[Contract SCHEDULE [Guidance: insert schedule ref here]

STAFF TRANSFER

***[Guidance Note: this schedule only contains general provisions on the application of***

***TUPE and related issues and is essentially designed to alert Employers to the range of issues that may need to be considered where the entering into of a Call Off Agreement (and/or its subsequent expiry) is likely to entail a TUPE transfer. Employers should always take specialist legal advice on the specific TUPE and pensions drafting requirements (e.g. whether the New Fair Deal applies, whether there will be a Relevant Transfer etc) relevant to their project]***

1. Definitions
   1. In this Schedule [Guidance: insert schedule ref here], the following definitions shall apply:

|  |  |
| --- | --- |
|  |  |
| **“Consultant’s Final Personnel List”** | means a list provided by the *Consultant* of all staff who will transfer under the Employment Regulations on the Relevant Transfer Date; |
| **“Consultant’s Provisional Personnel List”** | means a list prepared and updated by the *Consultant* of all staff who are engaged in or wholly or mainly assigned to the provision of the *service* or any relevant part of the *service* which it is envisaged as at the date of such list will no longer be provided by the *Consultant* |
| **“Employee Liabilities”** | 1. means all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:    1. redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;    2. unfair, wrongful or constructive dismissal compensation;    3. compensation for discrimination on grounds of  sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity  or sexual orientation or claims for equal pay;    4. compensation for less favourable treatment of part-time workers or fixed term employees;    5. outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions in relation to payments made by the *Employer* or the Replacement Consultant to a Transferring Consultant Employee which would have been payable by the *Consultant* or the Sub-Consultant if such payment should have been made prior to the Service Transfer Date;    6. claims whether in tort, contract or statute or otherwise;    7. any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation; |
| **"New Fair Deal"** | the revised Fair Deal position set out in the HM Treasury guidance: “Fair Deal for staff pensions: staff transfer from central government” issued in October 2013; |
| **"Notified Sub-Consultant"** | means a Sub-Consultant identified in Annex 1 of this Contract [Guidance: insert schedule ref here] to whom Transferring Employer’s Employees and/or Transferring Former Consultant Employees will transfer on a Relevant Transfer Date; |
| **"Principles of Good Employment Practice"** | means the guidance published by the Cabinet Office and found at [www.gov.uk/government/publications/principles-of-good-employment-practice](http://www.gov.uk/government/publications/principles-of-good-employment-practice) ; |
| **“Replacement Consultant”** | means any third party provider of Replacement Services appointed by or at the direction of the *Employer* from time to time or where the *Employer* is providing Replacement Services for its own account, shall also include the *Employer* |
| **“Replacement Services”** | means any services which are substantially similar to any of the *service* and which the *Employer* receives in substitution for any of the *service* following the end of the *service period* or earlier termination, whether those services are provided by the *Employer* internally and/or by any third party; |
| **“Replacement Sub-Consultant”** | means a Subconsultant of the Replacement Consultant to whom Transferring Consultant Employees will transfer on a Service Transfer Date (or any sub-Consultant of any such sub-Consultant); |
| **“Service Transfer”** | any transfer of the *service* (or any part of the *service*), for whatever reason, from the *Consultant* or any Subconsultant to a Replacement Consultant or a Replacement Sub-Consultant |
| **“Service Transfer Date”** | means the date of a Service Transfer; |
| **"Staffing Information"** | means, in relation to all persons identified on the Consultant's Provisional Personnel List or Consultant's Final Personnel List, as the case may be, such information as the *Employer* may reasonably request (subject to all applicable provisions of the Data Protection Legislation), but including in an anonymised format:  a) their ages, dates of commencement of employment or engagement and gender;  b) details of whether they are employed, self employed Consultants or consultants, agency workers or otherwise;  c) details of contracted working hours;  d) the identity of the employer or relevant contracting party;  e) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;  f) their wages, salaries and profit sharing arrangements as applicable;  g) 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;  h) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);  i) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;  j) 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  k) any other “employee liability information” as such term is defined in regulation 11 of the Employment Regulations; |
| **“Transferring Consultant Employees”** | means those employees of the *Consultant* and/or the Sub-Consultants to whom the Employment Regulations will apply on the Service Transfer Date |
| **"Transferring Employer Employees"** | means those employees of the *Employer* to whom the Employment Regulations will apply on the Relevant Transfer Date; |

**Interpretation**

Where a provision in this Annex imposes an obligation on the *Consultant* to provide an indemnity, undertaking or warranty, the *Consultant* shall procure that each of its Sub-Consultants shall comply with such obligation and provide such indemnity, undertaking or warranty to the *Employer*, Former Consultant, Replacement Consultant or Replacement Sub-Consultant, as the case may be.

**PART A**

**Transferring Employer Employees at commencement of the provision of Services**

1. RelevantTransfers
   1. The *Employer* and the *Consultant* agree that:
      1. the commencement of the provision of the *service* or of each relevant part of the *service* will be a Relevant Transfer in relation to the Transferring Employer Employees; and
      2. as a result of the operation of the Employment Regulations, the contracts of employment between the *Employer* and the Transferring Employer Employees (except in relation to any terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Relevant Transfer Date as if originally made between the *Consultant* and/or any Notified Sub-Consultant and each such Transferring Employer Employee.
   2. The *Employer* shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Employer Employees in respect of the period arising up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period up to (but not including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the *Employer*; and (ii) the *Consultant* and/or any Notified Sub-Consultant (as appropriate).
2. *Employer* Indemnities
   1. Subject to paragraph 1 of Part A of this [Guidance: insert schedule ref here], the *Employer* shall indemnify the *Consultant* and any Notified Sub-Consultant against any Employee Liabilities in respect of any Transferring Employer Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
      1. any act or omission by the *Employer* occurring before the Relevant Transfer Date;
      2. the breach or non-observance by the *Employer* before the Relevant Transfer Date of:
         1. any collective agreement applicable to the Transferring Employer Employees; and/or
         2. any custom or practice in respect of any Transferring Employer Employees which the *Employer* is contractually bound to honour.
      3. any claim by any trade union or other body or person representing the Transferring Employer Employees arising from or connected with any failure by the *Employer* to comply with any legal obligation to such trade union, body or person arising before the Relevant Transfer Date;
      4. any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
         1. in relation to any Transferring Employer Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
         2. in relation to any employee who is not a Transferring Employer Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the *Employer* to the *Consultant* and/or any Notified Sub-Consultant as appropriate, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date.
      5. a failure of the *Employer* 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 Employer Employees arising before the Relevant Transfer Date;
      6. any claim made by or in respect of any person employed or formerly employed by the *Employer* other than a Transferring Employer Employee for whom it is alleged the *Consultant* and/or any Notified Sub-Consultant as appropriate may be liable by virtue of the Employment Regulations and/or the Acquired Rights Directive; and
      7. any claim made by or in respect of a Transferring Employer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Employer Employee relating to any act or omission of the *Employer* 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 *Consultant* or any Sub-Consultant to comply with regulation 13(4) of the Employment Regulations.
   2. The indemnities in paragraph 2.1 of Part A of this [Guidance: insert schedule ref here] shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the *Consultant* or any Sub-Consultant (whether or not a Notified Sub-Consultant) whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities:
      1. arising out of the resignation of any Transferring Employer Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the *Consultant* and/or any Sub-Consultant to occur in the period from (and including) the Relevant Transfer Date); or
      2. arising from the failure by the *Consultant* or any Sub-Consultant to comply with its obligations under the Employment Regulations.
   3. If any person who is not identified by the *Employer* as a Transferring Employer Employee claims, or it is determined in relation to any person who is not identified by the *Employer* as a Transferring Employer Employee, that his/her contract of employment has been transferred from the *Employer* to the *Consultant* and/or any Notified Sub-Consultant pursuant to the Employment Regulations or the Acquired Rights Directive then:
      1. the *Consultant* shall, or shall procure that the Notified Sub-Consultant shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the *Employer*; and
      2. the *Employer* may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of receipt of the notification by the *Consultant* and/or any Notified Sub-Consultant, or take such other reasonable steps as the *Employer* considers appropriate to deal with the matter provided always that such steps are in compliance with *law of the contract*.
   4. If an offer referred to in paragraph 2.3.2 of Part A of this [Guidance: insert schedule ref here] is accepted, or if the situation has otherwise been resolved by the *Employer*, the *Consultant* shall, or shall procure that the Notified Sub-Consultant shall, immediately release the person from his/her employment or alleged employment.
   5. If by the end of the fifteen (15) Working Day period specified in paragraph 2.3.2 of Part A of this [Guidance: insert schedule ref here]:
      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 *Consultant* and/or any Notified Sub-Consultant may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

* 1. Subject to the *Consultant* and/or any Notified Sub-Consultant acting in accordance with the provisions of paragraphs 2.3 to 2.5 of Part A of this [Guidance: insert schedule ref here] and in accordance with all applicable proper employment procedures set out in the *law of the contract*, the *Employer* shall indemnify the *Consultant* and/or any Notified Sub-Consultant (as appropriate) against all Employee Liabilities arising out of the termination pursuant to the provisions of paragraph 2.5 of Part A of this [Guidance: insert schedule ref here] provided that the *Consultant* takes, or procures that the Notified Sub-Consultant takes, all reasonable steps to minimise any such Employee Liabilities.
  2. The indemnity in paragraph 2.6 of Part A of this [Guidance: insert schedule ref here]
     1. shall not apply to:
        1. any claim for

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

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 *Consultant* and/or any Sub-Consultant;

* + - 1. any claim that the termination of employment was unfair because the *Consultant* and/or Notified Sub-Consultant neglected to follow a fair dismissal procedure; and
    1. shall apply only where the notification referred to in paragraph 2.3.1 of Part A of this [Guidance: insert schedule ref here] is made by the *Consultant* and/or any Notified Sub-Consultant (as appropriate) to the *Employer* within six (6) months of the Contract Date.
  1. If any such person as is referred to in paragraph 2.3 of Part A of this [Guidance: insert schedule ref here] is neither re-employed by the *Employer* nor dismissed by the *Consultant* and/or any Notified Sub-Consultant within the time scales set out in paragraph 2.5 of Part A of this [Guidance: insert schedule ref here] such person shall be treated as having transferred to the *Consultant* and/or any Notified Sub-Consultant and the *Consultant* shall, or shall procure that the Notified Sub-Consultant shall, comply with such obligations as may be imposed upon it under the *law of the contract*.

1. *Consultant* Indemnities and Obligations
   1. Subject to paragraph 3.2 of Part A of this [Guidance: insert schedule ref here], the *Consultant* shall indemnify the *Employer* against any Employee Liabilities in respect of any Transferring Employer Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
      1. any act or omission by the *Consultant* or any Sub-Consultant whether occurring before, on or after the Relevant Transfer Date;
      2. the breach or non-observance by the *Consultant* or any Sub-Consultant on or after the Relevant Transfer Date of:
         1. any collective agreement applicable to the Transferring Employer Employees; and/or
         2. any custom or practice in respect of any Transferring Employer Employees which the *Consultant* or any Sub-Consultant is contractually bound to honour;
      3. any claim by any trade union or other body or person representing any Transferring Employer Employees arising from or connected with any failure by the *Consultant* or any Sub-Consultant 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 *Consultant* or a Sub-Consultant made before the Relevant Transfer Date to change the terms and conditions of employment or working conditions of any Transferring Employer Employees on or after their transfer to the *Consultant* or the relevant Sub-Consultant (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 Employer Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
      5. any statement communicated to or action undertaken by the *Consultant* or any Sub-Consultant to, or in respect of, any Transferring Employer Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the *Employer* 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 Employer 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
         2. in relation to any employee who is not a Transferring Employer Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the *Employer* to the *Consultant* or a Sub-Consultant, 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;
      7. a failure of the *Consultant* or any Sub-Consultant 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 Employer Employees in respect of the period from (and including) the Relevant Transfer Date; and
      8. any claim made by or in respect of a Transferring Employer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Employer Employee relating to any act or omission of the *Consultant* or any Sub-Consultant in relation to their obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the *Employer*'s failure to comply with its obligations under regulation 13 of the Employment Regulations.
   2. The indemnities in paragraph 3.1 of Part A of this [Guidance: insert schedule ref here] shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the *Employer* whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the *Employer*’s failure to comply with its obligations under the Employment Regulations.
   3. The *Consultant* shall comply, and shall procure that each Sub-Consultant shall comply, with all its obligations under the Employment Regulations (including its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-Consultant shall perform and discharge, all its obligations in respect of the Transferring Employer Employees, from (and including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period from and including the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the *Employer* and the *Consultant*.
2. Information
   1. The *Consultant* shall, and shall procure that each Sub-Consultant shall, promptly provide to the *Employer* in writing such information as is necessary to enable the *Employer* to carry out its duties under regulation 13 of the Employment Regulations. The *Employer* shall promptly provide to the *Consultant* and each Notified Sub-Consultant in writing such information as is necessary to enable the *Consultant* and each Notified Sub-Consultant to carry out their respective duties under regulation 13 of the Employment Regulations.
3. Principles of Good Employment Practice
   1. The Parties agree that the principles set out in the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the *Consultant* of employees whose employment begins after the Relevant Transfer Date, and the *Consultant* undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.
   2. The *Consultant* shall, and shall procure that each Sub-Consultant shall, comply with any requirement notified to it by the *Employer* relating to pensions in respect of any Transferring Employer 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.
4. Pensions
   1. The *Consultant* shall, and shall procure that each of its Sub-Consultants shall, comply with the pensions provisions set out in the following Annex.

12/08/2013

**ANNEX TO PART A: PENSIONS**

1. Participation
   1. The *Consultant* undertakes to enter into the Admission Agreement.
   2. The *Consultant* and the *Employer*:
      1. undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the *Consultant* to participate in the Schemes in respect of the Fair Deal Employees;
      2. agree that the *Employer* is entitled to make arrangements with the body responsible for the Schemes for the *Employer* to be notified if the *Consultant* breaches the Admission Agreement;
      3. notwithstanding Paragraph 1.2.2 of this Annex, the *Consultant* shall notify the *Employer* in the event that it breaches the Admission Agreement; and
      4. agree that the *Employer* may terminate this Call Off Contract for default in the event that the *Consultant* breaches the Admission Agreement.
   3. The *Consultant* shall bear its own costs and all costs that the *Employer* reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the *Consultant* participating in the Schemes.
2. Future Service Benefits
   1. The *Consultant* shall procure that the Fair Deal Employees shall be either admitted into or offered continued membership of the relevant section of the Schemes that they currently contribute to or were eligible to join immediately prior to the Relevant Transfer Date and the *Consultant* shall procure that the Fair Deal Employees shall continue to accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.
   2. The *Consultant* undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the *Employer*, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary’s Department or any actuary nominated by the *Employer* in accordance with relevant guidance produced by the Government Actuary’s Department as providing benefits which are broadly comparable to those provided by the Schemes at the relevant date.
   3. The parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.
3. Funding
   1. The *Consultant* undertakes to pay to the Schemes such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.
   2. The *Consultant* shall indemnify and keep indemnified the *Employer* on demand against any claim by, payment to, or loss incurred by the Schemes in respect of the failure to account to the Schemes for payments received and non-payment or the late payment of any sum payable by the *Consultant* to or in respect of the Schemes.
4. Provision of Information
   1. The *Consultant* and the *Employer* respectively undertake to each other:
      1. to provide all information which the other party may reasonably request concerning matters:

referred to in this Annex; and

set out in the Admission Agreement

and shall supply such information as expeditiously as possible; and

* + 1. not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other party (not to be unreasonably withheld or delayed).

1. Indemnities
   1. The *Consultant* undertakes to the *Employer* to indemnify and keep indemnified the *Employer* on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.
2. Employer Obligation
   1. The *Consultant* shall comply with the requirements of the Pensions Act 2008 and the Transfer of Employment (Pension Protection) Regulations 2005.
3. Subsequent Transfers
   1. The *Consultant* shall:
      1. not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the date of the relevant future transfer; and
      2. provide all such co-operation and assistance as the Replacement Consultant and/or the *Employer* may reasonably require to enable the Replacement Consultant to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under the New Fair Deal; and.
      3. for the period either:
         1. after notice (for whatever reason) is given, in accordance with the other provisions of this contract, to terminate the contract or any part of the *service*; or
         2. after the date which is two (2) years prior to the date of expiry of this contract,

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

12/08/2013

**PART B**

**Transferring Former Consultant Employees at commencement of the provision of Services**

1. Relevant Transfers
   1. The parties agree that:
      1. the commencement of the provision of the *service* or of any relevant part of the *service* will be a Relevant Transfer in relation to the Transferring Former Consultant Employees; and
      2. as a result of the operation of the Employment Regulations, the contracts of employment between each Former Consultant and the Transferring Former Consultant Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the *Consultant* and/or Notified Sub-Consultant and each such Transferring Former Consultant Employee.
   2. The *Employer* shall procure that each Former Consultant shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Consultant Employees in respect of the period up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the *Consultant* shall make, and the *Employer* shall procure that each Former Consultant makes, any necessary apportionments in respect of any periodic payments.
2. Former Consultant Indemnities
   1. Subject to paragraph 1.2 of Part B of this [Guidance: insert schedule ref here], the *Employer* shall procure that each Former Consultant shall indemnify the *Consultant* and any Notified Sub-Consultant against any Employee Liabilities in respect of any Transferring Former Consultant Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
      1. any act or omission by the Former Consultant arising before the Relevant Transfer Date;
      2. the breach or non-observance by the Former Consultant arising before the Relevant Transfer Date of:
         1. any collective agreement applicable to the Transferring Former Consultant Employees; and/or
         2. any custom or practice in respect of any Transferring Former Consultant Employees which the Former Consultant is contractually bound to honour.
      3. any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
         1. in relation to any Transferring Former Consultant Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
         2. in relation to any employee who is not a Transferring Former Consultant Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Consultant to the *Consultant* and/or any Notified Sub-Consultant as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;
      4. a failure of the Former Consultant 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 Consultant Employees in respect of the period to (but excluding) the Relevant Transfer Date;
      5. any claim made by or in respect of any person employed or formerly employed by the Former Consultant other than a Transferring Former Consultant Employee for whom it is alleged the *Consultant* and/or any Notified Sub-Consultant as appropriate may be liable by virtue of this contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
      6. any claim made by or in respect of a Transferring Former Consultant Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Consultant Employee relating to any act or omission of the Former Consultant 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 *Consultant* or any Sub-Consultant to comply with regulation 13(4) of the Employment Regulations.
   2. The indemnities in paragraph 2.1 of Part B of this [Guidance: insert schedule ref here] shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the *Consultant* or any Sub-Consultant 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 Consultant Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the *Consultant* or any Sub-Consultant to occur in the period from (and including) the Relevant Transfer Date); or
      2. arising from the failure by the *Consultant* and/or any Sub-Consultant to comply with its obligations under the Employment Regulations).
   3. If any person who is not identified by the *Employer* as a Transferring Former Consultant Employee claims, or it is determined in relation to any person who is not identified by the *Employer* as a Transferring Former Consultant Employee, that his/her contract of employment has been transferred from a Former Consultant to the *Consultant* and/or any Notified Sub-Consultant pursuant to the Employment Regulations or the Acquired Rights Directive then:
      1. the *Consultant* shall, or shall procure that the Notified Sub-Consultant shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the *Employer* and, where required by the *Employer*, to the Former Consultant; and
      2. the Former Consultant 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 *Consultant* and/or the Notified Sub-Consultant or take such other reasonable steps as the Former Consultant considers appropriate to deal with the matter provided always that such steps are in compliance with the *law of the contract*.
   4. If an offer referred to in paragraph 2.3.2 of Part B of this [Guidance: insert schedule ref here] is accepted, or if the situation has otherwise been resolved by the Former Consultant and/or the *Employer*, the *Consultant* shall, or shall procure that the Notified Sub-Consultant shall, immediately release the person from his/her employment or alleged employment.
   5. If by the end of the 15 Working Day period specified in paragraph 2.3.2 of Part B of this [Guidance: insert schedule ref here]:
      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 *Consultant* and/or any Notified Sub-Consultant may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

* 1. Subject to the *Consultant* and/or any Notified Sub-Consultant acting in accordance with the provisions of paragraphs 2.3 to 2.5 of Part B of this [Guidance: insert schedule ref here] and in accordance with all applicable proper employment procedures set out in the *law of the contract*, the *Employer* shall procure that the Former Consultant indemnifies the *Consultant* and/or any Notified Sub-Consultant (as appropriate) against all Employee Liabilities arising out of the termination pursuant to the provisions of paragraph 2.5 of Part B of this [Guidance: insert schedule ref here] provided that the *Consultant* takes, or shall procure that the Notified Sub-Consultant takes, all reasonable steps to minimise any such Employee Liabilities.
  2. The indemnity in paragraph 2.6 of Part B of this [Guidance: insert schedule ref here]
     1. shall not apply to:
        1. any claim for

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

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 *Consultant* and/or any Sub-Consultant; or

* + - 1. any claim that the termination of employment was unfair because the *Consultant* and/or Notified Sub-Consultant neglected to follow a fair dismissal procedure; and
    1. shall apply only where the notification referred to in paragraph 2.3.2 of Part B of this [Guidance: insert schedule ref here] is made by the *Consultant* and/or any Notified Sub-Consultant (as appropriate) to the *Employer* and, if applicable, the Former Consultant, within six (6) months of the Contract Date.
  1. If any such person as is described in paragraph 2.3 of Part B of this [Guidance: insert schedule ref here] is neither re-employed by the Former Consultant nor dismissed by the *Consultant* and/or any Notified Sub-Consultant within the time scales set out in paragraph 2.5 of Part B of this [Guidance: insert schedule ref here], such person shall be treated as having transferred to the *Consultant* or Notified Sub-Consultant and the *Consultant* shall, or shall procure that the Notified Sub-Consultant shall, comply with such obligations as may be imposed upon it under the *law of the contract*.

1. Consultant Indemnities and Obligations
   1. Subject to paragraph 3.2  of Part B of this [Guidance: insert schedule ref here], the *Consultant* shall indemnify the *Employer* and/or the Former Consultant against any Employee Liabilities in respect of any Transferring Former Consultant Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
      1. any act or omission by the *Consultant* or any Sub-Consultant whether occurring before, on or after the Relevant Transfer Date;
      2. the breach or non-observance by the *Consultant* or any Sub-Consultant on or after the Relevant Transfer Date of:
         1. any collective agreement applicable to the Transferring Former Consultant Employee; and/or
         2. any custom or practice in respect of any Transferring Former Consultant Employees which the *Consultant* or any Sub-Consultant is contractually bound to honour;
      3. any claim by any trade union or other body or person representing any Transferring Former Consultant Employees arising from or connected with any failure by the *Consultant* or a Sub-Consultant 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 *Consultant* or a Sub-Consultant prior to the Relevant Transfer Date to change the terms and conditions of employment or working conditions of any Transferring Former Consultant Employees on or after their transfer to the *Consultant* or a Sub-Consultant (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 Consultant Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
      5. any statement communicated to or action undertaken by the *Consultant* or a Sub-Consultant to, or in respect of, any Transferring Former Consultant Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the *Employer* and/or the Former Consultant 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 Former Consultant 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
         2. in relation to any employee who is not a Transferring Former Consultant Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Consultant to the *Consultant* or a Sub-Consultant, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
      7. a failure of the *Consultant* or any Sub-Consultant 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 Consultant Employees in respect of the period from (and including) the Relevant Transfer Date; and
      8. any claim made by or in respect of a Transferring Former Consultant Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Consultant Employee relating to any act or omission of the *Consultant* or any Sub-Consultant in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Consultant's failure to comply with its obligations under regulation 13 of the Employment Regulations.
   2. The indemnities in paragraph 3.1 of Part B of this [Guidance: insert schedule ref here] shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Consultant whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Consultant’s failure to comply with its obligations under the Employment Regulations.
   3. The *Consultant* shall comply, and shall procure that each Sub-Consultant shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-Consultant shall perform and discharge, all its obligations in respect of all the Transferring Former Consultant Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the *Consultant* and the Former Consultant.
2. Information
   1. The *Consultant* shall, and shall procure that each Sub-Consultant shall, promptly provide to the *Employer* and/or at the *Employer*’s direction, the Former Consultant, in writing such information as is necessary to enable the *Employer* and/or the Former Consultant to carry out their respective duties under regulation 13 of the Employment Regulations. The *Employer* shall procure that the Former Consultant shall promptly provide to the *Consultant* and each Notified Sub-Consultant in writing such information as is necessary to enable the *Consultant* and each Notified Sub-Consultant to carry out their respective duties under regulation 13 of the Employment Regulations.
3. Principles of Good Employment Practice
   1. The *Consultant* shall, and shall procure that each Sub-Consultant shall, comply with any requirement notified to it by the *Employer* relating to pensions in respect of any Transferring Former Consultant Employee as set down in:
   2. the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
   3. HM Treasury's guidance “Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
   4. HM Treasury's guidance: “Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues” of June 2004; and/or
   5. the New Fair Deal.
4. Procurement Obligations
   1. Notwithstanding any other provisions of this Part B of this [Guidance: insert schedule ref here], where in this Part B the *Employer* accepts an obligation to procure that a Former Consultant does or does not do something, such obligation shall be limited so that it extends only to the extent that the *Employer*'s contract with the Former Consultant contains a contractual right in that regard which the *Employer* may enforce, or otherwise so that it requires only that the *Employer* must use reasonable endeavours to procure that the Former Consultant does or does not act accordingly.
5. Pensions
   1. The *Consultant* shall, and shall procure that each Sub-Consultant shall, comply with the pensions provisions in the following Annex.

12/08/2013

**ANNEX TO PART B: PENSIONS**

1. Participation
   1. The *Consultant* undertakes to enter into the Admission Agreement.
   2. The *Consultant* and the *Employer*:
      1. undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the *Consultant* to participate in the Schemes in respect of the Fair Deal Employees;
      2. agree that the *Employer* is entitled to make arrangements with the body responsible for the Schemes for the *Employer* to be notified if the *Consultant* breaches the Admission Agreement;
      3. notwithstanding Paragraph 1.2.2 of this Annex, the *Consultant* shall notify the *Employer* in the event that it breaches the Admission Agreement; and
      4. agree that the *Employer* may terminate this Call Off Contract for default in the event that the *Consultant* breaches the Admission Agreement.
   3. The *Consultant* shall bear its own costs and all costs that the *Employer* reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the *Consultant* participating in the Schemes.
2. Future Service Benefits
   1. If the *Consultant* is rejoining the Schemes for the first time, the *Consultant* shall procure that the Fair Deal Employees shall be either admitted to or offered continued membership of the relevant section of the Schemes that they became eligible to join on the Relevant Transfer Date and shall continue to accrue or accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.
   2. If staff have already been readmitted to the Schemes, the *Consultant* shall procure that the Fair Deal Employees shall be either admitted into or offered continued membership of the relevant section of the Schemes that they currently contribute to or were eligible to join immediately prior to the Relevant Transfer Date and the *Consultant* shall procure that the Fair Deal Employees shall continue to accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.
   3. The *Consultant* undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the *Employer*, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary’s Department or any actuary nominated by the *Employer* in accordance with relevant guidance produced by the Government Actuary’s Department as providing benefits which are broadly comparable to those provided by the Schemes at the relevant date.
   4. The parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.
3. Funding
   1. The *Consultant* undertakes to pay to the Schemes such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.
   2. The *Consultant* shall indemnify and keep indemnified the *Employer* on demand against any claim by, payment to, or loss incurred by the Schemes in respect of the failure to account to the Schemes for payments received and non-payment or the late payment of any sum payable by the *Consultant* to or in respect of the Schemes.
4. Provision of Information
   1. The *Consultant* and the *Employer* respectively undertake to each other:
      1. to provide all information which the other party may reasonably request concerning matters:

referred to in this Annex; and

set out in the Admission Agreement

and shall supply such information as expeditiously as possible; and

* + 1. not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other party (not to be unreasonably withheld or delayed).

1. Indemnities
   1. The *Consultant* undertakes to the *Employer* to indemnify and keep indemnified the *Employer* on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.
2. Employer Obligation
   1. The *Consultant* shall comply with the requirements of the Pensions Act 2008 and the Transfer of Employment (Pension Protection) Regulations 2005.
3. Subsequent Transfers
   1. The *Consultant* shall:
      1. not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the date of the relevant future transfer; and
      2. provide all such co-operation and assistance as the Replacement Consultant and/or the *Employer* may reasonably require to enable the Replacement Consultant to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under the New Fair Deal; and.
      3. for the period either:
         1. after notice (for whatever reason) is given, in accordance with the other provisions of this contract, to terminate the contract or any part of the *service*; or
         2. after the date which is two (2) years prior to the date of expiry of this contract,

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

12/08/2013

**PART C**

**No transfer of employees at commencement of the provision of Services**

1. Procedure in the Event of Transfer
   1. The *Employer* and the *Consultant* agree that the commencement of the provision of the *service* or of any part of the *service* will not be a Relevant Transfer in relation to any employees of the *Employer* and/or any Former Consultant.
   2. If any employee of the *Employer* and/or a Former Consultant claims, or it is determined in relation to any employee of the *Employer* and/or a Former Consultant, that his/her contract of employment has been transferred from the *Employer* and/or the Former Consultant to the *Consultant* and/or any Sub-Consultant pursuant to the Employment Regulations or the Acquired Rights Directive then:
      1. the *Consultant* shall, and shall procure that the relevant Sub-Consultant shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the *Employer* and, where required by the *Employer*, give notice to the Former Consultant; and
      2. the *Employer* and/or the Former Consultant 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 *Consultant* or the Sub-Consultant (as appropriate) or take such other reasonable steps as the *Employer* or Former *Consultant* (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with the *law of the contract*.
   3. If an offer referred to in paragraph 1.2.2 of Part C of this [Guidance: insert schedule ref here] is accepted (or if the situation has otherwise been resolved by the *Employer* and/or the Former Consultant), the *Consultant* shall, or shall procure that the Sub-Consultant shall, immediately release the person from his/her employment or alleged employment.
   4. If by the end of the fifteen (15) Working Day period specified in paragraph 1.2.2
      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 *Consultant* and/or the Sub-Consultant may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

1. Indemnities
   1. Subject to the *Consultant* and/or the relevant Notified Sub-Consultant acting in accordance with the provisions of paragraphs 1.2 to 1.4 of Part C of this [Guidance: insert schedule ref here] and in accordance with all applicable employment procedures set out in the *law of the contract* and subject also to paragraph 1.4 of Part C of this [Guidance: insert schedule ref here], the *Employer* shall:
      1. indemnify the *Consultant* and/or the relevant Notified Sub-Consultant against all Employee Liabilities arising out of the termination of the employment of any employees of the *Employer* referred to in paragraph 1.2 of Part C of this [Guidance: insert schedule ref here] made pursuant to the provisions of paragraph 1.4 of Part C of this [Guidance: insert schedule ref here] provided that the *Consultant* takes, or shall procure that the Notified Sub-Consultant takes, all reasonable steps to minimise any such Employee Liabilities; and
      2. procure that the Former Consultant indemnifies the *Consultant* and/or any Notified Sub-Consultant against all Employee Liabilities arising out of termination of the employment of the employees of the Former Consultant made pursuant to the provisions of paragraph 1.2 of Part C of this [Guidance: insert schedule ref here] provided that the *Consultant* takes, or shall procure that the relevant Sub-Consultant takes, all reasonable steps to minimise any such Employee Liabilities.
   2. If any such person as is described in paragraph 1.2 of Part C of this [Guidance: insert schedule ref here] is neither re employed by the *Employer* and/or the Former Consultant as appropriate nor dismissed by the *Consultant* and/or any Sub-Consultant within the fifteen (15) Working Day period referred to in paragraph 1.4 of Part C of this [Guidance: insert schedule ref here] such person shall be treated as having transferred to the *Consultant* and/or the Sub-Consultant (as appropriate) and the *Consultant* shall, or shall procure that the Sub-Consultant shall, comply with such obligations as may be imposed upon it under the *law of the contract*.
   3. Where any person remains employed by the *Consultant* and/or any Sub-Consultant pursuant to paragraph 1.2 of Part C of this [Guidance: insert schedule ref here], all Employee Liabilities in relation to such employee shall remain with the *Consultant* and/or the Sub-Consultant and the *Consultant* shall indemnify the *Employer* and any Former Consultant, and shall procure that the Sub-Consultant shall indemnify the *Employer* and any Former Consultant, against any Employee Liabilities that either of them may incur in respect of any such employees of the *Consultant* and/or employees of the Sub-Consultant.
   4. The indemnities in paragraph 2.1 of Part C of this [Guidance: insert schedule ref here]
      1. shall not apply to:
         1. any claim for

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

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

in any case in relation to any alleged act or omission of the *Consultant* and/or any Sub-Consultant; or

* + - 1. any claim that the termination of employment was unfair because the *Consultant* and/or Notified Sub-Consultant neglected to follow a fair dismissal procedure; and
    1. shall apply only where the notification referred to in paragraph 1.2.1 of Part C of this [Guidance: insert schedule ref here] is made by the *Consultant* and/or any Sub-Consultant to the *Employer* and, if applicable, Former Consultant within six (6) months of the Contract Date.

1. Procurement Obligations
   1. Where in this Part C of this [Guidance: insert schedule ref here] the *Employer* accepts an obligation to procure that a Former Consultant does or does not do something, such obligation shall be limited so that it extends only to the extent that the *Employer*'s contract with the Former Consultant contains a contractual right in that regard which the *Employer* may enforce, or otherwise so that it requires only that the *Employer* must use reasonable endeavours to procure that the Former Consultant does or does not act accordingly.

12/08/2013

**PART D**

**Employment Exit Provisions**

1. Pre-service Transfer Obligations
   1. The *Consultant* agrees that within twenty (20) Working Days of the earliest of:
      1. receipt of a notification from the *Employer* of a Service Transfer or intended Service Transfer;
      2. receipt of the giving of notice of early termination or any partial termination of this contract;
      3. the date which is twelve (12) months before the end of the *service period*; and
      4. receipt of a written request of the *Employer* at any time (provided that the *Employer* shall only be entitled to make one such request in any six (6) month period),

it shall provide in a suitably anonymised format so as to comply with the Data Protection Legislation, the Consultant's Provisional Personnel List, together with the Staffing Information in relation to the Consultant's Provisional Personnel List and it shall provide an updated Consultant's Provisional Personnel List at such intervals as are reasonably requested by the *Employer*.

* 1. At least twenty (20) Working Days prior to the Service Transfer Date, the *Consultant* shall provide to the *Employer* or at the direction of the *Employer* to any Replacement Consultant and/or any Replacement Sub-Consultant:
     1. the Consultant's Final Personnel List, which shall identify which of the Staff are Transferring Consultant Employees; and
     2. the Staffing Information in relation to the Consultant’s Final Personnel List (insofar as such information has not previously been provided).
  2. The *Employer* shall be permitted to use and disclose information provided by the *Consultant* under paragraphs 1.1 and 1.2 of Part D of this [Guidance: insert schedule ref here] for the purpose of informing any prospective Replacement Consultant and/or Replacement Sub-Consultant.
  3. The *Consultant* warrants, for the benefit of the *Employer*, any Replacement Consultant, and any Replacement Sub-Consultant that all information provided pursuant to paragraphs 1.1 and 1.2 of Part D of this [Guidance: insert schedule ref here] shall be true and accurate in all material respects.
  4. From the date of the earliest event referred to in paragraphs 1.1.1 to 1.1.3 of Part D of this [Guidance: insert schedule ref here], the *Consultant* agrees, that it shall not, and agrees to procure that each Sub-Consultant shall not, assign any person to the provision of the Services who is not listed on the Consultant’s Provisional Personnel List and shall not without the approval of the *Employer* (not to be unreasonably withheld or delayed):
     1. replace or re-deploy any Staff listed on the Consultant’s Provisional Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;
     2. make, promise, propose or permit any material changes to the terms and conditions of employment of the Staff (including 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 Staff 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 Consultant's Provisional 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 Consultant's Provisional Personnel List save by due disciplinary process,

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

* 1. During the *service period*, the *Consultant* shall provide to the *Employer* any information the *Employer* may reasonably require relating to any individual employed, assigned or engaged in providing the Services (subject to any limitations imposed by the Data Protection Legislation) including without limitation the Staffing Information and, upon reasonable request by the *Employer* and subject only to any limitation imposed by the Data Protection Legislation, the *Consultant* shall provide, and shall procure that each Sub-Consultant shall provide, the *Employer* or, at the direction of the *Employer* to a Replacement Consultant and/or any Replacement Sub-Consultant with access (on reasonable notice and during normal working hours) to such employment records as the *Employer* reasonably requests and shall allow the *Employer* or at the *Employer*’s direction, the Replacement Consultant and/or any Replacement Sub-Consultant to have copies of any such documents.
  2. The *Consultant* shall provide, and shall procure that each Sub-Consultant shall provide, all reasonable cooperation and assistance to the *Employer*, any Replacement Consultant and/or any Replacement Sub-Consultant to ensure the smooth transfer of the Transferring Consultant 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 Consultant 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 *Consultant* shall provide, and shall procure that each Sub-Consultant shall provide, the *Employer* or, at the direction of the *Employer*, to any Replacement Consultant and/or any Replacement Sub-Consultant (as appropriate), in respect of each person on the Consultant's Final Personnel List who is a Transferring Consultant 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; and
     6. bank/building society account details for payroll purposes.

1. Employment Regulations Exit Provisions
   1. The *Employer* and the *Consultant* acknowledge that subsequent to the *starting date*, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or partial termination of this contract or otherwise) resulting in the Services being undertaken by a Replacement Consultant and/or a Replacement Sub-Consultant. Such change in the identity of the *Consultant* of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The *Employer* and the *Consultant* further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the *Consultant* and the Transferring Consultant Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Consultant and/or a Replacement Sub-Consultant (as the case may be) and each such Transferring Consultant Employee.
   2. The *Consultant* shall, and shall procure that each Sub-Consultant shall, comply with all its obligations in respect of the Transferring Consultant Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-Consultant shall perform and discharge, all its obligations in respect of all the Transferring Consultant Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the *Consultant* and/or the Sub-Consultant (as appropriate); and (ii) the Replacement Consultant and/or Replacement Sub-Consultant.
   3. Subject to paragraph 2.4 of Part D of this [Guidance: insert schedule ref here], the *Consultant* shall indemnify the *Employer* and/or the Replacement Consultant and/or any Replacement Sub-Consultant against any Employee Liabilities in respect of any Transferring Consultant Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
      1. any act or omission of the *Consultant* or any Sub-Consultant whether occurring before, on or after the Service Transfer Date;
      2. the breach or non-observance by the *Consultant* or any Sub-Consultant occurring on or before the Service Transfer Date of:
         1. any collective agreement applicable to the Transferring Consultant Employees; and/or
         2. any other custom or practice with a trade union or staff association in respect of any Transferring Consultant Employees which the *Consultant* or any Sub-Consultant is contractually bound to honour;
      3. any claim by any trade union or other body or person representing any Transferring Consultant Employees arising from or connected with any failure by the *Consultant* or a Sub-Consultant to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
      4. any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
         1. in relation to any Transferring Consultant 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 a Transferring Consultant Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the *Consultant* to the *Employer* and/or Replacement Consultant and/or any Replacement Sub-Consultant, 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;
      5. a failure of the *Consultant* or any Sub-Consultant 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 Consultant Employees in respect of the period up to (and including) the Service Transfer Date);
      6. any claim made by or in respect of any person employed or formerly employed by the *Consultant* or any Sub-Consultant other than a Transferring Consultant Employee for whom it is alleged the *Employer* and/or the Replacement Consultant and/or any Replacement Sub-Consultant may be liable by virtue of this contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
      7. any claim made by or in respect of a Transferring Consultant Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Consultant Employee relating to any act or omission of the *Consultant* or any Sub-Consultant 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 *Employer* and/or Replacement Consultant to comply with regulation 13(4) of the Employment Regulations.
   4. The indemnities in paragraph 2.3 of Part D of this [Guidance: insert schedule ref here] shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Consultant and/or any Replacement Sub-Consultant 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 Consultant Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Consultant and/or any Replacement Sub-Consultant to occur in the period on or after the Service Transfer Date); or
      2. arising from the Replacement Consultant’s failure, and/or Replacement Sub-Consultant’s failure, to comply with its obligations under the Employment Regulations.
   5. If any person who is not a Transferring Consultant Employee claims, or it is determined in relation to any person who is not a Transferring Consultant Employee, that his/her contract of employment has been transferred from the *Consultant* or any Sub-Consultant to the Replacement Consultant and/or Replacement Sub-Consultant pursuant to the Employment Regulations or the Acquired Rights Directive, then:
      1. the *Employer* shall procure that the Replacement Consultant shall, or any Replacement Sub-Consultant shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the *Consultant*; and
      2. the *Consultant* may offer (or may procure that a Sub-Consultant may offer) employment to such person within fifteen (15) Working Days of the notification by the Replacement Consultant and/or any and/or Replacement Sub-Consultant or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with the *law of the contract*.
   6. If such offer is accepted, or if the situation has otherwise been resolved by the *Consultant* or a Sub-Consultant, the *Employer* shall procure that the Replacement Consultant shall, or procure that the Replacement Sub-Consultant shall, immediately release or procure the release of the person from his/her employment or alleged employment.
   7. If after the fifteen (15) Working Day period specified in paragraph 2.5.2 of Part D of this [Guidance: insert schedule ref here] 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 *Employer* shall advise the Replacement Consultant and/or Replacement Sub-Consultant, 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 Replacement Consultant and/or Replacement Sub-Consultant acting in accordance with the provisions of paragraphs 2.5 to 2.7 of Part D of this [Guidance: insert schedule ref here] and in accordance with all applicable proper employment procedures set out in the *law of the contract*, the *Consultant* shall indemnify the Replacement Consultant and/or Replacement Sub-Consultant against all Employee Liabilities arising out of the termination pursuant to the provisions of paragraph 1.7 of Part D of this [Guidance: insert schedule ref here] provided that the Replacement Consultant takes, or shall procure that the Replacement Sub-Consultant takes, all reasonable steps to minimise any such Employee Liabilities.
  2. The indemnity in paragraph 2.8 of Part D of this [Guidance: insert schedule ref here]
     1. shall not apply to:
        1. any claim for

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

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

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

* + - 1. any claim that the termination of employment was unfair because the Replacement Consultant and/or Replacement Sub-Consultant neglected to follow a fair dismissal procedure; and
    1. shall apply only where the notification referred to in paragraph 2.5.1 of Part D of this [Guidance: insert schedule ref here] is made by the Replacement Consultant and/or Replacement Sub-Consultant to the *Consultant* within six (6) months of the Service Transfer Date.
  1. If any such person as is described in paragraph 2.5 of Part D of this [Guidance: insert schedule ref here] is neither re-employed by the *Consultant* or any Sub-Consultant nor dismissed by the Replacement Consultant and/or Replacement Sub-Consultant within the time scales set out in paragraphs 2.5 to 2.7 of Part D of this [Guidance: insert schedule ref here], such person shall be treated as a Transferring Consultant Employee and the Replacement Consultant and/or Replacement Sub-Consultant shall comply with such obligations as may be imposed upon it under the *law of the contract*.
  2. The *Consultant* shall comply, and shall procure that each Sub-Consultant shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-Consultant shall perform and discharge, all its obligations in respect of the Transferring Consultant Employees up to (but not including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part 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 *Consultant* and/or any Sub-Consultant; and
     2. the Replacement Consultant and/or the Replacement Sub-Consultant.
  3. The *Consultant* shall, and shall procure that each Sub-Consultant shall, promptly provide to the *Employer* and any Replacement Consultant and/or Replacement Sub-Consultant, in writing such information as is necessary to enable the *Employer*, the Replacement Consultant and/or Replacement Sub-Consultant to carry out their respective duties under regulation 13 of the Employment Regulations. The *Employer* shall procure that the Replacement Consultant and/or Replacement Sub-Consultant shall promptly provide to the *Consultant* and each Sub-Consultant in writing such information as is necessary to enable the *Consultant* and each Sub-Consultant to carry out their respective duties under regulation 13 of the Employment Regulations.
  4. Subject to paragraph 2.14 of Part D of this [Guidance: insert schedule ref here], the *Employer* shall procure that the Replacement Consultant indemnifies the *Consultant* on its own behalf and on behalf of any Replacement Sub-Consultant and its sub-Consultants against any Employee Liabilities in respect of each Transferring Consultant Employee (or, where applicable any employee representative (as defined in the Employment Regulations) of any Transferring Consultant Employee) arising from or as a result of:
     1. any act or omission of the Replacement Consultant and/or Replacement Sub-Consultant;
     2. the breach or non-observance by the Replacement Consultant and/or Replacement Sub-Consultant on or after the Service Transfer Date of:
        1. any collective agreement applicable to the Transferring Consultant Employees; and/or
        2. any custom or practice in respect of any Transferring Consultant Employees which the Replacement Consultant and/or Replacement Sub-Consultant is contractually bound to honour;
     3. any claim by any trade union or other body or person representing any Transferring Consultant Employees arising from or connected with any failure by the Replacement Consultant and/or Replacement Sub-Consultant 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 Replacement Consultant and/or Replacement Sub-Consultant to change the terms and conditions of employment or working conditions of any Transferring Consultant Employees on or after their transfer to the Replacement Consultant or Replacement Sub-Consultant (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 Consultant Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
     5. any statement communicated to or action undertaken by the Replacement Consultant or Replacement Sub-Consultant to, or in respect of, any Transferring Consultant Employee on or before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the *Consultant* 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 Consultant Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
        2. in relation to any employee who is not a Transferring Consultant Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the *Consultant* or Sub-Consultant, to the Replacement Consultant or Replacement Sub-Consultant 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 Replacement Consultant or Replacement Sub-Consultant 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 Consultant Employees in respect of the period from (and including) the Service Transfer Date; and
     8. any claim made by or in respect of a Transferring Consultant Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Consultant Employee relating to any act or omission of the Replacement Consultant or Replacement Sub-Consultant in relation to obligations under regulation 13 of the Employment Regulations.
  5. The indemnities in paragraph 2.13 of Part D of this [Guidance: insert schedule ref here] shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the *Consultant* and/or any Sub-Consultant (as applicable) whether occurring or having its origin before, on or after the Relevant Transfer Date, including any Employee Liabilities arising from the failure by the *Consultant* and/or any Sub-Consultant (as applicable) to comply with its obligations under the Employment Regulations.

12/08/2013

**ANNEX 1: LIST OF NOTIFIED SUBCONSULTANTS**

***[Guidance Note: list of Notified Sub-Consultants to be inserted here as required.*]**