**Schedule 12**

**TUPE**

# DEFINITIONS

In this Schedule, the following definitions shall apply:

|  |  |
| --- | --- |
| **Employee Liabilities**  | all claims, actions, proceedings, orders, demands, costs, liabilities, 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 reasonable legal costs; |
| **Employment Regulations** | the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Acquired Rights Directive; |
| **Former Supplier** | 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) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor); |
| Relevant Transfer | a transfer of employment to which the Employment Regulations applies; |
| Relevant Transfer Date | in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place; |
| Replacement Sub-contractor | a sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);  |
| Service Transfer | any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-Contractor to a Replacement Supplier or a Replacement Sub-contractor; |
| Service Transfer Date | the date of a Service Transfer; |
| Staffing Information | 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 Authority may reasonably request (subject to all applicable provisions of the Data Protection Legislation), but including (in an anonymised format in the case of the Supplier’s Provisional Supplier Personnel List):1. their job title and percentage dedication to the relevant Services;
2. their dates of birth, dates of commencement of employment or engagement and gender;
3. details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise;
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 hours and place of work;
7. their wages, salaries, incentive arrangements and any other remuneration;
8. details of employment-related benefits, including medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car or care allowances applicable to them;
9. any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
10. details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
11. 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), material HR policies and collective agreements applicable to them; and
12. any other “employee liability information” as such term is defined in regulation 11 of the Employment Regulations;
 |
| Supplier's Final Supplier Personnel List | a list provided by the Supplier of all of the Supplier’s Personnel who will transfer under the Employment Regulations on the Relevant Transfer Date; |
| Supplier's Provisional Supplier Personnel List | a list prepared and updated by the Supplier of all Supplier’s Personnel who are, as at the date of the list, engaged in or wholly or mainly assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier; |
| Transferring Authority Employees | those employees of the Authority (if any) to whom the Employment Regulations apply on the Relevant Transfer Date; |
| Transferring Former Supplier Employees | in relation to a Former Supplier, those employees (if any) of the Former Supplier to whom the Employment Regulations apply on the Relevant Transfer Date; and |
| Transferring Supplier Employees | those persons who were employees of the Supplier and/or the Sub-Contractors whose details are included on the Supplier’s Provisional Staff List and Supplier’s Final Staff List in compliance with the Supplier’s obligations under paragraphs 5.2 and 5.3 of this Schedule and to whom the Employment Regulations apply on the Service Transfer Date. |

# INTERPRETATION

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

# PROCEDURE IN THE EVENT OF TRANSFER ON COMMENCEMENT OF THE SERVICES

## The Authority 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 Authority and/or any Former Supplier.

## If it is claimed or determined in relation to any employee of the Authority and/or a Former Supplier, that their contract of employment has been transferred from the Authority and/or the Former Supplier to the Supplier and/or any relevant Sub-Contractor pursuant to the Employment Regulations then:

* + 1. the Supplier shall, and shall procure that the relevant Sub-Contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, give notice to the Former Supplier;
		2. the Authority and/or the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Supplier or the relevant Sub-Contractor (as appropriate) or take such other reasonable steps as the Authority or Former Supplier (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law;
		3. If an offer referred to in paragraph 3.2(b) is accepted (or if the situation has otherwise been resolved by the Authority and/or the Former Supplier), the Supplier shall, or shall procure that the relevant Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.
		4. If by the end of the 15 Working Day period specified in paragraph 3.2(b):
			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 Supplier and/or the relevant Sub-Contractor may within 20 Working Days give notice to terminate the employment or alleged employment of such person.

## If it is determined in relation to any former employee of the Authority or Former Supplier that their contract of employment has been transferred from the Authority or Former Supplier to the Supplier and/or any relevant Sub-Contractor pursuant to the Employment Regulations and subject to the Supplier and/or the relevant Sub-Contractor acting in accordance with the provisions of paragraph 3.2 (a) to (d) and in accordance with all applicable employment procedures set out in applicable Law and subject also to paragraph 3.5, the Authority shall indemnify (in respect of any Transferring Authority Employees only) or shall procure that the Former Supplier shall indemnify (in respect of any Transferring Former Supplier Employees) the Supplier and/or the relevant Sub-Contractor against all Employee Liabilities incurred by the Suppler or relevant Sub-Contractor arising out of:

## any failure by the Authority or Former Supplier to comply with its obligations to inform and consult in respect of the Transferring Authority Employees and/or the Transferring Former Supplier Employees respectively in respect of the Relevant Transfer;

## any act or omission of the Authority or Former Supplier in relation to the Transferring Authority Employees and/or the Transferring Former Supplier Employees respectively in respect of any period prior to the Relevant Transfer Date;

## in relation to any Transferring Authority Employee or Transferring Former Supplier Employee whose employment is terminated in accordance with paragraph 3.2 (d):

#### the cost of statutory redundancy payments, contractual or statutory notice payments and any enhanced contractual redundancy payments (based in any case on the terms and conditions in force immediately prior to the Relevant Transfer Date) payable to such Transferring Authority Employee or Transferring Former Supplier Employee in respect of such termination; and

#### the cost of salary and contractual benefits in respect of such Transferring Authority Employee or Former Supplier Employee in respect of the period from the Relevant Transfer Date to the date of termination of such Transferring Authority Employee or Transferring Former Supplier Employee under paragraph 3.2 (d),

provided that the Supplier takes, or shall procure that any relevant Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.

## If any such person as is described in paragraph 3.2 is neither employed by the Authority and/or the Former Supplier as appropriate within the 15 Working Day period referred to in paragraph 3.2 (b) nor dismissed by the Supplier and/or any relevant Sub-Contractor within the 20 Working Day period referred to in paragraph 3.2 (d):

## such person shall be treated as having transferred to the Supplier and/or the relevant Sub-Contractor (as appropriate) and the Supplier shall, or shall procure that the relevant Sub-Contractor shall, comply with such obligations as may be imposed upon it under Law; and

## all Employee Liabilities in relation to such employee shall remain with the Supplier and/or the relevant Sub-Contractor and the Supplier shall indemnify the Authority and any Former Supplier, and shall procure that the relevant Sub-Contractor shall indemnify the Authority and any Former Supplier, against any Employee Liabilities arising after the date of transfer that either of them may incur in respect of any such employees of the Supplier and/or employees of the relevant Sub-Contractor.

## For the avoidance of doubt the indemnities in paragraph 3.3:

## shall not apply to:

#### 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 Supplier and/or any relevant Sub-Contractor; or

#### any claim that the termination of employment was unfair or for a protective award because the Supplier and/or any relevant Sub-Contractor neglected to follow a fair dismissal procedure or carry out collective consultation; and

## shall apply only where the notification referred to in paragraph 3.2(a) is made by the Supplier and/or any relevant Sub-Contractor to the Authority and, if applicable, Former Supplier within 6 months of the Commencement Date.

# PROCUREMENT OBLIGATIONS

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

# PRE-SERVICE TRANSFER OBLIGATIONS IN RELATION TO EXIT

## The Authority and the Supplier agree that they do not anticipate that the Supplier or any Sub-Contractor will assign Supplier Personnel wholly or mainly to the Services and therefore they do not anticipate that the termination or expiry of the provision of the Services or of each relevant part of the Services will be a Relevant Transfer in relation to any Supplier’s Personnel.

## Notwithstanding paragraph 5.1, the Supplier agrees that within 20 Working Days of the earliest of:

## receipt of a notification from the Authority of a Service Transfer or intended Service Transfer or retender process in relation to a potential Service Transfer;

## receipt of the giving of notice of early termination or any Partial Termination of this agreement;

## the date which is 12 months before the end of the Term; and

## receipt of a written request of the Authority at any time (provided that the Authority shall only be entitled to make one such request in any 3 month period),

it shall provide in a suitably anonymised format so as to comply with the Data Protection Legislation, 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 Staffing Information at such intervals as are reasonably requested by the Authority.

## At least 20 Working Days prior to the Service Transfer Date, the Supplier shall provide to the Authority or at the direction of the Authority to any Replacement Supplier and/or any Replacement Sub-contractor:

## the Supplier's Final Supplier Personnel List, which shall identify which of the Supplier’s Personnel (if any) are Transferring Supplier Employees; and

## the Staffing Information in relation to the Supplier’s Final Supplier Personnel List (insofar as such information has not previously been provided).

## The Authority shall be permitted to use and disclose information provided by the Supplier under paragraphs 5.2 and 5.3 for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-contractor provided that any prospective Replacement Suppliers and/or Replacement Sub-contractors enter into confidentiality undertakings.

## The Supplier warrants, for the benefit of the Authority that all information provided pursuant to paragraphs 5.2 and 5.3 shall be true and accurate in all material respects at the time of providing the information.

## From the date of the earliest event referred to in paragraphs 5.2(a) to 5.2(c), the Supplier agrees, that it shall not, and agrees to procure that each relevant 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 Authority (not to be unreasonably withheld or delayed):

#### replace or re-deploy any Supplier’s Personnel listed on the Supplier Provisional Supplier Personnel List other than where any replacement is of equivalent grade, skills, experience, expertise and performance capability and is employed on the same terms and conditions of employment as the person they replace;

#### make, promise, propose or permit any material changes to the remuneration or terms and conditions of employment of any Supplier’s Personnel listed on the Supplier Provisional Supplier Personnel List;

#### increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier’s Personnel save temporarily for fulfilling assignments and projects previously scheduled and agreed with the Authority;

#### 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;

#### increase the total number of employees engaged on the Services, or deploy any other person to perform the Services (or the relevant part of the Services); or

#### 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 relevant Sub-Contractor shall promptly notify, the Authority or, at the direction of the Authority, 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.

## During the Term, the Supplier shall provide, and shall procure that each relevant Sub-Contractor shall provide, to the Authority any information the Authority may reasonably require relating to the manner in which the Services are organised, which shall include:

## the numbers of employees engaged in providing the Services;

## the percentage of time spent by each employee engaged in providing the Services; and

## a description of the nature of the work undertaken by each employee by location.

## Where a Service Transfer will involve a Relevant Transfer the Supplier shall provide, and shall procure that each relevant Sub-Contractor shall provide, all reasonable cooperation and assistance to the Authority, any Replacement Supplier and/or any Replacement Sub-contractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing reasonably 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 the Supplier shall provide, and shall procure that each relevant Sub-Contractor shall provide, to the Authority or, at the direction of the Authority, 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. at least 10 Working Days prior to the Service Transfer Date:
			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. bank/building society account details for payroll purposes; and
			7. home address
		2. on or before the Service Transfer Date copies of such employment records as are reasonably required for the continued employment of such Transferring Supplier Employees.

# EMPLOYMENT REGULATIONS EXIT PROVISIONS

## The Authority and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this agreement or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Sub-contractor. Such change in the identity of the supplier of such services may (although is not expected to) constitute a Relevant Transfer to which the Employment Regulations will apply. The Authority and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Supplier Employee.

## The Supplier shall and shall procure that any Sub-Contractor shall, if requested by the Authority, a Replacement Supplier and/or a Replacement Sub-contractor:

## permit and facilitate the Authority or any Replacement Supplier or Replacement Sub-contractor to carry out consultation with or in respect of any Supplier’s Personnel expected to become Transferring Supplier Employees in good time prior to the Service Transfer Date regarding any potential redundancies and/or relocation proposed by the Authority, Replacement Supplier or Replacement Sub-contractor in connection with or following the Service Transfer (including without limitation agreeing under S198A (3)(a) (and not withdrawing agreement) to any election made by the Authority, Replacement Supplier or Replacement Sub-contractor under S198A(2) of the Trade Union & Labour Relations (Consolidation) Act 1992. For the avoidance of doubt such permission would not extend to notice of termination of employment being issued to affected employees prior to the Service Transfer Date; and

## to the extent that the Supplier or Sub-Contractor have suitable vacancies, use reasonable endeavours to redeploy any Supplier’s Personnel expected to become Transferring Supplier Employees with effect from the Service Transfer Date such that they cease to be Transferring Supplier Employees.

## The Supplier shall, and shall procure that each relevant Sub-Contractor shall, comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each relevant Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period ending on (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 relevant Sub-Contractor (as appropriate); and (ii) the Authority, Replacement Supplier and/or Replacement Sub-contractor as applicable.

## The Supplier shall indemnify the Authority (for itself and on behalf of each Replacement Supplier and Replacement Sub-contractor) and each Replacement Supplier and Replacement Sub-contractor against all Employee Liabilities incurred by the Authority (whether directly or through an indemnity given to any Replacement Supplier or Replacement Sub-contractor), Replacement Supplier or Replacement Sub-contractor arising from or as a result of:

## any act or omission of the Supplier or any relevant Sub-Contractor in relation to any Transferring Supplier Employees whether occurring before, on or after the Service Transfer Date;

## the breach or non-observance by the Supplier or any relevant Sub-Contractor occurring on or before the Service Transfer Date of:

#### any collective agreement applicable to any Transferring Supplier Employees; and/or

#### any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any relevant Sub-Contractor is contractually bound to honour;

## 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 relevant Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;

## 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 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

#### in relation to any employee who is not a Transferring Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier to the Authority 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;

## a failure of the Supplier or any relevant Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits, holiday pay and all PAYE tax deductions and national insurance contributions relating to any Transferring Supplier Employees in respect of the period up to (and including) the Service Transfer Date;

## any claim or liability arising in respect of the period up to (and including) the Service Transfer Date made by or in respect of any person employed or engaged or formerly employed or engaged by the Supplier or any relevant Sub-Contractor other than a Transferring Supplier Employee for whom or which it is alleged the Authority and/or the Replacement Supplier and/or any Replacement Sub-contractor may be liable by virtue of this agreement and/or the Employment Regulations; and

## any claim made by or in respect of any Transferring Supplier Employee or any appropriate representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any relevant Sub-Contractor in relation to its obligations under regulation 13 or 14 of the Employment Regulations, except to the extent that the liability arises from the failure by the Authority and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.

## The indemnities in paragraph 6.4 shall not apply to the extent that the Employee Liabilities arise or are solely and directly attributable to an act or omission of the Authority, the Replacement Supplier and/or any Replacement Sub-contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:

## arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or any Replacement Sub-contractor to occur in the period on or after the Service Transfer Date; or

## arising from the Replacement Supplier’s failure, and/or Replacement Sub-contractor’s failure, to comply with its obligations under the Employment Regulations.

## If any person who is not a Transferring Supplier Employee claims, or it is determined in relation to any person who is not a Transferring Supplier Employee, that their contract of employment or any liability regarding their employment has been transferred from the Supplier or any relevant Sub-Contractor to the Authority, any Replacement Supplier and/or Replacement Sub-contractor pursuant to the Employment Regulations, then:

## the Authority shall or shall procure that the Replacement Supplier shall, or any Replacement Sub-contractor shall, within 10 Working Days of becoming aware of that fact, give notice in writing to the Supplier; and

## the Supplier may offer (or may procure that a relevant Sub-Contractor may offer) employment to such person within 15 Working Days of the notification by the Authority, 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; and

## If such offer made under paragraph 6.6(b) is accepted, or if the situation has otherwise been resolved by the Supplier or a relevant Sub-Contractor, the Authority shall or shall procure that the Replacement Supplier or Replacement Sub-contractor shall, immediately release or procure the release of the person from their employment or alleged employment.

## If after the 15 Working Day period specified in paragraph 6.6 (b) has elapsed:

#### no such offer of employment has been made;

#### such offer has been made but not accepted; or

#### the situation has not otherwise been resolved,

the Authority, Replacement Supplier and/or Replacement Sub-contractor, as appropriate may within a further 30 Working Days give notice to terminate the employment or alleged employment of such person.

## Subject to the Authority, Replacement Supplier and/or Replacement Sub-contractor acting in accordance with the provisions of paragraphs 6.6(a)to 6.6(d), the Supplier shall indemnify the Authority and/or Replacement Supplier and/or any Replacement Sub-contractor against all Employee Liabilities arising out of or in connection with:

## the termination pursuant to the provisions of paragraph 6.6(d) provided that the Authority takes, or shall use reasonable endeavours to procure that the Replacement Supplier and/or any Replacement Sub-contractor takes reasonable steps to mitigate any such Employee Liabilities; and

## the cost of remuneration, pension and other benefits together with national insurance contributions thereon in respect of those persons whose employment was terminated pursuant to the provisions of paragraph 6.6(d) in respect of the period between the Service Transfer Date and such termination.

## The indemnity in paragraph 6.7:

## shall not apply to:

#### 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 Authority, Replacement Supplier and/or Replacement Sub-contractor; or

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

## shall apply only where the notification referred to in paragraph 6.6(a) is made by the Replacement Supplier and/or Replacement Sub-contractor to the Supplier within 6 months of the Service Transfer Date.

## If any such person as is described in paragraph 6.6 is neither re-employed by the Supplier or any relevant Sub-Contractor nor dismissed by the Authority, Replacement Supplier and/or Replacement Sub-contractor within the time scales set out in paragraphs 6.6(a) to 6.6(d), such person shall be treated as a Transferring Supplier Employee and the Authority shall and shall use reasonable endeavours to procure that the Replacement Supplier and/or Replacement Sub-contractor shall comply with such obligations as may be imposed upon it under applicable Law.

## The Supplier shall, and shall procure that each relevant Sub-Contractor shall, promptly provide to the Authority and any Replacement Supplier and/or Replacement Sub-contractor, in writing such information as is necessary to enable the Authority, the Replacement Supplier and/or Replacement Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Authority shall (if and to the extent that there is a Relevant Transfer of Transferring Supplier Employees to the Authority) and/or shall use reasonable endeavours to procure that the Replacement Supplier and/or Replacement Sub-contractor, shall promptly provide to the Supplier and each relevant Sub-Contractor in writing such information as is necessary to enable the Supplier and each relevant Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations in respect of Transferring Supplier Employees.

## Subject to paragraph 6.12, the Authority shall indemnify (if and to the extent only that there is a Relevant Transfer of Transferring Supplier Employees to the Authority) and/or shall use reasonable endeavours to procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-contractor against any Employee Liabilities arising from or as a result of:

#### any act or omission of the Authority, Replacement Supplier and/or replacement Sub-contractor in relation to any Transferring Supplier Employees in respect of any period on or after the relevant Service Transfer Date;

#### the breach or non-observance by the Authority, Replacement Supplier and/or Replacement Sub-contractor on or after the relevant Service Transfer Date of:

#### any collective agreement applicable to the Transferring Supplier employees; and/or

#### any custom or practice in respect of any Transferring Supplier employees which the Replacement Supplier and/or Replacement Sub-contractor is contractually bound to honour;

#### 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 Authority, 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 relevant Service Transfer Date;

#### any proposal by the Authority, Replacement Supplier and/or Replacement Sub-contractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees on or after their transfer to the Authority, Replacement Supplier or Replacement Sub-contractor (as the case may be) on the relevant Service Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the relevant Service Transfer Date as a result of or for a reason connected to such proposed changes;

#### 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 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 Service Transfer Date;

#### a failure of the Authority, Replacement Supplier or Replacement Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period from (and including) the relevant Service Transfer Date; and

#### 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 Authority Replacement Supplier or Replacement Sub-contractor in relation to obligations under regulation 13(4) of the Employment Regulations.

## The indemnities in paragraph 6.11 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 relevant Sub-Contractor (as applicable) whether occurring or having its origin before, on or after the relevant Service Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any relevant Sub-Contractor (as applicable) to comply with its obligations under the Employment Regulations.