



**SCHEDULE N: STAFF TRANSFERS (TUPE)**

**1. Definitions**

- 1.1 In this Schedule, unless the context otherwise requires, any definitions of capitalised terms are in Schedule A (Definitions) of this Contract.

**2. Warranty and Indemnity in respect of Transferring-In Employees**

- 2.1 The Parties agree that there will not be a relevant transfer pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") on the Commencement Date and that there are no Transferring-In Employees.

**3. Disclosure of Information**

- 3.1 Not later than one year (365 days) prior to the end of the Contract Period where the Contract terminates pursuant to clause 2.1 , and not later than sixty days (60 days) where the Contract terminates pursuant to clauses 56.1 and 57.1 , and not later than twenty eight (28 days) where the Contract terminates pursuant to clause 58.1 or following notice of immediate termination as provided in this Contract, the Provider shall unless prohibited by Law fully and accurately disclose to the Authority all information that the Authority may reasonably request in relation to the Provider's Personnel including the following Re-tendering Employment Information:

- a) the total number of Transferring-Out Employees;
- b) current salary;
- c) length of service;
- d) hours of work;
- e) arrangements for overtime;
- f) factors that may affect redundancy entitlement;
- g) outstanding industrial injury or other claims;
- h) probationary periods;
- i) periods of notice for termination of employment;
- j) current pay agreement and any agreed settlement yet to come into effect;
- k) age;
- l) gender;
- m) whether an employee requires additional approvals to work in the UK;
- n) annual leave entitlement;
- o) sick leave entitlement;
- p) maternity/paternity leave arrangements;



- q) special leave entitlement;
  - r) season ticket loans, provision of cars and other contractual or customary benefits, if applicable;
  - s) pension arrangements;
  - t) location and any contractual provisions relating to location;
  - u) nature of job;
  - v) percentage of time spent in providing the Services;
  - w) any disciplinary action taken by the Provider against a Transferring-Out Employee within the previous two (2) years where the Employment Act 2002 (Dispute Resolution) Regulations 2004 applied;
  - x) any grievance procedure taken by a Transferring-Out Employee against the Provider within the previous two (2) years where the Employment Act 2002 (Dispute Resolution) Regulations 2004 applied;
  - y) any court or tribunal case, claim or action:
    - (i) brought by a Transferring-Out Employee against the Provider within the previous two (2) years;
    - (ii) that the Provider has reasonable grounds to believe a Transferring-Out Employee may bring against a Replacement Provider arising out of the Transferring-Out Employee's employment with the Provider; and
  - z) any collective agreement which will have effect after a transfer of employment in relation to the Transferring-Out Employees, pursuant to TUPE.
- 3.2 At intervals to be stipulated by the Authority (which shall not be more frequent than every thirty (30) days) and immediately prior to the end of the Contract Period the Provider shall deliver to the Authority a complete update of all such information which shall be disclosable pursuant to paragraph 3.1 of this Schedule.
- 3.3 At the time of providing the information disclosed pursuant to paragraphs 3.1 and 3.2, the Provider shall warrant the completeness and accuracy of all such information and the Authority may assign the benefit of this warranty to any Replacement Provider.
- 3.4 The Authority may use the information it receives from the Provider pursuant to paragraphs 3.1 and 3.2 for the purposes of TUPE and/or any retendering process in order to ensure an effective handover of all work in progress at the end of the Contract Period. The Provider shall provide the Replacement Provider with such assistance as it shall reasonably request.
- 3.5 The Provider shall indemnify and keep indemnified and hold the Authority and the Crown (both for themselves and any Replacement Provider) harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority or the Crown or any Replacement Provider may suffer or incur as a result of or in connection with:



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- 3.5.1. the provision of information pursuant to paragraph 3.1; and
  - 3.5.2. any claim or demand by any Transferring-Out Employee (whether in contract, tort, under statute, pursuant to European Law or otherwise) in each case arising directly or indirectly from any act, fault or omission of the Provider or any Sub-contractor in respect of any Transferring-Out Employee on or before the end of the Contract Period; and
  - 3.5.3. any failure by the Provider or any Sub-contractor to comply with its obligations under Regulation 13 or 14 of TUPE or any award of compensation under Regulation 15 of TUPE save where such failure arises from the failure of the Authority or a Replacement Provider to comply with its duties under Regulation 13 of the Regulations; and
  - 3.5.4. any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Transferring-Out Employees arising from or connected with any failure by the Provider or any Sub-contractor to comply with any legal obligation to such trade union, body or person; and
  - 3.5.5. any successful claim for loss or breach of obligation by any person who is transferred by the Provider to the Authority and/or a Replacement Provider whose name is not included in the list of Transferring-Out Employees.
- 3.6 If the Provider becomes aware that the information it provided pursuant to paragraphs 3.1 or 3.2 has become untrue, inaccurate or misleading, it shall notify the Authority and provide the Authority with up to date information.
- 3.7 This clause applies during the Contract Period and indefinitely thereafter.
- 3.8 The Provider undertakes to the Authority that, during the 28 days prior to the end of the Contract Period the Provider shall not (and shall procure that any Sub-contractor shall not) without the prior consent of the Authority (such consent not be unreasonably withheld or delayed):
- 3.8.1. amend or vary (or purport or promise to amend or vary) the terms and conditions of employment or engagement (including, for the avoidance of doubt, pay) of any Provider's Personnel (other than where such amendment or variation has previously been agreed between the Provider and the Provider's Personnel in the normal course of business, and where any such amendment or variation is not in any way related to the transfer of the Services);
  - 3.8.2. terminate or give notice to terminate the employment or engagement of any of the Provider's Personnel (other than in circumstances in which the termination is for reasons of misconduct or lack of capability);
  - 3.8.3. transfer away, remove, reduce or vary the involvement of any of the Provider's Personnel from or in the provision of the Services (other than where such transfer or removal:



3.8.3.1 was planned as part of the individual's career development;

3.8.3.2 takes place in the normal course of business; and

3.8.3.3 will not have any adverse impact upon the delivery of the Services by the Provider;

PROVIDED THAT any such transfer, removal, reduction or variation is not in any way related to the transfer of the Services); or

3.8.4. recruit or bring in any new or additional individuals to provide the Services who were not already involved in providing the Services prior to the relevant period.

3.9. The Provider will indemnify the Authority for any failure by the Provider to comply with the Acts and the Regulations against any claims for loss or damage which may be made against the Authority as an organisation as a result of the Provider's failure. The Provider further undertakes that it warrants to the Authority that the Provider has thoroughly researched its obligations under the Acts and the Regulations, and has taken appropriate actuarial and financial advice as may be necessary to ensure compliance with the Acts and the Regulations; and that the Provider has made an estimate of the costs which will be incurred by it as a result of complying with its obligations under the Acts and the Regulations and that those estimated costs are included in the Provider's Tender price.

3.10. The Authority shall be entitled to assign the benefit of the indemnities contained in paragraph 3.9 to any Replacement Provider.