supplier shall do and/or provide all such acts and things as may, in the reasonable opinion of the Customer or a Service Recipient be necessary or desirable to enable the Framework Authority, the Customer or a Service Recipient and the Replacement Supplier in relation to the LGPS Pensionable Employees who are subject to a Relevant Transfer:
- (a) to meet the terms of any applicable legislation or codes of practice or guidance or policies issued by any statutory authority;
 - (b) to enable the Replacement Supplier to provide ongoing pension accrual at the prevailing level of accrual for each LGPS Pensionable Employee in the Fund or to provide access to a registered occupational pension scheme (the "Replacement Supplier's Scheme") certified by the Government Actuary's Department or any actuary nominated by the Customer in accordance with relevant guidance produced by the Government Actuary's Department as providing future service benefits which are broadly comparable to those provided by the Fund for the LGPS Pensionable Employees immediately prior to the Relevant Transfer Date; and
 - (c) to provide the opportunity, where relevant, to transfer pension rights which are fully funded on a past service reserve basis from the Fund to the Replacement Supplier's Scheme.
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PART B

Transferring Former Supplier Employees at commencement of Services

1 RELEVANT TRANSFERS

1.1 The Customer and the Supplier agree that:

- (a) Where the commencement of the provision of the Services or of any relevant part of the Services or the entering into of a Service Request (as the case may be) constitutes a Relevant Transfer in relation to any Transferring Former Supplier Employees the provisions of this Part B will apply; and
- (b) as a result of the operation of the Employment Regulations, subject to regulation 4(7) 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 as soon as reasonably practicable following the date of this Agreement (and at least 20 Working Days prior to the Relevant Transfer Date) provide in a suitably anonymised format so as to comply with the DPA, to the Supplier or at the direction of the Supplier to any Notified Sub-contractor a final list of the names of all Transferring Former Supplier Employees which shall be complete, accurate and up to date in all material respects (the “**Transferring Former Supplier Employees List**”) together with the Transferring Former Supplier Staffing Information and the Customer shall procure that each Former Supplier shall notify the Supplier or if so directed any Notified Sub-contractor of any changes to the Transferring Former Supplier Employees List prior to the Relevant Transfer Date.

1.4 The Customer shall procure that each Former Supplier shall not, on or after the date of this Agreement, assign any person to the provision of the Services who is not listed as a Transferring Former Supplier Employee and shall not without the approval of the Supplier (not to be unreasonably withheld or delayed):

- (a) replace or re-deploy any such Transferring Former Supplier Employee 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 or permit any material changes to the terms and conditions of employment of the Transferring Former Supplier Employees (including any payments connected with the termination of employment);
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- (c) increase the proportion of working time spent on the Services (or the relevant part of the Services) by any person 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 such Transferring Former Supplier Employee;
- (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 such Transferring Former Supplier Employee save by due disciplinary process,

and shall procure that each Former Supplier shall promptly notify the Supplier or, at the direction of the Supplier, any Sub-contractor of any notice to terminate employment given by the Former Supplier or received from any such Transferring Former Supplier Employee regardless of when such notice takes effect.

- 1.5 The Customer shall procure that each Former Supplier shall provide all reasonable cooperation and assistance to the Supplier and/or any Sub-contractor to ensure the smooth transfer of the Transferring Former Supplier Employees on the Relevant Transfer Date including providing sufficient information in advance of the Relevant Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Former Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Relevant Transfer Date, the Customer shall procure that each Former Supplier shall provide to the Supplier or, at the direction of the Supplier, to any Sub-contractor (as appropriate), in respect of each Transferring Former Supplier 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 **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:
- (a) any act or omission by the Former Supplier arising before the Relevant Transfer Date;
 - (b) the breach or non-observance by the Former Supplier whether occurring before on or after the Relevant Transfer Date of:
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- (i) any collective agreement applicable to the Transferring Former Supplier Employees; and/or
 - (ii) any custom or practice in respect of any Transferring Former Supplier Employees which the Former Supplier is contractually bound to honour;
 - (c) any claim by any trade union or other body or person representing any Transferring Former Supplier Employee arising from or connected with any failure by the Former Supplier to comply with any legal obligation to such trade union, body or person arising 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 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
 - (ii) in relation to any employee who is not a Transferring Former Supplier Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the 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;
 - (e) 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;
 - (f) 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 Agreement and/or the Employment Regulations and/or the Acquired Rights Directive; and
 - (g) 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:
- (a) arising out of the resignation of any Transferring Former Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier or any Sub-contractor to occur in the period from (and including) the Relevant Transfer Date; or
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- (b) arising from the failure by the Supplier and/or any Sub-contractor to comply with its obligations under the Employment Regulations.
 - 2.3 At least 20 Working Days prior to the Relevant Transfer Date the Customer shall procure that each Former Supplier provides to the Supplier or at the direction of the Supplier to any Notified Sub-contractor a final list of the names of all Transferring Former Supplier Employees which shall be complete, accurate in all material respects and up to date (the “**Transferring Former Supplier Employees List**”) and the Customer shall procure that the Transferring Former Supplier immediately notifies the Supplier or if so directed any Notified Sub-contractor of any changes to the Transferring Former Supplier Employees List prior to the Relevant Transfer Date.
 - 2.4 If any person who is not identified by the Customer as a Transferring Former Supplier Employee on the Transferring Former Supplier Employees List 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:
 - (a) the Supplier shall, or shall procure that the Notified Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Customer and, where required by the Customer, to the Former Supplier; and
 - (b) the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the 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.
 - 2.5 If an offer referred to in paragraph 2.3(b) 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.
 - 2.6 If by the end of the 15 Working Day period specified in paragraph 2.4(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 Supplier and/or any Notified Sub-contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
 - 2.7 Subject to the Supplier and/or any Notified Sub-contractor acting in accordance with the provisions of paragraphs 2.4 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 (including, for the avoidance of doubt, the costs incurred by the Supplier and/or any Notified Sub-contractor in employing such persons from the Relevant Transfer Date up to the date of termination) provided that the Supplier takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
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2.8 The indemnity in paragraph 2.7:

- (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 Supplier and/or any Sub-contractor; or
 - (ii) 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
- (b) shall apply only where the notification referred to in paragraph 2.3(a) 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; and
- (c) shall not apply where any employee transferring in accordance with paragraph 2.3 above is able to be designated as a Redundant Employee and therefore treated in accordance with the provisions of paragraph 5 below

2.9 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 2.6, or otherwise dismissed in accordance with the provisions of paragraph 5 below, 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:

- (a) any act or omission by the Supplier or any Sub-contractor whether occurring before, on or after the Relevant Transfer Date;
 - (b) the breach or non-observance by the Supplier or any Sub-contractor on or after the Relevant Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Former Supplier Employee; and/or
 - (ii) any custom or practice in respect of any Transferring Former Supplier Employees which the Supplier or any Sub-contractor is contractually bound to honour;
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- (c) any claim by any trade union or other body or person representing any Transferring Former Supplier Employees arising from or connected with any failure by the 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;
 - (d) 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;
 - (e) 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;
 - (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 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
 - (ii) subject to paragraph 2.6 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;
 - (g) 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
 - (h) any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the 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.
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- 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 (and the Customer shall procure that the Former Supplier fully co-operates with the Supplier in making and funding such apportionments).

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 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 **REDUNDANT EMPLOYEES**

- 5.1 The Supplier shall, and shall procure that any Notified Sub-contractor shall, as soon as reasonably practicable following the Relevant Transfer Date, provide details to the Customer of any Transferring Former Supplier Employee whom the Supplier or the relevant Notified Sub-contractor reasonably anticipates may become a Redundant Employee.
- 5.2 The Customer shall, subject to the remaining provisions of this paragraph, pay or reimburse to the Supplier or the Notified Sub-contractor, the Redundancy Costs.
- 5.3 The Customer shall, subject to the Supplier's or the Notified Sub-contractor's compliance with the provisions of this paragraph 5, make available the funds to cover the Redundancy Costs within an appropriate timeframe agreed by the parties to enable the Redundancy Costs to be paid to the Redundant Employees in a timely manner. Where the Customer is reimbursing the Supplier or a Notified Sub-contractor in respect of Redundancy Costs already paid by the Supplier or the Notified Sub-contractor, the Customer shall make such payment within 60 days of the Customer confirming to the Supplier that it is satisfied that the payments requested fall within the category of Redundancy Costs under paragraph 5.6 below.
- 5.4 The Customer shall not be liable for any increase in the Redundancy Costs payable to any Redundant Employee where the increase to the Redundancy Costs results from any changes made by the Supplier or the Notified Sub-contractor to the terms and conditions of employment of any Redundant Employee which take effect on or after the Relevant Transfer Date.
- 5.5 The Supplier shall and shall procure that the Notified Sub-contractor shall comply with Law and applicable procedures in respect of implementing any redundancies and shall have a duty to mitigate its or their Redundancy Costs.
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- 5.6 When claiming payment for any sums under this paragraph 5, the Supplier and shall procure that the Notified Sub-contractor shall forward to the Customer such evidence as the Customer reasonably requests to evidence to the Customer's reasonable satisfaction that the payments claimed by the Supplier fall within the category of Redundancy Costs and shall include (but not be limited to) providing evidence:
- (a) of the identity of the Redundant Employees
 - (b) that the Redundant Employees were dismissed by reason of Redundancy;
 - (c) of the contractual entitlements of any Redundant Employee;
 - (d) to demonstrate that the Notice Payments claimed are payable; and
 - (e) such information relating to pay, benefits and other entitlements as may be necessary for the Customer to verify the Redundancy Costs.

6 PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

- 6.1 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 respect of that Transferring Former Supplier Employee 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.
- 6.2 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.

7 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.

8 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.

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ANNEX TO PART B

PENSIONS

1 PURPOSE OF THIS ANNEX

- 1.1 This Annex sets out the Parties' respective rights and obligations in relation to the provision of pension benefits and treatment of pension benefits deriving from past service for Fair Deal Employees who are involved in the delivery of the Services.
- 1.2 In respect of any employees who are Fair Deal Employees but are not PCSPS Fair Deal Employees or LGPS Pensionable Employees, the Supplier shall comply with the Principles of Good Employment Practice set out in paragraph 6 and shall enter into such specific terms relating to the provisions of pension benefits and treatment of pension benefits deriving from past service as may be reasonably required by the Customer to give effect to New Fair Deal, as applicable.
- 1.3 This Annex is comprised of two parts:
- (a) Part 1 of this Annex is applicable to PCSPS Fair Deal Employees; and
 - (b) Part 2 of this Annex is applicable to LGPS Pensionable Employees.

PART 1 - PCSPS

2 PARTICIPATION

- 2.1 The Supplier and the Customer undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Supplier to participate in the PCSPS in respect of the PCSPS Fair Deal Employees.
- 2.2 The Supplier shall bear its own costs and all costs that the Customer reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Supplier participating in the PCSPS.

3 FUTURE SERVICE BENEFITS

- 3.1 If the Supplier is joining the PCSPS for the first time, the Supplier shall procure that the PCSPS Fair Deal Employees shall be either admitted to or offered continued membership of the relevant section of the PCSPS 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 PCSPS for service from (and including) the Relevant Transfer Date.
- 3.2 If staff have already been readmitted to the PCSPS, the Supplier shall procure that the PCSPS Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the PCSPS that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Supplier shall procure that the PCSPS Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of the PCSPS for service from (and including) the Relevant Transfer Date.
- 3.3 The Customer shall procure that the Former Supplier will offer the PCSPS Fair Deal Employees the option to transfer to the PCSPS any benefits that they accrued under the Former Supplier's broadly comparable pension scheme prior to the Relevant Transfer Date. If
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the PCSPS determines that there is any shortfall in the funding of such transferred benefits, the Customer shall procure that the shortfall is paid and undertakes to the Supplier to indemnify and keep indemnified the Supplier on demand in respect of such shortfall.

- 3.4 The Supplier undertakes that should it cease to participate in the PCSPS for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the Customer, provide to any PCSPS 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 Customer in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the PCSPS at the relevant date.
- 3.5 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.

4 FUNDING

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

5 PROVISION OF INFORMATION

The Supplier and the Customer respectively undertake to each other:

- (a) to provide all information which the other Party may reasonably request concerning matters (i) referred to in Part 1 of 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 PCSPS Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in Part 1 of this Annex without the consent in writing of the other Party (such consent not to be unreasonably withheld or delayed).

6 INDEMNITY

- 6.1 The Supplier undertakes to the Customer to indemnify and keep indemnified the Customer on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the PCSPS Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the PCSPS.
- 6.2 The Customer undertakes to the Supplier to indemnify and keep indemnified the Supplier on demand from and against all and any Losses whatsoever arising out of or in connection with any failure by the Customer to comply with its obligations during any period of its participation in the PCSPS prior to the Relevant Transfer Date.
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7 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.

8 SUBSEQUENT TRANSFERS

The Supplier shall:

- (a) not adversely affect pension rights accrued by any PCSPS Fair Deal Employee in the period ending on the date of the relevant future transfer;
- (b) provide all such co-operation and assistance as the PCSPS and the Replacement Supplier and/or the Customer may reasonably require to enable the Replacement Supplier to participate in the PCSPS in respect of any PCSPS Fair Deal Employee; 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 Supplier or the Customer, 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 Customer (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.

PART 2 - LGPS

1. PARTICIPATION IN LGPS

1.1 Before the Relevant Transfer Date, the Supplier shall:

- (a) undertake a risk assessment to the satisfaction of the Customer and the Administering Authority (in accordance with the requirements of paragraph 6 of Part 3 of Schedule 2 of the LGPS Regulations) to identify the level of risk arising whilst an admitted body by reason of the Supplier's insolvency, winding up or liquidation; and
- (b) procure that it shall as soon as reasonably practicable obtain and implement any indemnity or bond or guarantee required by the Administering Authority.

1.2 Subject to the Supplier complying with its obligations under paragraph , the Customer undertakes to the Supplier that it shall procure that the Administering Authority shall execute an LGPS Admission Agreement so that the Supplier will become an Admission Body with effect on and from the Relevant Transfer Date.

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1.3 The Supplier and the Customer undertake to do all such things and execute any documents (including the LGPS Admission Agreement) as may be required to enable the Supplier to participate in the LGPS in respect of all of the Supplier's LGPS Pensionable Employees, including where necessary documents with retroactive terms for membership of the LGPS for the period, if any, after the Relevant Transfer Date and prior to the effective date of such documents.

1.4 The costs the Parties reasonably incurred in connection with the negotiation, preparation and execution of documents to facilitate the Supplier participating in the LGPS shall be borne by the Supplier.

2. FUTURE SERVICE BENEFITS IN LGPS

2.1 If the Supplier is joining the Fund for the first time, the Supplier shall procure that, on and from the Relevant Transfer Date, each LGPS Pensionable Employee shall be either automatically enrolled in or offered continued membership of the Fund and shall continue to accrue or, as the case may be, accrue benefits in accordance with the provisions governing the Fund for service on or after the Relevant Transfer Date. The Supplier shall not automatically enrol for the purposes of the Pensions Act 2008 any Eligible Employee who is an LGPS Pensionable Employee eligible to join the Fund in any pension scheme other than the Fund.

2.2 If staff have already been re-admitted to the relevant Fund, the Supplier shall procure that the LGPS Pensionable employees shall either be admitted to, or offered continued membership of, the relevant Fund that they currently contribute to, or were eligible to join immediate prior to the Relevant Transfer Date and the Supplier shall procure that the LGPS Pensionable Employees continue to accrue benefits in accordance with the provisions governing the relevant Fund for service from (and including) the Relevant Transfer Date.

2.3 The Supplier undertakes that should it cease to participate in the Fund for whatever reason at a time when it has Eligible Employees who are LGPS Pensionable Employees, that it will, at no extra cost to the Customer, provide to any LGPS Pensionable Employee who immediately prior to such cessation remained an LGPS Pensionable Employee with:

- (a) access to a registered occupational pension scheme (the "**Supplier's Scheme**") certified by the Government Actuary's Department or any actuary nominated by the Customer in accordance with relevant guidance produced by the Government Actuary's Department as providing future service benefits which are broadly comparable to those provided by the Fund at the relevant date; and
- (b) the opportunity, where relevant, to transfer pension rights which are fully funded on a past service reserve basis from the Fund to the Supplier's Scheme.

2.4 The Supplier shall procure that so long as it remains an Admission Body in the Fund it shall:

- (a) award to the Transferring Employees who are LGPS Pensionable Employees discretionary benefits (where permitted) under the LGPS Regulations in circumstances where those Transferring Employees would have received such benefits had they still been employed by the Customer on the basis of the
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Customer's written policy in relation to such benefits effective from time to time (which shall be provided by the Customer to the Supplier upon request);

- (b) award to the Transferring Employees who are LGPS Pensionable Employees benefits (where permitted) under the Compensation Regulations in circumstances where those Transferring Employees would have received such benefits had they still been employed by the Customer. Where such benefits under this paragraph 2.4(b) are of a discretionary nature, they shall be awarded on the basis of the Customer's written policy in relation to such benefits effective from time to time (which shall be provided by the Customer to the Supplier upon request). Where the payment of such benefits is not, for whatever reason, possible the Supplier shall compensate the Transferring Employees in a manner which is broadly comparable or equivalent in cash terms.

The Supplier shall be responsible for meeting all costs associated with the award of the benefits referred to in paragraph 2.4.

3. FUNDING

- 3.1 The Supplier undertakes to pay to the Fund all such sums, including employer contributions, as are provided for in the LGPS Admission Agreement and shall deduct and pay to the Fund such employee contributions as are required by the Fund. For the purposes of calculating the employer's contribution rate, any termination payment and any other sums due to the Administering Authority under the LGPS Admission Agreement, the Customer shall ensure that the LGPS Pensionable Employees' past service benefits accrued before the Relevant Transfer Date are fully funded as at the Relevant Transfer Date, as determined by the Relevant Actuary.
- 3.2 The Supplier shall not without the agreement in writing of the Customer consent to, instigate, encourage or assist any event which could impose on the Customer, the Administering Authority or the Fund a cost in respect of any LGPS Pensionable Employee which would not have arisen otherwise or which is greater than the cost which would have been payable had that consent, instigation, encouragement or assistance not been given by the Customer.
- 3.3 The Supplier shall indemnify and keep indemnified the Customer on demand against any claim by, payment to, or loss incurred by the Fund in respect of the non-payment or the late payment or the failure to account for any sum payable by the Supplier to or in respect of the Fund.
- 3.4 Where the LGPS Admission Agreement is terminated or otherwise ceases to have effect, the Supplier shall be responsible for any unpaid sums, including contributions due under the LGPS Admission Agreement up to the date of termination of the LGPS Admission Agreement.

[Drafting note: Funding arrangements in addition to Clause 3 above relating to LGPS pension costs (for example, employer contribution rates and/or termination costs etc) to be negotiated between the Supplier and the Customer. Any special terms that are agreed should be documented accordingly in advance of the contract being executed.]

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4. PROVISION OF INFORMATION

4.1 The Supplier undertakes to the Customer:

- (a) to provide all information which the Customer or the Administering Authority may reasonably request from the Supplier concerning matters referred to in Part 2 of this Annex and the information shall be supplied as expeditiously as possible; and
- (b) it shall not issue any announcements to the LGPS Pensionable Employees concerning the matters stated in Part 2 of this Annex without the consent in writing of the Customer or the Administering Authority (such consent not to be unreasonably withheld or delayed).

5. INDEMNITIES

5.1 The Supplier undertakes to the Customer to indemnify and keep indemnified the Customer on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the LGPS Pensionable Employees arising in respect of any failure by the Supplier to comply with its obligations during any period of its actual or retrospective deemed participation in the Fund on or after the Relevant Transfer Date.

5.2 The Customer undertakes to the Supplier to indemnify and keep indemnified the Supplier on demand from and against all and any Losses whatsoever arising out of or in connection with any failure by the Customer to comply with its obligations during any period of its participation in Fund prior to the Relevant Transfer Date.

6. SUPPLIER OBLIGATIONS

6.1 The Supplier shall comply with the requirements of the Pensions Act 2008 and the Transfer of Employment (Pension Protection) Regulations 2005 in relation to all relevant employees and with the LGPS Admission Agreement in relation to re-enrolment in the LGPS of any relevant employees who are LGPS Pensionable Employees.

6.2 The obligations of the Supplier under Part 2 of this Annex shall be directly enforceable by an affected employee against the Supplier to the extent required by the Best Value Authorities Staff Transfers (Pensions) Direction 2007, and the Customer and the Supplier agree that any affected employee shall have the right to enforce in his own right any obligation owed to him by the Supplier under the Contracts (Rights of Third Parties) Act 1999.

7. TERMINATION OF THIS CALL-OFF AGREEMENT

7.1 The Supplier shall, and shall use all reasonable endeavours to procure that the managers of the Fund, do and/or provide all such acts and things as may, in the reasonable opinion of the Customer or a Service Recipient be necessary or desirable to enable the Framework Authority, the Customer or a Service Recipient and the Replacement Supplier in relation to the LGPS Pensionable Employees who are subject to a Relevant Transfer:

- (a) to meet the terms of any applicable legislation or codes of practice or guidance or policies issued by any statutory authority;
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- (b) to enable the Replacement Supplier to provide ongoing pension accrual at the prevailing level of accrual for each LGPS Pensionable Employee in the Fund or to provide access to a registered occupational pension scheme (the "Replacement Supplier's Scheme") certified by the Government Actuary's Department or any actuary nominated by the Customer in accordance with relevant guidance produced by the Government Actuary's Department as providing future service benefits which are broadly comparable to those provided by the Fund for the LGPS Pensionable Employees immediately prior to the Relevant Transfer Date; and
 - (c) to provide the opportunity, where relevant, to transfer pension rights which are fully funded on a past service reserve basis from the Fund to the Replacement Supplier's Scheme.
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PART C

No transfer of employees at commencement of Services

1 PROCEDURE IN THE EVENT OF NO 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:
- (a) 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
 - (b) the Customer and/or the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the 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(b) 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 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 Supplier 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 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:
- (a) 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 (including, for the avoidance of doubt, the costs incurred by the Supplier and/or any Notified Sub-contractor in employing such persons from the Relevant Transfer Date up to the date of termination) provided that the Supplier takes,
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or shall procure that the Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities; and

- (b) procure that the Former Supplier indemnifies the Supplier and/or any 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 15 Working Day period referred to 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:

- (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 Supplier and/or any Sub-contractor; or
 - (ii) 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
- (b) shall apply only where the notification referred to in paragraph 1.2(a) is made by the Supplier and/or any Sub-contractor to the Customer and, if applicable, Former Supplier within 6 months of the Call-Off Effective 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.

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PART D
EMPLOYMENT EXIT PROVISIONS

1 PRE-SERVICE TRANSFER OBLIGATIONS

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

- (a) receipt of a notification from the Customer 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; and
- (d) 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 20 Working 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:

- (a) the Supplier's Final Supplier Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and
- (b) 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(a), 1.1(b) and 1.1(c), 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):

- (a) 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;
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- (b) 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);
- (c) 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;
- (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 Supplier's Provisional Supplier Personnel List;
- (e) increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
- (f) terminate or give notice to terminate the employment or contracts of any persons on the 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:

- (a) the numbers of employees engaged in providing the Services;
- (b) the percentage of time spent by each employee engaged in providing the Services; and
- (c) 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 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:

- (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;
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- (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 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 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, subject to regulation 4(7) 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 (but not 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 Supplier Employees arising in respect of the period up to (but not 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 (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Sub-contractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Sub-contractor (as appropriate) and the Customer shall procure that the Replacement Supplier and/or Replacement Sub-contractor fully co-operates with the Supplier in making and funding such apportionments.
- 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:
- (a) any act or omission of the Supplier or any Sub-contractor whether occurring before, on or after the Service Transfer Date;
 - (b) the breach or non-observance by the Supplier or any Sub-contractor occurring on or before the Service Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Supplier Employees; and/or
 - (ii) 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;
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- (c) 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;
 - (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 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
 - (ii) 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;
 - (e) 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 (and including) the Service Transfer Date);
 - (f) 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 Agreement and/or the Employment Regulations and/or the Acquired Rights Directive; and
 - (g) 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:
- (a) 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
 - (b) arising from the Replacement Supplier's failure, and/or Replacement Sub-contractor's failure, to comply with its obligations under the Employment Regulations.
- 2.5 If any person who is not 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
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employment has been transferred from the Supplier or any Sub-contractor to the Replacement Supplier and/or Replacement Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:

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

2.6 If such offer is accepted, or if the situation has otherwise been resolved by the 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(b) has elapsed:

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

the Customer shall advise the Replacement Supplier and/or Replacement Sub-contractor, as appropriate that it may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

2.8 Subject to the Replacement Supplier and/or Replacement Sub-contractor acting in accordance with the provisions of paragraphs 2.5 to 2.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the 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 (including, for the avoidance of doubt, the costs incurred by the Replacement Supplier and/or Replacement Sub-contractor in employing such persons from the Relevant Transfer Date up to the date of termination) provided that the Replacement Supplier takes, or shall procure that the Replacement Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.9 The indemnity in paragraph 2.8:

- (a) shall not apply to:
 - (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,

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

- (ii) any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Sub-contractor neglected to follow a fair dismissal procedure; and
 - (b) shall apply only where the notification referred to in paragraph 2.5(a) is made by the Replacement Supplier and/or Replacement Sub-contractor to the Supplier within 6 months of the Service Transfer Date; and
 - (c) shall not apply where any employee transferring in accordance with paragraph 2.5 above is able to be designated as a Redundant Employee and therefore treated in accordance with the provisions of paragraph 3 below.
- 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, or otherwise dismissed in accordance with the provisions of paragraph 3 below, 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, 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.
- 2.12 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:
- (a) any act or omission of the Replacement Supplier and/or Replacement Sub-contractor whether occurring before, on or after the Service Transfer Date;
 - (b) the breach or non-observance by the Replacement Supplier and/or Replacement Sub-contractor on or after the Service Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Supplier Employees; and/or
 - (ii) 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;
 - (c) 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
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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;

- (d) any proposal by the Replacement Supplier and/or Replacement Sub-contractor to change the terms and conditions of employment or working conditions of any Transferring 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;
 - (e) 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 Relevant Transfer Date regarding the Service Transfer which has not been agreed in advance with the Supplier 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 Supplier Employee, 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) subject to paragraph 2.9 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 after the Service Transfer Date;
 - (g) a failure of the Replacement Supplier or Replacement Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period from (and including) the Service Transfer Date; and
 - (h) 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.
- 2.13 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 Relevant 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.
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3 REDUNDANT EMPLOYEES

- 3.1 The Replacement Supplier and/or the Replacement Sub-contractor shall, as soon as reasonably practicable following the Service Transfer Date, provide details to the Supplier of any Transferring Supplier Employees whom the Replacement Supplier and/or the Replacement Sub-contractor reasonably anticipates may be Redundant Employees.
- 3.2 The Supplier shall, subject to the remaining provisions of this paragraph 3, pay or reimburse to the Replacement Supplier and/or the Replacement Sub-contractor the Redundancy Costs.
- 3.3 The Supplier shall, subject to the Replacement Supplier's and/or the Replacement Sub-contractor's compliance with the provisions of this paragraph, make available the funds to cover the Redundancy Costs within an appropriate timeframe agreed by the parties to enable the Redundancy Costs to be paid to the Redundant Employees in a timely manner. Where the Supplier is reimbursing the Replacement Supplier and/or the Replacement Sub-contractor in respect of Redundancy Costs already paid by the Replacement Supplier and/or the Replacement Sub-contractor, the Supplier shall make such payment within 60 days of the Supplier confirming to the Replacement Supplier and/or the Replacement Sub-contractor that it is satisfied that the payments requested fall within the category of Redundancy Costs under paragraph 3.6 below.
- 3.4 The Supplier shall not be liable for any increase in the Redundancy Costs payable to any Redundant Employee where the increase to the Redundancy Costs results from any changes made by the Replacement Supplier or the Replacement Sub-contractor to the terms and conditions of employment of any Redundant Employee which take effect on or after the Service Transfer Date.
- 3.5 The Replacement Supplier and/or the Replacement Sub-contractor shall comply with Law and applicable procedures in respect of implementing any redundancies and shall have a duty to mitigate its Redundancy Costs.
- 3.6 When claiming payment for any sums under this paragraph 3, the Replacement Supplier and/or the Replacement Sub-contractor shall forward to the Supplier such evidence as the Supplier reasonably requests to evidence to the Supplier's reasonable satisfaction that the payments claimed by the Replacement Supplier and/or the Replacement Sub-contractor fall within the category of Redundancy Costs and shall include (but not be limited to) providing evidence:
- (a) of the identity of the Redundant Employees
 - (b) that the Redundant Employees were dismissed by reason of Redundancy;
 - (c) of the contractual entitlements of any Redundant Employee;
 - (d) to demonstrate that the Notice Payments claimed are payable;
 - (e) such information relating to pay, benefits and other entitlements as may be necessary for the Supplier to verify the Redundancy Costs.
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