**DYNAMIC FRAMEWORK**

**SCHEDULE 9.1A (FOR USE IN RESPECT OF DAY 1 SERVICES)**

**STAFF TRANSFER**

**This Schedule relates to the Authority ONLY commissioning the services under the DF. Where any other Participating Body is commissioning the services or the services are co-commissioned an alternative Relevant Staff Transfer Schedule may be included in the relevant Call-Off Contract.**

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| **VERSION** | **DATE** | **COMMENT** |
| 1.0 | 10 June 2020 | Initial Release |
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**SCHEDULE 9.1**

**STAFF TRANSFER**

1. **DEFINITIONS**

In this Schedule, the following definitions shall apply:-

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| 1. "**Former Authority Supplier**" | means a supplier supplying services to the Authority before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) under the terms of an amended and restated services agreement dated 1 February 2014 as amended from time to time |
| "**Former Authority Supplier Sub-contractor"** | means a sub-contractor (or any sub-contractor of any such sub-contractor or any other sub-contractor within the Former Authority Supplier's supply chain) of a Former Authority Supplier supplying services or discharging grant obligations 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) |
| 1. "**Former Supplier**" | means either Former Authority Supplier or Former Authority Supplier Sub-contractor or both as the context requires |
| 1. "**New Fair Deal**" | means the revised Fair Deal position set out in the HM Treasury guidance: "*Fair Deal for staff pensions: staff transfer from central government*" issued in October 2013 including:-   * 1. any amendments to that document immediately prior to the Relevant Transfer Date and   2. any similar pension protection in accordance with the Annexes D1-D2 inclusive to Part D of Schedule 9.1 (Staff Transfer) as notified to the Supplier by the Customer |
| 1. "**Notified Sub-contractor**" | means a Sub-contractor identified in Schedule 9.1 (Call-Off Staff Transfer) to whom Transferring Former Supplier Employees will transfer on a Relevant Transfer Date |
| 1. "**Relevant Transfer Date**" | means in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place or the Call-Off Commencement Date where the incumbent Former Supplier becomes the Supplier or a Sub-contractor of the Supplier under the Call-Off Contract |
| 1. "**Relevant Transfer**" | means a transfer of employment under a Staff Transfer Scheme and/or by operation of law |
| 1. "**Replacement Sub-contractor**" | means 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) |
| 1. "**Service Transfer Date**" | means the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires |
| 1. "**Service Transfer**" | means 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 |
| 1. "**Staff Transfer Scheme**" | means a staff transfer scheme made pursuant to Schedule 1 of the Offender Management Act or pursuant to any other power vested in the Authority |
| 1. "**Staffing Information**" | means in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier 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 if required:-   * 1. their ages, job title, dates of commencement of employment or engagement, gender and place of work;   2. details of whether they are employed, self employed contractors or consultants, workers, agency workers or otherwise;   3. the % of time they spend engaged in the provision of the Service (or part thereof) transferring;   4. the identity of the employer or relevant contracting Party;   5. their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;   6. their wages, salaries, bonuses and profit sharing arrangements as applicable;   7. 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;   8. any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);   9. details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;   10. 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   11. any other "employee liability information" as such term is defined in regulation 11 of the Employment Regulations |
| 1. "**Statutory Schemes**" | means the CSPS or the LGPS |
| 1. "**Supplier's Final Supplier Personnel List**" | means a list provided by the Supplier of all Supplier Personnel who will transfer via a Relevant Transfer on the Service Transfer Date |
| 1. "**Supplier's Provisional Supplier Personnel List**" | means a list prepared and updated by the Supplier of all Supplier Personnel who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier or any Sub-contractor of the Supplier (or any Sub-contractor of any such Sub-contractor) |
| 1. "**Transferring Former Supplier Employees**" | means in relation to a Former Supplier, those employees of the Former Supplier identified by the Customer as Transferring Former Supplier Employees who transfer via a Relevant Transfer on the Relevant Transfer Date |
| 1. "**Transferring Supplier Employees**" | means those employees of the Supplier and/or the Supplier's Sub-contractors to whom a Staff Transfer Scheme and/or the Employment Regulations will apply on the Service Transfer Date |

1. interpretation

Where a provision in this Schedule and Annexes 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.

**PART A**

**[NOT USED]**

**PART B: TRANSFERRING FORMER SUPPLIER EMPLOYEES AT COMMENCEMENT OF**

**SERVICES**

1. Relevant Transfers
   1. The Customer and the Supplier agree that:
      1. the commencement of the provision of the Services or of any relevant part of the Services will give rise to a Relevant Transfer in relation to the Transferring Former Supplier Employees;
      2. as a result of the Relevant Transfer, the contracts of employment between each Former Supplier and the Transferring Former Supplier Employees 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;
      3. the Supplier shall not, and shall procure that any Notified Sub-contractor shall not, at any time during the Call-Off Term of the Call-Off Contract sub-contract the provision of the Services, whether in whole or in part, without complying with the provisions of Clause 17 of the Framework Agreement.
   2. On or as soon as practicable after the Relevant Transfer Date, the Supplier shall, or shall procure that any Notified Sub-contractor shall, in conjunction with the Former Supplier issue to each Transferring Former Supplier Employee a notice of change of employer in a form to be agreed.
   3. The Customer shall procure that each Former Authority Supplier shall perform and discharge all its obligations in respect of its Transferring Former Supplier Employees in respect of the period up to (but not including) the Relevant Transfer Date and the Customer shall procure that each Former Authority Supplier shall pay to the Supplier an amount in respect of any bonus and incentive payments, holiday pay and any other remuneration payable after the Relevant Transfer Date in respect of an entitlement accrued to any extent for the period before the Relevant Transfer Date.
2. Former AUTHORITY Supplier Indemnities
   1. Subject to Paragraph 2.2, the Customer shall procure that each Former Authority Supplier shall indemnify the Supplier against any Employee Liabilities arising from or as a result of:
      1. any act or omission by the Former Authority Supplier in respect of its Transferring Former Supplier Employee arising before the Relevant Transfer Date; and
      2. any claim made by or in respect of any person employed or formerly employed by the Former Authority 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 the Call-Off Contract and/or the Staff Transfer Scheme.
   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:
      1. arising out of the resignation of any Transferring Former Supplier Employee before the Relevant Transfer Date on account of any measures or changes to their working conditions proposed by the Supplier or any Sub‑contractor to occur in the period from (and including) the Relevant Transfer Date; or
      2. arising from the failure by the Supplier and/or any Sub‑contractor to comply with its obligations under the Staff Transfer Scheme and/or required by law.
3. FORMER AUTHORITY SUPPLIER SUB-CONTRACTOR INDEMNITIES
   1. The Customer is unable to procure that the Former Authority Supplier Sub-contractors shall indemnify the Supplier against any Employee Liabilities arising before the Relevant Transfer Date in relation to any of their employees. Consequently, subject to Paragraphs 3.2 and 3.3, the Customer shall indemnify the Supplier against any Employee Liabilities arising from or as a result of:
      1. any act or omission by the Former Authority Supplier Sub-contractor in respect of any of its Transferring Former Supplier Employees arising before the Relevant Transfer Date; and
      2. any claim made by or in respect of any person employed or formerly employed by the Former Authority Supplier Sub-contractor 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 the Call-Off Contract and/or the Staff Transfer Scheme.
   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 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:
      1. arising out of the resignation of any Transferring Former Supplier Employee before the Relevant Transfer Date on account of any measures or changes to their working conditions proposed by the Supplier or any Sub‑contractor to occur in the period from (and including) the Relevant Transfer Date; or
      2. arising from the failure by the Supplier and/or any Sub‑contractor to comply with its obligations under the Staff Transfer Scheme and/or required by law.
   3. The indemnities provided in Paragraph 3.1 shall be subject to:
      1. the Supplier and/or any Sub-contractor using all reasonable endeavours to mitigate the Employee Liabilities;
      2. the Supplier and/or any Sub-contractor complying with all relevant contractual and statutory obligations; and
      3. any claim in respect of the indemnities being notified to the Customer by the Supplier within 28 calendar days of the Relevant Transfer Date, after such time the indemnity provided in Paragraph 3.1 shall cease to be effective.
4. Supplier Indemnities And Obligations
   1. Subject to Paragraph 4.2, the Supplier shall indemnify the Customer and/or the Former Supplier against any Employee Liabilities arising from or as a result of:
      1. any act or omission by the Supplier or any Sub‑contractor in respect of any Transferring Former Supplier Employee whether occurring before, on or after the Relevant Transfer Date;
      2. the breach or non‑observance by the Supplier or any Sub‑contractor on or after the Relevant Transfer Date of:
         1. any collective agreement applicable to the Transferring Former Supplier Employee; and/or
         2. any custom or practice in respect of any Transferring Former Supplier Employees which the Supplier or any Sub‑contractor is contractually bound to honour;
      3. 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;
      4. any proposal by the Supplier or a Sub‑contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Supplier Employees to their material detriment on or after their transfer to the Supplier or a Sub‑contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Supplier Employee but for their resignation (or decision to treat their employment as terminated) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
      5. any statement communicated to or action undertaken by the Supplier or a Sub‑contractor to, or in respect of, any Transferring Former Supplier Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Customer and/or the Former Supplier in writing;
      6. any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions 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
      7. a failure of the Supplier or any Sub‑contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period from (and including) the Relevant Transfer Date;
      8. any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative of any Transferring Former Supplier Employee relating to any act or omission of the Supplier or any Sub‑contractor in relation to a failure to provide details of changes to any working conditions or arrangements and/or details of any changes to terms and conditions of employment that arise as a consequence of a Relevant Transfer; and
   2. The indemnities in Paragraph 4.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier occurring or having its origin before the Relevant Transfer Date.
   3. The Supplier shall comply, and shall procure that each Sub‑contractor shall comply, with all its obligations under the Staff Transfer Scheme and/or as required by law 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 and any other sums due under an Admission Agreement which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and ensure that any necessary apportionments in respect of any periodic payments shall be made between the Supplier and the Former Supplier.
   4. The Supplier shall, and shall procure that each Sub-contractor shall, ensure that any individual employed or engaged in the provision of the Services (in whatever capacity) shall be paid the National Minimum or Living Wage as applicable and as amended from time to time.
5. 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 such consultation as the Customer deems necessary and the Supplier shall, and shall procure that each Sub-contractor shall take such steps to ensure a smooth and timely transfer from the Former Supplier.

1. Principles Of Good Employment Practice
   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:
      1. the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
      2. HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999";
      3. HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
      4. the New Fair Deal.
   2. Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 6.1 shall be agreed in accordance with the Change Control Procedure.
2. Pensions
   1. The Supplier shall, and shall procure that each Sub‑contractor shall, comply with:
      1. the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff; and
      2. Part D and its Annexes to this Staff Transfer Schedule.

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

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

1.1 The Customer and the Supplier agree that the commencement of the provision of the

Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Customer and/or any Former Supplier.

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

1.2.1 the Supplier shall, and shall procure that the relevant Sub-contractor shall,

within five (5) Working Days of becoming aware of that fact, give notice in writing to the Customer and, where required by the Customer, give notice to the Former Supplier; and

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

1.3 If an offer referred to in Paragraph 1.2.2 is accepted (or if the situation has otherwise been resolved by the Customer and/or the Former Supplier), the Supplier shall, or shall procure that the Sub-contractor shall, immediately release the person from his/her employment or alleged employment.

1.4 If by the end of the fifteen (15) Working Day period specified in Paragraph 1.2.2:

1.4.1 no such offer of employment has been made;

1.4.2 such offer has been made but not accepted; or

1.4.3 the situation has not otherwise been resolved,

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

**2. INDEMNITIES**

2.1 Subject to the Supplier and/or the relevant Sub-contractor acting in accordance with the provisions of Paragraphs 1.2 to 1.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 2.4, the Customer shall 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 or Former Supplier referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the 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 fifteen (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: (a) comply with such obligations as may be imposed upon it under Law; and (b) comply with the provisions of Part D and its Annexes of this Staff Transfer Schedule if notified by the Customer to do so.

2.3 Where any person remains employed by the Supplier and/or any Sub-contractor pursuant to Paragraph 2.2, all Employee Liabilities in relation to such employee shall remain with the Supplier and/or the Sub-contractor and the Supplier shall indemnify the Customer and any Former Supplier, and shall procure that the Sub-contractor shall indemnify the Customer and any Former Supplier, against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Sub-contractor.

2.4 The indemnities in Paragraph 2.1:

2.4.1 shall not apply to:

(a) any claim for:

(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

(b) any claim that the termination of employment was unfair because the Supplier and/or any Sub-contractor neglected to follow a fair dismissal procedure; and

2.4.2 shall apply only where the notification referred to in Paragraph 1.2.1 is made by the Supplier and/or any Sub-contractor to the Customer and, if applicable, Former Supplier within 6 months of the Call-Off Commencement Date.

# PART D: PENSIONS

1. DEFINITIONS

In this Part D, the following words have the following meanings and they shall supplement Schedule 1 (Definitions), and shall be deemed to include the definitions set out in the Annexes to this Part D:

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| "**Actuary**" | 1. means a Fellow of the Institute and Faculty of Actuaries |
| "**Admission Agreement**" | 1. means either or both of the CSPS Admission Agreement (as defined in Annex D1: CSPS) or the LGPS Admission Agreement (as defined in Annex D2: LGPS), as the context requires |
| **"Broadly Comparable"** | means:   1. in respect of a pension scheme, a status satisfying the condition that there are no identifiable employees who will suffer material detriment overall in terms of future accrual of pension benefits as assessed in accordance with Annex A of New Fair Deal and demonstrated by the issue by the Government Actuary's Department of a broad comparability certificate; and/or 2. in respect of benefits provided for or in respect of a member under a pension scheme, benefits that are consistent with that pension scheme's certificate of broad comparability issued by the Government Actuary's Department,   and "**Broad Comparability**" shall be construed accordingly |
| **"CSPS"** | means the schemes as defined in Annex D1 to this Part D |
| **"Fair Deal Employees"** | means any Pension Protected Employees who at the Relevant Transfer Date are or become entitled to New Fair Deal protection in respect of any of the Statutory Schemes as notified by the Customer |
| **"Fair Deal Schemes"** | means the relevant Statutory Scheme or a Broadly Comparable pension scheme |
| **"Fund Actuary"** | means a fund actuary as defined in Annex D2 to this Part D of this Schedule 9.1 (Staff Transfer) |
| **"LGPS"**  **"Pension Protected Employees"** | means the scheme as defined in Annex D2 to this Part D of this Schedule 9.1 (Staff Transfer);  means any:   1. Transferring Former Supplier Employees; and/or 2. employees of the Former Supplier who remain as employees of the Supplier or a Sub-contractor where the incumbent Former Supplier becomes the Supplier or a Sub-contractor under the Call-Off Contract; and/or 3. employees of the Customer and/or of the Former Supplier whose employment transfers to the Supplier or a Sub-contractor in accordance with Part C of this Schedule, whose employment is not terminated in accordance with either Paragraph 1.3 or 1.4 of Part C and in respect of whom the Customer has notified the Supplier or a Sub-contractor that they must comply with the provisions of this Part D and its Annexes in accordance with Paragraph 2.2 of Part C |
| **"Statutory Scheme"** | means the CSPS or the LGPS. |

1. PARTICIPATION
   1. In respect of all or any Fair Deal Employees each of Annex D1: (CSPS) and/or Annex D2: (LGPS) shall apply, as appropriate.
   2. The Supplier undertakes to (and shall procure that any Sub-contractor shall) use best endeavours to do all such things and execute any documents (including any relevant Admission Agreement if necessary) as may be required to enable the Supplier (or Sub-contractor) to participate in the appropriate Statutory Schemes in respect of all the Fair Deal Employees and shall (subject to Annex D1: CSPS and Annex D2: LGPS to this Part D) bear its own costs in such regard.
   3. The Supplier undertakes to the Customer to (and shall procure that any Sub-contractor shall):
      1. pay to the applicable Statutory Schemes all such amounts as are due under the relevant Admission Agreement or otherwise and shall deduct and pay to the Statutory Schemes such employee contributions as are required; and
      2. subject to Paragraph 5 of Annex D2: LGPS to this Part D, be fully responsible for all costs, contributions, payments and other amounts relating to its participation in the Statutory Schemes.
2. PROVISION OF COOPERATION AND INFORMATION
   1. The Supplier undertakes to the Customer to (and shall procure that any Sub-contractor shall)*:*
      1. maintain such documents, records and information as is reasonably required to allow for participation in the Statutory Scheme and any pension scheme;
      2. fully cooperate with and provide all information and any such documents which the Customer and/or the Administering Authority (as defined in Annex D2: LGPS to this Part D) may reasonably request concerning matters referred to in this Part D as expeditiously as possible both during the Call-Off Term of the Call-Off Contract and on its expiry;
      3. not to issue any announcements to any Fair Deal Employee prior to the Relevant Transfer Date concerning the matters stated in this Part D without the consent in writing of the Customer (such consent not to be unreasonably withheld or delayed);
      4. retain such records as would be necessary to manage the pension aspects of any onward transfer of any person engaged or employed in the provision of the Services on expiry or termination of the Call-Off Contract; and
      5. retain such Payroll, HR and Pension Records going back at least thirteen (13) years from the date of any onward transfer (and as forwarded from the Former Supplier) as the Customer requires to enable the Customer to meet its obligations under the LGPS (Offender Management) (Amendment) Regulations 2014 (paragraphs 3A (4) & (5)) in respect of any Fair Deal Employee who was entitled to participate in the LGPS under the Call-Off Contract and who at the end of the Call-Off Contract is a deferred member, deferred pensioner member, pensioner member or persons entitled to a refund of contributions in each case in respect of the LGPS. The Parties acknowledge that the Customer will be a Controller for the pension, and associated HR and payroll data of such (ex) employees.

For the purpose of this Paragraph 3 "**Payroll, HR and Pension Records**" means all HR records including change of hours notifications, change of role, job descriptions and change of salary, allowances, overtime and other pensionable allowances and all payroll records confirming pensionable pay and pension contributions paid, including all data as per the Annex D2: LGPS data required or such list of LGPS data as may be notified to the Supplier by the Customer.

1. INDEMNITIES
   1. The Supplier undertakes to the Customerto indemnify and keep indemnified the Customerand/or any Replacement Supplier and/or any Replacement Sub-contractor on demand from and against all and any Losses whatsoever:
      1. arising out of or in connection with any liability towards all and any employees of the Supplier and/or any Sub-contractor (including Fair Deal Employees) in respect of service on or after the Relevant Transfer Date which arises from any breach by the Supplier (including as a result of any act or omission of a Sub-contractor) of this Part D, and/or the CSPS Admission Agreement and/or the LGPS Admission Agreement; and/ or
      2. which relates to the payment of benefits under and/or participation in an occupational pension scheme or a personal pension scheme (within the meanings provided for in section 1 of the Pension Schemes Act 1993) including the Fair Deal Schemes in respect of all and any employees of the Supplier and/or any Sub-contractor (including Fair Deal Employees).
   2. The Supplier hereby indemnifies the Customerand/or any Replacement Supplier and/or Replacement Sub-contractor from and against all Losses suffered or incurred by it or them which arise from claims by employees of the Supplier and/or of any Sub-contractor (including Fair Deal Employees) or by any trade unions, elected employee representatives or staff associations in respect of all or any such employees of the Supplier and/or any Sub-contractor (including Fair Deal Employees) which Losses:
      1. relate to any rights to benefits under a pension scheme (as defined in section 150(1) Finance Act 2004) in respect of periods of employment on and after the Relevant Transfer Date until the date of termination or expiry of the Call-Off Contract; and/or
      2. arise out of the failure of the Supplier and/or any relevant Sub-contractor to comply with the provisions of this Part D and its Annexes before the date of termination or expiry of the Call-Off Contract.
   3. The indemnities in this Part D and its Annexes:
      1. shall survive termination of the Call-Off Contract; and
      2. shall not be affected by the caps on liability contained in Clause 28 (Limitation of Liability).
2. DISPUTES
   1. The Dispute Resolution Procedure will not apply to (i) any dispute between the Customer and/or the Supplier, or (ii) between their respective actuaries, or the Fund Actuary about any of the actuarial matters referred to in this Part D shall in the absence of agreement between the Customer and/or the Supplier be referred to an independent Actuary:
      1. who will act as an expert and not as an arbitrator;
      2. whose decision will be final and binding on the Customer and/or the Supplier; and
      3. whose expenses shall be borne equally by the Customer and/or the Supplier unless the independent Actuary shall otherwise direct.
3. THIRD PARTY RIGHTS
   1. The Parties agree Clause 48 (Third Party Rights) does not apply and that the CRTPA applies to this Part D to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce against the Supplier any obligation in respect of them under this Part D, in their or its own right under section 1(1) of the CRTPA.
   2. Further, the Supplier must ensure that the CRTPA will apply to any Sub-contract to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce against any Sub-contractor any obligation in respect of them under this Part D in his or her own right under section 1(1) of the CRTPA.
   3. For the avoidance of doubt, the provisions of Paragraph 6.1 and Paragraph 6.2 shall only apply to those who are Fair Deal Employees and not to any other Pension Protected Employees.
4. BREACH
   1. The Supplier accepts and acknowledges that it shall be a Supplier Termination Event if the Supplier:
      1. commits an irremediable breach of any provision or obligation it has under this Part D; or
      2. commits a breach of any provision or obligation it has under this Part D which, where capable of remedy, it fails to remedy within a reasonable time and in any event within 28 days of the date of a notice from the Customer giving particulars of the breach and requiring the Supplier to remedy it,

and (a) and (b) above shall include the act or omission of a Sub-contractor or the failure of the Supplier to procure a relevant act or omission from its Sub-contractor such events being deemed to be a relevant breach by the Supplier.

1. Transfer to another Employer/Sub-contractors
   1. In concordance with Clause 17.8 of the Framework Agreement, where the proposed Sub-contracting will involve the transfer of employees to a Sub-contractor under a Relevant Transfer or by operation of the law, the Supplier shall or shall procure that the Sub-contractor shall in respect of those employees:
      1. consult with and inform the employees who are Fair Deal Employees, of the pension provisions relating to that transfer;
      2. procure that the employer to which the Fair Deal Employees are transferred (the **"New Employer"**) complies with the provisions of this Part D (Pensions) and its Annexes of Schedule 9.1 (Staff Transfer) provided that references to "Relevant Transfer Date" will become references to the date of the transfer to the New Employer and references to "Fair Deal Employees" will become references to the Fair Deal Employees so transferred to the New Employer;
      3. procure that the New Employer complies with Paragraph 12.2 (Pension Provisions for Employees who are not Fair Deal Employees) of Part D (Pensions) of Schedule 9.1 (Staff Transfer) in respect of those employees who are Pension Protected Employees but not Fair Deal Employees; and
      4. procure that the New Employer complies with the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring employees who are not Pension Protected Employees.
2. RIGHT OF SET-OFF
   1. The Customershall have a right to set off against any Charges due to the Supplier under the Call-Off Contract an amount equal to:
      1. any unpaid employer's and/or employee's contributions and/or any other financial obligations or payments (and interest payable) due to the CSPS whether due from the Supplier (or from any relevant Sub-contractor) or from a third party under a CSPS Admission Agreement or indemnity, bond or guarantee;
      2. any unpaid employer's and/or employee's contributions and/or any other financial obligations or payments (and interest payable under the LGPS Regulations) whether due from the Supplier (or from any relevant Sub-contractor) or from a third party under an LGPS Admission Agreement or indemnity bond or guarantee (including for the avoidance of doubt any guarantee provided in accordance with Annex D2 (Pensions) LGPS or Part D Paragraph 2.4); and
      3. all reasonable costs and expenses incurred by the Customer as result of any amounts due under Paragraphs 9.1 (a) and 9.1 (b) above.
3. PENSION ISSUES ON EXPIRY OR TERMINATION
   1. The provisions of Part E: Staff Transfer On Exit (Mandatory) apply in relation to pension issues on expiry or termination of the Call-Off Contract, save that in relation to pension information the date in Paragraph 1.1(b)(iii) of Part E Employment Exit Provisions shall be 24 months in place of twelve (12) months. In addition, the Supplier (and the Supplier shall procure that the relevant Sub-contractor) is required to maintain such documents and information as will reasonably be required to manage the pension aspects of any onward transfer of persons engaged in the provision of the Services on expiry or termination of the Call-Off Contract.
   2. The provisions of Part D Pensions shall survive the termination of the Call-Off Contract.
4. BROADLY COMPARABLE PENSION SCHEMES
   1. If:
      1. the terms of any of Paragraph 2.3 of Annex D1: CSPS, or Paragraph 3 of Annex D2: LGPS apply; and
      2. the Customer agrees, having considered the exceptional cases provided for in New Fair Deal, (such agreement not to be unreasonably withheld) that the Supplier (and/or its Sub-contractors, if any) is unable to continue to provide the Fair Deal Employees, who continue to qualify for protection under New Fair Deal, with access to the appropriate Statutory Scheme,

the Supplier must (and must, where relevant, procure that each of its Sub-contractors will) ensure that, with effect from the cessation of participation in the Statutory Scheme, until the day before the Service Transfer Date, the relevant Fair Deal Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided under the relevant Statutory Scheme, and then on such terms as may be decided by the Customer.

* 1. Where the Supplier (and where relevant each of its Sub-contractors) has set up a Broadly Comparable pension scheme pursuant to the provisions of Paragraph 11.1, the Supplier shall (and shall procure that any of its Sub-contractors shall):
     1. supply to the Customer details of its (or its Sub-contractor's) Broadly Comparable pension scheme and provide a full copy of the valid certificate of Broad Comparability covering all relevant Fair Deal Employees, as soon as it is able to do so;
     2. fully fund any such Broadly Comparable pension scheme on a past service reserve basis which is aligned to the funding requirements set by that Broadly Comparable pension scheme's Actuary or by the Government Actuary's Department and is subject to the underpin for the period ending on the Service Transfer Date;
     3. instruct any such Broadly Comparable pension scheme's Actuary to, and to provide all such co-operation and assistance in respect of any such Broadly Comparable pension scheme as the Replacement Supplier and/or CSPS and/or the relevant Administering Authority and/or the Customer may reasonably require, to enable the Replacement Supplier to participate in the appropriate Statutory Scheme in respect of any Fair Deal Employee that remains eligible for New Fair Deal protection following a Service Transfer;
     4. provide a replacement Broadly Comparable pension scheme with immediate effect for those Fair Deal Employees who are still employed by the Supplier and/or relevant Sub-contractor and are still eligible for New Fair Deal protection in the event that the Supplier and/or Sub-contractor's Broadly Comparable pension scheme is closed to future accrual and/or terminated;
     5. allow and make all necessary arrangements to effect, in respect of any Fair Deal Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the relevant Statutory Scheme and as is relevant on a day for day service basis and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal. For the avoidance of doubt, should the amount offered by the Broadly Comparable pension scheme be less than the amount required by the appropriate Statutory Scheme to fund day for day service ("**Shortfall**"), the Supplier or the Sub-contractor (as agreed between them) must pay the Statutory Scheme, as required, provided that in the absence of any agreement between the Supplier and any Sub-contractor, the Shortfall shall be paid by the Supplier; and
     6. indemnify the Customer and/or CSPS and/or the relevant Administering Authority and/or on demand for any failure to pay the Shortfall as required under Paragraph (e) above.

1. PENSION PROVISION FOR EMPLOYEES WHO ARE NOT FAIR DEAL EMPLOYEES
   1. The Supplier shall (and shall procure that any Sub-contractor shall) at all material times in respect of new employees who are engaged in the provision of the Services under the Call-Off Contract, provide a retirement benefits scheme which is a "qualifying scheme" for the purposes of the Supplier's (or Sub-contractors) obligations under Part 1 of the Pensions Act 2008, the terms of which satisfy the conditions in section 258 of the Pensions Act 2004 and the Transfer of Employer (Pension Protection) Regulations 2005 (where applicable).
   2. The Supplier shall (and shall procure that any Sub-contractor shall) ensure that on the Relevant Transfer Date for all Pension Protected Employees who are not Fair Deal Employees, it will:
      1. comply with the requirements of Part 1 of the Pensions Act 2008; and
      2. ensure terms and conditions of employment in respect of the relevant Pension Protected Employees for pension benefits (as defined in section 150(1) Finance Act 2004) that applied immediately before the employee was employed by the Supplier will have effect after the Relevant Transfer Date as terms and conditions of employment with the Supplier.

**Annex D1: CSPS**

This Annex D1: CSPS shall only apply to the Call-Off Contract as stated in the Call-Off Order Form.

1. DEFINITIONS

In this Annex D1: CSPS to Part D: Pensions of this Schedule 9.1 (Staff Transfer), the following words have the following meanings and they shall supplement Schedule 1 (Definitions):

|  |  |
| --- | --- |
| **"CSPS Admission Agreement"** | means an admission agreement in the form available on the Civil Service Pensions website immediately prior to the Relevant Transfer Date to be entered into for the CSPS in respect of the Services |
| **"CSPS Eligible Employee"** | means any Fair Deal Employee who at the relevant time is an eligible employee as defined in the CSPS Admission Agreement |
| **"CSPS"** | means the Principal Civil Service Pension Scheme available to Civil Servants and employees of bodies under Schedule 1 of the Superannuation Act 1972 (and eligible employees of other bodies admitted to participate under a determination under section 25 of the Public Service Pensions Act 2013), as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Arrangements and (ii) Death Benefits Arrangements; the Civil Service Additional Voluntary Contribution Scheme; and "alpha" introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014 |

1. FUTURE SERVICE BENEFITS
   1. Subject to Paragraph 2.2 below, the Supplier shall (and shall procure that any Sub-contractor shall) procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the CSPS that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date or became eligible to join on the Relevant Transfer Date and the Supplier shall (and shall procure that any Sub-contractor shall) procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of the CSPS for service from (and including) the Relevant Transfer Date.
   2. Subject to Part 1 of the Pensions Act 2008, the Supplier is not (and shall not be required to procure that any Sub-contractor is) required to admit a Fair Deal Employee into the relevant section of the CSPS in accordance with Paragraph 2.1, where the Fair Deal Employee has notified the Supplier (or Sub-contractor, as appropriate) in writing that the Fair Deal Employee benefits from the tax protections set out in regulation 5D of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 and the Supplier (or Sub-contractor, as appropriate) has reasonable grounds to believe that Fair Deal Employee does have such tax protections.
   3. The Supplier undertakes (and shall procure that any Sub-contractor undertakes) that should it (or the Sub-contractor, as appropriate) cease to participate in the CSPS for whatever reason at a time when it has CSPS Eligible Employees, that it will, at no extra cost to the Customer, provide to any Fair Deal Employee who immediately prior to such cessation of participation remained a CSPS Eligible Employee with access to a pension scheme which is Broadly Comparable to the CSPS on the date the CSPS Eligible Employees ceased to participate in the CSPS.

**Annex D2: LGPS**

This Annex D2: LGPS shall apply to the Call-Off Contract unless otherwise stated in the Call-Off Order Form.

1. DEFINITIONS

In this Annex D2: LGPS to Part D: Pensions of this Schedule 9.1 (Staff Transfer), the following words have the following meanings and they shall supplement Schedule 1 (Definitions):

|  |  |
| --- | --- |
| "**Adjusted Exit Contribution**" | means the Exit Contribution not attributable to Pensions Related Discretionary Actions |
| "**Administering Authority**" | means in relation to the Fund, Tameside Metropolitan Borough Council, the relevant administering authority of that Fund for the purposes of the Local Government Pension Scheme Regulations 2013 |
| "**Agreed Employer Contribution Rate**" | means 16% (or such other amount as set out in the relevant Call-Off Order Form) of pensionable pay to be paid to the Fund by the Supplier or a Sub-contractor which for the avoidance of doubt shall not include any Ill-Health Allowance that the Administering Authority requires the Supplier to pay the Fund and the Ill-Health Allowance shall be in addition to the Agreed Employer Contribution Rate |
| "**Employer Contribution Rate**" | means the Supplier's (or a Sub-contractor's) employer contribution rate from time to time specified in the rates and adjustment certificate applicable to the Supplier calculated under regulation 62 of the LGPS Regulations provided that no account shall be taken of such part of that employer contribution rate attributable to the Ill-Health Allowance |
| **"Exit Contribution"** | means:   1. the revised contributions required by the Administering Authority from the Supplier or any Sub-contractor set out in a rates and adjustment certificate arising as a result of a valuation carried out under regulation 64(2) of the LGPS Regulations; or 2. the revised contributions required by the Administering Authority from a Supplier or any Sub-contractor set out in the actuary's certificate prepared in the circumstances set out in regulation 64(4) of the LGPS Regulations; |
| "**Fund Actuary**" | means the actuary to a Fund appointed by the Administering Authority of that Fund |
| "**Fund**" | means the Greater Manchester Pension Fund, a pension fund within the LGPS |
| "**Ill-Health**" | means any condition which qualifies a person for benefits under regulations 35, 37 and 38 of the LGPS Regulations |
| **"Ill-Health Allowance"** | means any regular contributions and/or payments (whether or not forming part of the Supplier's (or any Sub-contractors) employer contribution rate from time to time specified in the rates and adjustment certificate applicable to the Supplier (or any Sub-contractor) calculated under regulation 62 of the LGPS Regulations) which the Administering Authority requires the Supplier (or Sub-contractor) to pay to the Fund in lieu of any costs that become due and payable by the Supplier (or any Sub-contractor) in respect of the LGPS Eligible Employees on the award of benefits on the grounds of Ill-health; |
| "**LGPS**" | means the Local Government Pension Scheme as governed by the LGPS 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 Body**" | has the meaning in Paragraph 1 of Part 3 of Schedule 2 of the LGPS Regulations |
| "**LGPS Admission Agreement**" | means an admission agreement within the meaning in Schedule 1 of the LGPS Regulations |
| "**LGPS Eligible Employees**" | means any Fair Deal Employee who at the relevant time is an eligible employee as defined in the LGPS Admission Agreement or otherwise any Fair Deal Employee who immediately before the Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the LGPS or of a scheme Broadly Comparable to the LGPS |
| "**LGPS Regulations**" | means the Local Government Pension Scheme Regulations 2013 (SI 2013/2356) and The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014, and any other regulations (in each case as amended from time to time) which are from time to time applicable to the LGPS |
| **"Pensions Related Discretionary Actions"** | means any or all of the following acts or omissions of the Supplier (or any Sub-contractor) occurring on or after the Relevant Transfer Date:   1. the consent to or grant of early retirement benefits on grounds of redundancy or for reasons of business efficiency to or in respect of an LGPS Eligible Employee; 2. the consent to or grant of any unreduced early retirement benefits to or in respect of an LGPS Eligible Employee or former LGPS Eligible Employee, whether or not for reasons of Ill-Health; 3. the consent to or grant of any other type of enhanced benefit under the LGPS Regulations to or in respect of an LGPS Eligible Employee or former LGPS Eligible Employee at the discretion of the Supplier (or Sub-contractor, as appropriate), including, but not limited to, an award of additional pension and enhanced benefits in the context of flexible retirement; 4. the grant of increases in pensionable pay (as defined in the LGPS Regulations) to LGPS Eligible Employees in excess of the greater of: 5. the increases assumed in the latest formal actuarial valuations for the Fund, calculated as the average increase over all LGPS Eligible Employees; and 6. the increases the Supplier or Sub-contractor is contractually bound to provide at the Relevant Transfer Date; 7. the employment of an LGPS Eligible Employee in relation to whom there is an inward transfer of pension rights under regulation 100 of the LGPS Regulations (other than in relation to a transfer of liabilities pursuant to the Local Government Pension Scheme (Offender Management) Regulations 2014 or in relation to any compulsory transfers of employments to the Supplier under the Employment Regulations or a Staff Transfer Scheme in the context of which it has been agreed by the Secretary of State for Justice that such liabilities are to be treated as fully funded on the Scheme's ongoing basis for the purpose of the Supplier's or a Sub-contractor's liability to fund those liabilities) or who exercises the option to aggregate a past period of membership with the current period of membership as an employee of the Supplier or a Sub-contractor giving rise to a net additional liability for the Administering Authority; 8. any contribution required by the Administering Authority towards the cost of the administration of the Fund relating to the Supplier or a Sub-contractor that are not met through the Supplier's or a Sub-contractor's payment under any rates and adjustment certificate issued by the Fund Actuary in relation to the Supplier or Sub-contractor from time to time, including without limitation an amount specified in a notice given by the Administering Authority under regulation 70 of the LGPS Regulations and the costs of any reports and advice requested by the Supplier or a Sub-contractor from an Actuary appointed by the Administering Authority; 9. any act or omission which gives rise to any costs other than minimum employer contributions payable under any rates or adjustment certificate issued by the Fund Actuary in relation to the Supplier or a Sub-contractor from time to time, including but not limited to costs arising from any breach of the LGPS Admission Agreement; and/or 10. any interest payable under the LGPS Regulations and/or the LGPS Admission Agreement. |

1. SUPPLIER TO BECOME AN LGPS ADMISSION BODY
   1. Where the Supplier (or a Sub-contractor) employs any LGPS Eligible Employees from a Relevant Transfer Date, the Supplier shall (and shall procure that a Sub-contractor shall) become an LGPS Admission Body and shall on or before the Relevant Transfer Date enter into a LGPS Admission Agreement with the Administering Authority which will have effect from and including the Relevant Transfer Date.
   2. The Supplier shall (and shall procure that a Sub-contractor shall) ensure that all LGPS Eligible Employees whether actively participating in the LGPS or eligible but not actively participating immediately before the Relevant Transfer Date are admitted as active LGPS members with effect on and from the Relevant Transfer Date. Subject to Part 1 of the Pensions Act 2008, the Supplier is not required to admit (and shall not be required to procure that a Sub-contractor shall admit) an LGPS Eligible Employee into the LGPS, where the LGPS Eligible Employee has notified the Supplier (or Sub-contractor, as appropriate) in writing that the LGPS Eligible Employee benefits from the tax protections set out in regulation 5D of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 and the Supplier (or Sub-contractor, as appropriate) has reasonable grounds to believe that LGPS Eligible Employee does have such tax protections.
   3. The Supplier shall (and shall procure that a Sub-contractor shall) remain an LGPS Admission Body for the duration of the Call-Off Contract and the Supplier shall (and shall procure that a Sub-contractor shall) ensure that the LGPS Eligible Employees shall be entitled to accrue benefits in the LGPS in accordance with the LGPS Regulations and the LGPS Admission Agreement in respect of their employment with the Supplier (or Sub-contractor) for so long as they remain an LGPS Eligible Employee.
   4. The Customer will provide a guarantee in favour of the Administering Authority in the form attached to the relevant Call-Off Order Form.
   5. Whilst the Supplier (or Sub-contractor) participates in the LGPS it (or the Sub-contractor, as appropriate) shall not automatically enrol or re-enrol for the purposes of the Pensions Act 2008 any LGPS Eligible Employees in any pension scheme other than the LGPS.
   6. The Supplier shall (and shall procure that a Sub-contractor shall) not, (without the consent of the Customer in writing) take any action or omit to act which would materially affect the pension benefits of Fair Deal Employees who are or will be employed wholly or mainly in connection with the Services save where it is necessary to give effect to any pre-existing contractual obligations.
   7. The Supplier shall (and shall procure that a Sub-contractor shall) provide all reasonable cooperation and assistance to the Customer and the Administering Authority to allow those parties to monitor the Supplier's (or Sub-contractors) participation in the LGPS and specifically the Fund, to include without limitation the production of copies of, and the ability to inspect the following evidence to demonstrate compliance with and maintenance of:
      1. data required to comply with the Fund's Pension Administration Strategy document on monthly deadlines;
      2. monthly interface data to the Administering Authority;
      3. Quarterly payroll data to the Customer in a template provided by or on behalf of the Customer and updated from time to time by the Customer;
      4. the Fund's annual return within the deadline set by the Fund;
      5. any form required by the Customer to demonstrate the Supplier's (and/or Sub-contractor's as applicable ) compliance with LGPS data obligations;
      6. data required for the triennial evaluation; and
      7. any such other data, records or forms as may be required by either the Customer or the Administering Authority to demonstrate the Supplier's (and/or Sub-contractor's) compliance with LGPS data obligations.

The above information to be provided accurately in good time and within fourteen (14) days of receipt of a written request for the information. Further the Supplier undertakes to (and shall procure that a Sub-contractor shall) correct and update any such information provided as and when necessary.

* 1. The Supplier warrants (and shall procure that a Sub-contractor warrants), for the benefit of the Customer and the Administering Authority that all information provided pursuant to Paragraph 2.7 above shall be true and accurate in all material respects at the time of providing the information.
  2. The Supplier shall (and shall procure that a Sub-contractor shall) participate in both the Fund's "I-connect" payroll interface and "Altair" or such pension related system as may replace them for the duration of the Call-Off Contract.

1. SUPPLIER CEASES TO BE AN LGPS ADMISSION BODY

If the Supplier or a Sub-contractor employs any LGPS Eligible Employees from a Relevant Transfer Date and the Supplier or a Sub-contractor either cannot or does not participate in the LGPS, the Supplier shall (and shall procure that a Sub-contractor shall) offer such LGPS Eligible Employee membership of a pension scheme Broadly Comparable to the LGPS in accordance with Paragraph 11 of Part D of this Schedule 9.1 (Staff Transfer).

1. DISCRETIONARY BENEFITS

The Supplier shall (and shall procure that a Sub-contractor shall) comply with its obligations under regulation 60 of the LGPS Regulations in relation to the exercise of discretionary functions and where practicable and without prejudice to the discretionary nature of such functions adopt practices that are consistent with the Customer's Statement of Recommended Discretionary Practices issued to the Supplier by the Customer (as amended from time to time and notified to the Supplier) to achieve consistency across employers engaged in the provision of probation services.

1. FUNDING
   1. The Customer hereby undertakes that it shall procure that the funding of the liabilities attributable to the benefits payable to and in respect of the LGPS Eligible Employees in the Fund in respect of pensionable service completed before the Call-Off Commencement Date or Relevant Transfer Date (as appropriate) under the Call-Off Contract shall be calculated, as at the Call-Off Commencement Date or Relevant Transfer Date, on the basis that the Fund has assets equal to those liabilities at the Call-Off Commencement Date or Relevant Transfer Date, where the liabilities are measured using the actuarial assumptions which were used by the Actuary to set contributions at the most recent funding valuation (updated to reflect changes to market conditions since the valuation date).
   2. Except in relation to any Exit Contribution which shall be dealt with in accordance with Paragraphs 5.4 to 5.12 below, the Supplier undertakes to pay and shall procure that the Sub-contractor shall pay to the Administering Authority, on or before each relevant due date for payment, such employer and employee contributions and other payments as are required from time to time under the LGPS Regulations and the LGPS Admission Agreement, to be credited to the Fund in respect of the Supplier's or Sub-contractor's participation in the LGPS in respect of the LGPS Eligible Employees.

**LGPS Employer Contribution Rate True Up**

* 1. Where set out in the relevant Call-Off Order Form for the Call-Off Contract that, where the Employer Contribution Rate is varied following an actuarial valuation completed by the Fund Actuary pursuant to regulation 62(1) of the LGPS Regulations so that it is different from the Agreed Employer Contribution Rate during the Call-off Term then the Customer shall indemnify the Supplier and keep the Supplier indemnified in full against any additional costs incurred reasonably and properly by the Supplier (or where relevant, the Sub-contractor) in respect of LGPS Eligible Employees arising from the variation in the Employer Contribution Rate provided that such indemnity shall not cover any variation in the Employer Contribution Rate attributable to any Pensions Related Discretionary Actions.

**Exit Contribution**

* 1. Where an Exit Contribution is determined by the Administering Authority as being due from the Supplier or the Sub-contractor, the Supplier shall immediately notify the Customer, and the Supplier shall each use reasonable endeavours to procure that the Administering Authority shall confirm to the Customer the amount of the Exit Contribution that is attributable to Pensions Related Discretionary Actions.
  2. The Supplier recognises that the Customer may separately consult with the Administering Authority in relation to the Exit Contribution and to seek further information in relation to the value of the Exit Contribution and the amount of the Exit Contribution that is attributable to Pensions Related Discretionary Actions.
  3. Within twenty (20) Working Days of receiving confirmation under Paragraph 5.4 above, the Customer shall confirm to the Supplier if it agrees with the value of the Exit Contribution and the amount of the Exit Contribution that is attributable to Pensions Related Discretionary Actions.
  4. In the event that the Customer does not accept the value of the Exit Contribution and the amount of the Exit Contribution that is attributable to Pensions Related Discretionary Actions, the Supplier and the Customer shall follow the Dispute Resolution Procedure.
  5. If the Customer provides confirmation in accordance with Paragraph 5.6 above, the Customer may determine that in respect of the Adjusted Exit Contribution it shall:
     1. agree with the Administering Authority to accept liability for the Adjusted Exit Contribution on such basis and on such terms as the Customer and the Administering Authority may agree; or
     2. agree with the Administering Authority to pay the Adjusted Exit Contribution to the Administering Authority on behalf of the Supplier.
  6. The Customer shall give written notice to the Supplier of the determination made under Paragraph 5.8 within ten (10) Working Days of making such a determination.
  7. If the Customer agrees with the Administering Authority to either accept liability for the Adjusted Exit Contribution in accordance with Paragraph 5.8(a) above or to pay the Adjusted Exit Contribution to the Administering Authority in accordance with Paragraph 5.8(b) above (as applicable), the Supplier shall pay (or shall procure that the Sub-contractor shall pay) an amount equal to the difference between the Exit Contribution and the Adjusted Exit Contribution to the Administering Authority.
  8. Provided that the Customer has given notice to the Supplier in accordance with Paragraph 5.6, in the event that the Customer does not make a determination under Paragraph 5.8 above or the Customer does not give notice to the Supplier in accordance with Paragraph 5.9 above:
     1. the Customer shall pay the Adjusted Exit Contribution to the Supplier; and
     2. the Supplier shall (or shall procure that the Sub-contractor shall) pay the Exit Contribution to the Administering Authority in full and final settlement of all amounts due from the Supplier (or Sub-contractor, as appropriate) to the Fund under the LGPS Admission Agreement and/or the LGPS Regulations.
  9. In the event that the Supplier fails to pay (or fails to procure that the Sub-contractor pays) the Exit Contribution to the Administering Authority in accordance with Paragraph 5.11 above, the Customer shall demand in writing the immediate repayment of the Adjusted Exit Contribution by the Supplier and the Supplier shall make repayment within seven (7) days of such demand.

**Exit credit**

* 1. The Supplier accepts and agrees that the Customer has a right and entitlement to any exit credit that becomes payable to the Supplier or any Sub-contractor under regulation 64 of the LGPS Regulations.
  2. In the event that an exit credit becomes payable to the Supplier or any Sub-contractor under regulation 64 of the LGPS Regulations, in accordance with the LGPS Admission Agreement, the Customer and the Supplier shall procure that the Administering Authority does not pay the exit credit to the Supplier but shall set off the exit credit against any liabilities to the Fund by the Customer.
  3. Notwithstanding Paragraph 5.13 above, in the event that the Administering Authority pays or is obliged to pay the exit credit under regulation 64 of the LGPS Regulations to the Supplier or a Sub-contractor, the Supplier shall (and shall procure that a Sub-contractor shall) hold any exit credit received from the Administering Authority on trust for the Customer and the Supplier shall (and shall procure that a Sub-contractor shall) forthwith and within ten (10) Working Days of receipt of the exit credit pay the exit credit to the Customer.

**Termination**

* 1. For the avoidance of doubt, Paragraphs 3 and 5 of this Annex D2 shall survive the termination of the Call-Off Contract.

**PART E: EMPLOYMENT EXIT PROVISIONS**

1. Pre‑Service Transfer Obligations
   1. The Supplier agrees that:
      1. within twenty (20) Working Days of receipt of a written request of the Customer at any time; and/or
      2. within twenty (20) Working Days of the earliest of:
         1. receipt of a notification from the Customer of a Service Transfer or intended Service Transfer; or
         2. receipt of the giving of notice of early termination or any Partial Termination of the Call-Off Contract; or
         3. the date which is twelve (12) months before the end of the Call-Off Term or, if the Call-Off Term is less than 12 months the date which is six (6) months before the end of the Call-Off Term,

it shall provide in a suitably anonymised format so as to comply with the DPA 2018, 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 and/or updated Staffing Information at such intervals as are reasonably requested by the Customer.

* 1. At least twenty (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:
     1. the Supplier's Final Supplier Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and
     2. the Staffing Information in relation to the Supplier's Final Supplier Personnel List (insofar as such information has not previously been provided).
  2. 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.
  3. 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.
  4. From the date of the earliest event referred to in Paragraph 1.1(b) the Supplier agrees, that it shall not, and agrees to procure that each Sub‑contractor shall not, assign any person to the provision of the Services who is not listed on the Supplier's Provisional Supplier Personnel List and shall not without the approval of the Customer (not to be unreasonably withheld or delayed):
     1. 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 they replace;
     2. make, promise, propose, permit or implement any material changes to the terms and conditions of employment of the Supplier Personnel (including pensions and any payments connected with the termination of employment);
     3. increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;
     4. introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Personnel List;
     5. increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
     6. terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Personnel List save by due disciplinary process,

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

* 1. During the Call-Off Term, the Supplier shall provide, and shall procure that each Sub‑contractor shall provide, to the Customer any information the Customer may reasonably require relating to the manner in which the Services are organised, which shall include:
     1. the numbers of individuals (which includes but is not limited to employees, workers, contractors, agents, agency workers) engaged in providing the Services;
     2. the percentage of time spent by each individual engaged in providing the Services;
     3. the extent to which each individual qualifies for membership of any of the Statutory Schemes or any Broadly Comparable scheme set up pursuant to the provisions of any of the Annexes to Part D (Pensions) of this Schedule 9.1 (Staff Transfer) (as appropriate); and
     4. a description of the nature of the work undertaken by each individual by location.
  2. 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 support a future procurement process, timely and full provision of Staffing Information and consultation between employers and to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within five (5) Working Days following the Service Transfer Date, the Supplier shall provide, and shall procure that each Sub‑contractor shall provide, to the Customer or, at the direction of the Customer, to any Replacement Supplier and/or any Replacement Sub‑contractor (as appropriate), in respect of each person on the Supplier's Final Supplier Personnel List who is a Transferring Supplier Employee:
     1. the most recent month's copy pay slip data;
     2. details of cumulative pay for tax and pension purposes;
     3. details of cumulative tax paid;
     4. tax code;
     5. details of any voluntary deductions from pay;
     6. a copy of any personnel file and/or any other records regarding the service of the Transferring Supplier Employee;
     7. a complete copy of the information required to meet the minimum record keeping requirements under the Working Time Regulations 1998 and the National Minimum Wage Regulations 1998; and
     8. bank/building society account details for payroll purposes.

1. Employment Exit Provisions
   1. The Customer and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the Customer may make a Staff Transfer Scheme which may apply on termination or part termination of the Call-Off Contract, for whatever reason. The Customer and the Supplier also acknowledge that the Employment Regulations may apply on termination or part termination of the Call-Off Contract for whatever reason, as well as or instead of a Staff Transfer Scheme, and this Paragraph 2 shall be read accordingly. The identity of the provider of the Services (or any part of the Services) may therefore change (whether as a result of termination or Partial Termination of the Call-Off Contract or otherwise) resulting in the Services or part thereof being undertaken by the Customer, 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 a Staff Transfer Scheme and/or the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and/or any Sub-contractor and the Transferring Supplier Employees will have effect on and from the Service Transfer Date as if originally made between the Customer, a Replacement Supplier and/or a Replacement Sub‑contractor (as the case may be) and each such Transferring Supplier Employee.
   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 a Staff Transfer Scheme and/or the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub‑contractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Statutory Schemes which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Sub‑contractor (as appropriate); and (ii) the Customer, a Replacement Supplier and/or Replacement Sub‑contractor.
   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 arising from or as a result of:
      1. any act or omission of the Supplier or any Sub‑contractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee whether occurring before, on or after the Service Transfer Date;
      2. the breach or non‑observance by the Supplier or any Sub‑contractor occurring on or before the Service Transfer Date of:
         1. any collective agreement applicable to the Transferring Supplier Employees; and/or
         2. 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;
      3. any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Sub‑contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
      4. any failure by the Supplier or any Sub-contractor to comply with its obligations (including its obligations to maintain records) under the Working Time Regulations 1998, National Minimum Wage Act 1998 and any/all associated National Minimum Wage Regulations in the period prior to the Service Transfer Date in respect of any Transferring Supplier Employees or workers (current or past) including, but not limited to any failure to maintain adequate records which meet the minimum requirements for record-keeping and/or failure to deliver the same to the Customer, a Replacement Supplier and/or Replacement Sub-contractor on request;
      5. 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:
         1. 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
         2. in relation to any employee who is not identified in the Supplier's Final Supplier Personnel list, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer their employment from the Supplier or any Sub-contractor 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;
      6. 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;
      7. 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 identified in the Supplier's Final Supplier Personnel list for whom it is alleged the Customer and/or the Replacement Supplier and/or any Replacement Sub‑contractor may be liable by virtue of the Call-Off Contract and/or a Staff Transfer Scheme and/or the Employment Regulations and/or the Acquired Rights Directive; and
      8. any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the 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 and/or any Replacement Sub-contractor to comply with regulation 13(4) of the Employment Regulations.
   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 Customer, a 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:
      1. arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to their working conditions proposed by the Customer, a Replacement Supplier and/or any Replacement Sub‑contractor to occur in the period on or after the Service Transfer Date; or
      2. arising from the Customer's failure, a Replacement Supplier's failure, and/or Replacement Sub‑contractor's failure, to comply with its obligations under a Staff Transfer Scheme and/or the Employment Regulations.
   5. If any person who is not identified in the Supplier's Final Supplier Personnel list claims, or it is determined in relation to any person who is not identified in the Supplier's Final Supplier Personnel list, that their contract of employment has been transferred from the Supplier or any Sub‑contractor to the Customer, a Replacement Supplier and/or Replacement Sub‑contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:
      1. the Customer shall, or shall procure that the Replacement Supplier shall, or any Replacement Sub‑contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Supplier; and
      2. the Supplier may offer (or may procure that a Sub‑contractor may offer) employment to such person within fifteen (15) Working Days of the notification by the Customer, a 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.
   6. If such offer is accepted, or if the situation has otherwise been resolved by the Supplier or a Sub‑contractor, the Customer shall, or 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 their employment or alleged employment.
   7. If after the fifteen (15) Working Day period specified in Paragraph 2.5(b) has elapsed:
      1. no such offer of employment has been made;
      2. such offer has been made but not accepted; or
      3. the situation has not otherwise been resolved,

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

* 1. Subject to the Customer, a 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 Customer, a Replacement Supplier and/or Replacement Sub‑contractor against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.7 provided that the Customer takes, a Replacement Supplier takes, or shall procure that the Replacement Sub‑contractor takes, all reasonable steps to minimise any such Employee Liabilities.
  2. The indemnity in Paragraph 2.8:
     1. shall not apply to:
        1. any claim for:
           1. 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
           2. 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 Customer, a Replacement Supplier and/or Replacement Sub‑contractor; or

* + - 1. any claim that the termination of employment was unfair because the Customer, a Replacement Supplier and/or Replacement Sub‑contractor neglected to follow a fair dismissal procedure; and
    1. shall apply only where the notification referred to in Paragraph 2.5(a) is made by the Customer, a Replacement Supplier and/or Replacement Sub‑contractor to the Supplier within six (6) months of the Service Transfer Date.
  1. 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 Customer, a Replacement Supplier and/or Replacement Sub‑contractor within the time scales set out in Paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Supplier Employee.
  2. The Supplier shall comply, and shall procure that each Sub‑contractor shall comply, with all its obligations under a Staff Transfer Scheme and/or 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 any person identified in the Supplier's Final Supplier Personnel list before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and such sums due as a result of any Fair Deal Employees' participation in the Statutory Schemes and any requirement to set up a broadly comparable pension scheme which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:
     1. the Supplier and/or any Sub‑contractor; and
     2. the Customer and/or the Replacement Supplier and/or the Replacement Sub‑contractor.
  3. The Supplier shall, and shall procure that each Sub‑contractor shall, support a smooth and timely transfer and 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 and/or such consultation as the Customer deems necessary. The Customer shall, or 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.
  4. The Supplier shall, and shall procure that each Sub-contractor shall, provide all reasonable assistance and documentation required by the Customer, a Replacement Supplier and/or a Replacement Sub-contractor required by them in connection with any query, claim, dispute or proceedings arising after a Service Transfer Date but relating to a Transferring Supplier Employee.
  5. Subject to Paragraph 2.15, the Customer shall, or 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 arising from or as a result of:
     1. any act or omission of the Customer, a Replacement Supplier and/or Replacement Sub‑contractor in respect of any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee arising on or after the Service Transfer Date;
     2. the breach or non‑observance by the Customer and/or a Replacement Supplier and/or Replacement Sub‑contractor on or after the Service Transfer Date of:
        1. any collective agreement applicable to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List; and/or
        2. any custom or practice in respect of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List which the Customer and/or Replacement Supplier and/or Replacement Sub‑contractor is contractually bound to honour;
     3. any claim by any trade union or other body or person representing any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List arising from or connected with any failure by the Customer and/or Replacement Supplier and/or Replacement Sub‑contractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;
     4. any proposal by the Customer and/or Replacement Supplier and/or Replacement Sub‑contractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List on or after their transfer to the Customer and/or 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 identified in the Supplier's Final Supplier Personnel List who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Service Transfer Date as a result of or for a reason connected to such proposed changes;
     5. any statement communicated to or action undertaken by the Customer and/or Replacement Supplier and/or Replacement Sub‑contractor to, or in respect of, any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;
     6. any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
        1. in relation to any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
        2. in relation to any employee who is not a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer their employment from the Supplier or Sub‑contractor, to the Customer, 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;
     7. a failure of the Customer and/or Replacement Supplier and/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 identified in the Supplier's Final Supplier Personnel List in respect of the period from (and including) the Service Transfer Date; and
     8. any claim made by or in respect of a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee relating to any act or omission of the Customer and/or Replacement Supplier and/or Replacement Sub‑contractor in relation to obligations under regulation 13 of the Employment Regulations.
  6. The indemnities in Paragraph 2.14 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Sub‑contractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Sub‑contractor (as applicable) to comply with its obligations under a Staff Transfer Scheme and/or the Employment Regulations.