

Annex AB – Transfer Regulations

TRANSFER REGULATIONS**1. DEFINITIONS****1.1.** Unless the context otherwise requires:

Data Protection Legislation means all applicable data protection and privacy legislation in force from time to time in the UK, including but not limited to:

- (i) the General Data Protection Regulation ((EU) 2016/679) as retained in UK law by the EU (Withdrawal) Act 2018 and the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (the "UK General Data Protection Regulation" or "UK GDPR");
- (ii) the Data Protection Act 2018;
- (iii) the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended; and
- (iv) all applicable legislation and regulatory requirements in force from time to time which apply to a party relating to the processing of personal data and privacy and the guidance and codes of practice issued by the Information Commissioner's Office which apply to a party;

Employee Liability Information has the same meaning as is given in Regulation 11(2) of the Transfer Regulations;

Employing Sub-Contractor means any sub-contractor of the Contractor providing all or any part of the Services who employs or engages any person in providing the Services ;**New Provider:** any replacement service provider or providers engaged to provide the Services (or part thereof) or substantially similar services or the Authority itself where the Services or substantially similar services or part thereof continue to be provided by the Authority after partial termination, termination or expiry of this Contract;

Relevant Transfer: a transfer of the employment of Transferring Employees from the Contractor or any Employing Sub-Contractor to a New Provider or the Authority under the Transfer Regulations;

Transfer Date: the date on which the transfer of a Transferring Employee takes place under the Transfer Regulations;

Transferring Employee: an employee wholly or mainly employed or otherwise assigned to the Services (or in respect of partial termination, the relevant part of the Services) whose employment transfers under the Transfer Regulations from the Contractor or any Employing Sub-Contractor to a New Provider; and

Transfer Regulations: the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time and/or the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006 (as amended from time to time), as appropriate.

2. EMPLOYMENT**Information on Re-tender, Partial Termination, Termination or Expiry**

- 2.1. (Subject to Clause 20.1 of the Special Conditions) No earlier than two years preceding the termination, partial termination or expiry of this Contract or a potential Transfer Date or at any time after the service of a notice to terminate this Contract for the provision of any of the

Services (whether in whole or part), the Contractor shall (and shall procure that any Employing Sub-Contractor shall):

- 2.1.1. supply to the Authority such information as the Authority may reasonably require in order to consider the application of the Transfer Regulations on the termination, partial termination or expiry of this Contract;
 - 2.1.2. supply to the Authority the information listed in Appendix 1 to this Annex AB together with any other information the Authority may reasonably request, relating to the employees who are wholly or mainly employed, assigned or engaged in providing the Services or part of the Services under this Contract who may be subject to a Relevant Transfer.
 - 2.1.3. provide the information promptly and in any event not later than three months from the date when a request for such information is made and at no cost to the Authority;
 - 2.1.4. acknowledge that the Authority will use the information for informing any prospective New Provider for any services which are substantially the same as the Services or part of the Services provided pursuant to this Contract and the Authority shall disclose in confidence the information to any such prospective New Provider;
 - 2.1.5. inform the Authority of any material changes to the information provided under paragraphs 2.1.1 to 2.1.3 (inclusive) up to the Transfer Date as soon as reasonably practicable.
- 2.2. (Subject to Clause 20.1 of the Special Conditions) Three months preceding the termination, partial termination or expiry of this Contract or on receipt of a written request from the Authority the Contractor shall:
- 2.2.1. ensure that Employee Liability Information and such information listed in Part A of Appendix 2 of this Annex AB relating to the Transferring Employees is provided to the Authority and/or any New Provider;
 - 2.2.2. inform the Authority and/or any New Provider of any material changes to the information provided under this paragraph 2.2 up to any Transfer Date as soon as reasonably practicable; and
 - 2.2.3. enable and assist the Authority and/or any New Provider or any sub-contractor of a New Provider to communicate with and meet those employees and their trade union or other employee representatives.
- 2.3. No later than 28 days prior to the Transfer Date the Contractor shall provide the Authority and/or any New Provider with a final list of the Transferring Employees together with the information listed in Part B of Appendix 2 of this Annex AB relating to the Transferring Employees. The Contractor shall inform the Authority and/or New Provider of any changes to this list or information up to the Transfer Date.
- 2.4. Paragraphs 2.1 and 2.2 of this Schedule are subject to the Contractor's obligations in respect of the Data Protection Legislation and the Contractor shall provide the data in an anonymous form in order to enable disclosure of the information required under paragraphs 2.1 and 2.2.. To the extent that anonymous data has been provided by the Contractor pursuant to its obligations under Paragraph 2.1 or 2.2 above, the Contractor shall provide full data to the Authority no later than 28 days prior to the Transfer Date.

- 2.5. On notification to the Contractor by the Authority of a New Provider or within the period of six months prior to the Expiry Date or Termination Date or after service of a Termination Notice to this Contract (whether in whole or in part), whichever is earlier, the Contractor shall not and shall procure that an Employing Sub-Contractor shall not:
- 2.5.1. materially amend or promise to amend the rates of remuneration or other terms and conditions of employment of any person wholly or mainly employed or engaged in providing the Services under this Contract; or
 - 2.5.2. replace or re-deploy from the Services any person wholly or mainly employed or engaged in providing the Services, or materially increase or decrease the number of persons performing the Services under this Contract or the working time spent on the Services (or any part thereof); or
 - 2.5.3. materially reorganise any working methods or assign to any person wholly or mainly employed or engaged in providing the Services (or any part thereof) any duties unconnected with the Services (or any part thereof) under this Contract; or
 - 2.5.4. terminate or give notice to terminate the employment of any person wholly or mainly employed or engaged in providing the Services (or any part thereof) under this Contract other than in the case of serious misconduct or for poor performance,
- save in the ordinary course of business and with the prior written consent of the Authority (not to be unreasonably withheld or delayed including an appropriate consideration of business requirements, continued provision of the Services and Contractor Deliverables and rights at Law) and the Contractor shall indemnify and keep indemnified the Authority in respect of any reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any breach of paragraphs 2.1, 2.2, 2.3 or this paragraph 2.5 of this Annex AB.
- 2.6. Not Used .

Obligations in Respect of Transferring Employees

- 2.7. To the extent that the Transfer Regulations apply on expiry, termination or partial termination of this Contract, the Contractor shall and shall procure any Employing Sub-Contractor shall and the Authority shall and shall procure that a New Provider shall in such circumstances:
- 2.7.1. before and in relation to the Transfer Date liaise with each other and shall co-operate with each other in order to implement effectively the smooth transfer of the Transferring Employees to the Authority and/or a New Provider; and
 - 2.7.2. comply with their respective obligations under the Transfer Regulations including their obligations to inform and consult under Regulation 13 of the Transfer Regulations.

Unexpected Transferring Employees

- 2.8. If a claim or allegation is made by an employee or former employee of the Contractor or any Employing Sub-Contractor who is not named on the list of Transferring Employees provided under paragraph 2.3 (an **Unexpected Transferring Employee**) that he has or should have transferred to the Authority and/or New Provider by virtue of the Transfer Regulations, the Party receiving the claim or allegation shall notify the other Party (or the Contractor shall notify the Authority on the Sub-Contractor's behalf and the Authority shall notify the Contractor on the New Provider's behalf) in writing as soon as reasonably practicable and no later than 10 Business Days after receiving notification of the Unexpected Transferring Employee's claim or allegation, whereupon:

- 2.8.1. the Contractor shall (or shall procure that the Employing Sub-Contractor shall), as soon as reasonably practicable, offer and/or confirm continued employment to the Unexpected Transferring Employee or take such other steps so as to effect a written withdrawal of the claim or allegation; and
- 2.8.2. if the Unexpected Transferring Employee's claim or allegation is not withdrawn or resolved the Contractor shall notify the Authority (who will notify any New Provider who is a party to such claim or allegation), and the Authority (insofar as it is permitted) and/or New Provider (as appropriate) shall employ the Unexpected Transferring Employee or as soon as reasonably practicable, (subject to compliance with its obligations provided in this paragraph 2.8), serve notice to terminate the Unexpected Transferring Employee's employment in accordance with his contract of employment; and
- 2.8.3. the Contractor shall indemnify the Authority against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any of the following liabilities incurred by the Authority or New Provider in dealing with or disposing of the Unexpected Transferring Employee's claim or allegation:
- (a) any additional costs of employing the Unexpected Transferring Employee up to the date of dismissal where the Unexpected Transferring Employee has been dismissed in accordance with paragraph 2.8.2 provided that such dismissal is effected within 30 days of the notification referred to in paragraph 2.8.2;
 - (b) any liabilities acquired by virtue of the Transfer Regulations in relation to the Unexpected Transferring Employee but (without prejudice to paragraph 2.8.3(a)) excluding the costs and liabilities for the continued employment of an Unexpected Transferring Employee arising on or after the transfer, where the Authority or (as the case may be) the New Provider have elected not to terminate the Unexpected Transferring Employee's employment in accordance in accordance with paragraph 2.8.2;
 - (c) any liabilities relating to the termination of the Unexpected Transferring Employee's employment, but excluding such proportion or amount of any liability for unfair dismissal, breach of contract or discrimination attributable:
 - (i) to a failure by the Authority or a New Provider to act reasonably to mitigate the costs of dismissing such person;
 - (ii) directly or indirectly to the procedure followed by the Authority or a New Provider in dismissing the Unexpected Transferee; or
 - (iii) to the acts/omissions of the Authority or a New Provider not wholly connected to the dismissal of that person;
 - (d) any liabilities incurred under a settlement of the Unexpected Transferring Employee's claim which was reached with the express permission of the Contractor (not to be unreasonably withheld or delayed);
 - (e) reasonable administrative costs incurred by the Authority or New Provider in dealing with the Unexpected Transferring Employee's claim or allegation, subject to a cap per Unexpected Transferring Employee of £5,000; and
 - (f) legal and other professional costs reasonably incurred;

- 2.8.4. the Authority shall be deemed to have waived its right to an indemnity under paragraph 2.8.3 if it fails without reasonable cause to take, or fails to procure any New Provider takes, any action in accordance with any of the timescales referred to in this paragraph 2.8.

Indemnities on Transfer under the Transfer Regulations on Partial Termination, Termination or Expiry of the Contract

- 2.9. If on the expiry, termination or partial termination of this Contract there is a Relevant Transfer, the Contractor shall indemnify the Authority and any New Provider against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any claim by any employee or trade union representative or employee representative arising whether before or after the Transfer Date out of any failure by the Contractor or any Sub-Contractor to comply with their obligations under Regulation 13 of the Transfer Regulations in relation to any Transferring Employee or any other employee of the Contractor or any Sub-Contractor affected by the Relevant Transfer (as defined by Regulation 13 of the Transfer Regulations), save to the extent that all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities are a result of the act or omission of the Authority or the New Provider.
- 2.10. If there is a Relevant Transfer, the Authority shall indemnify the Contractor against all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with:
- 2.10.1. any claim or claims by a Transferring Employee at any time on or after the Transfer Date which arise as a result of an act or omission of the Authority or a New Provider or a sub-contractor of a New Provider during the period from and including the Transfer Date;
- 2.10.2. subject to paragraph 2.9, any claim by any employee or trade union representative or employee representative arising whether before or after the Transfer Date out of any failure by the Authority or a New Provider or a sub-contractor of a New Provider to comply with their obligations under Regulation 13 of the Transfer Regulations in relation to any Transferring Employee or any other employee engaged wholly or mainly in connection with the Services by the Authority or any New Provider or any other employee of the Authority or any New Provider affected by the Relevant Transfer effected by this Contract (as defined by Regulation 13 of the Transfer Regulations),
- save to the extent that all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities are a result of the act or omission of the Contractor or any Employing Sub-Contractor.
- 2.11. In the event of a Relevant Transfer, the Authority shall indemnify the Contractor in respect of all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and other liabilities arising out of or in connection with or as a result of a substantial change by the Authority or any New Provider on or after the Transfer Date to the working conditions of any Transferring Employee to the material detriment of any such Transferring Employee. For the purposes of this paragraph 2.11, the expressions "substantial change" and "material detriment" shall have the meanings as are ascribed to them for the purposes of Regulation 4(9) of the Transfer Regulations.

General

- 2.12. The Contractor shall not recover any costs and/or other losses under this Annex AB where such costs and/or losses are recoverable by the Contractor elsewhere in this Contract and/or are recoverable under the Transfer Regulations or otherwise.

Appendix 1

- 1.1. Pursuant to paragraph 2.1.2 of this Annex AB, the following information will be provided:
 - 1.1.1. The total number of individual employees (including any employees of Sub-Contractors) that are currently wholly or mainly engaged, assigned or employed in providing the Services and who may therefore be transferred. Alternatively, the Contractor should provide information why any of their employees or those of their Sub-Contractors will not transfer;
 - 1.1.2. The total number of posts or proportion of posts expressed as a full-time equivalent value that currently undertakes the work that is to transfer;
 - 1.1.3. The preceding 12 months total pay costs – (Pay, benefits employee/employer ERNIC and Overtime);
 - 1.1.4. Total redundancy liability including any enhanced contractual payments;
- 1.2. In respect of those employees included in the total at paragraph 1.1.1, the following information:
 - 1.2.1. Age (not date of Birth);
 - 1.2.2. Employment Status (i.e. Fixed Term, Casual, Permanent);
 - 1.2.3. Length of current period of continuous employment (in years, months) and notice entitlement;
 - 1.2.4. Weekly conditioned hours of attendance (gross);
 - 1.2.5. Standard Annual Holiday Entitlement (not "in year" holiday entitlement that may contain carry over or deficit from previous leave years);
 - 1.2.6. Pension Scheme Membership;
 - 1.2.7. Pension and redundancy liability information;
 - 1.2.8. Annual Salary;
 - 1.2.9. Details of any regular overtime commitments (these may be weekly, monthly or annual commitments for which staff may receive an overtime payment);
 - 1.2.10. Details of attendance patterns that attract enhanced rates of pay or allowances;
 - 1.2.11. Regular/recurring allowances;
- 1.3. The information to be provided under this Appendix 1 should not identify an individual employee by name or other unique personal identifier unless such information is being provided 28 days prior to the Transfer Date.
- 1.4. The Contractor will provide (and will procure that the Sub-Contractors provide) the Authority/tenderers with access to the Contractor's and Sub-Contractor's general employment terms and conditions applicable to those employees identified at paragraph 1.1 of this Appendix 1.

Appendix 2**Part A**

Pursuant to paragraph 2.2 of this Annex AB the written statement of employment particulars as required by section 1 of the Employment Rights Act 1996 together with the following information (save where that information is included within that statement) which will be provided to the extent it is not included within the written statement of employment particulars:

1. PERSONAL, EMPLOYMENT AND CAREER

- 1.1. Age;
- 1.2. Security Vetting Clearance;
- 1.3. Job title;
- 1.4. Work location;
- 1.5. Conditioned hours of work;
- 1.6. Employment Status;
- 1.7. Details of training and operating licensing required for Statutory and Health and Safety reasons;
- 1.8. Details of training or sponsorship commitments;
- 1.9. Standard Annual leave entitlement and current leave year entitlement and record;
- 1.10. Not Used
- 1.11. Issue of Uniform/Protective Clothing;
- 1.12. Working Time Directive opt-out forms; and
- 1.13. Date from which the latest period of continuous employment began.

2. SUPERANNUATION AND PAY

- 2.1. Maternity leave or other long-term leave of absence (meaning more than 4 weeks) planned or taken during the last two years;
- 2.2. Annual salary and rates of pay band/grade;
- 2.3. Shifts, unsociable hours or other premium rates of pay;
- 2.4. Overtime history for the preceding twelve-month period;
- 2.5. Allowances and bonuses for the preceding twelve-month period;
- 2.6. Details of outstanding loan, advances on salary or debts;
- 2.7. Contractor Scheme or other Contractor/Sub-Contractor pension scheme membership;
- 2.8. For pension purposes, the notional reckonable service date;
- 2.9. Pensionable pay history for three years to date of transfer;
- 2.10. Percentage of any pay currently contributed under additional voluntary contribution arrangements; and
- 2.11. Not Used

3. FURTHER INFORMATION

- 3.1. Information about specific adjustments that have been made for an individual under the Disability Discrimination Act 1995 or the Equality Act 2010;

- 3.2. Short term variations to attendance hours to accommodate a domestic situation;
- 3.3. Individuals that are members of the Reserves, or staff that may have been granted special leave as a School Governor; and
- 3.4. Information about any maternity or other statutory leave or other absence from work.

Part B

Information to be provided no later than 28 days prior to the Transfer Date:

- 1.1. Employee's full name;
- 1.2. Date of Birth
- 1.3. Home address;
- 1.4. Bank/building society account details for payroll purposes;
- 1.5. Tax Code; and
- 1.6. National Insurance Number
- 1.7. Annual leave reckonable service date;
- 1.8. Percentage of pay currently contributed under any added years arrangements.

2. Medical

- 2.1 Details of any active restoring efficiency case for health problems.

3. Disciplinary

- 3.1 Details of any active restoring efficiency case for reasons of performance;
- 3.2 Details of disciplinary or grievance proceedings taken by or against transferring employees in last two (2) years; and
- 3.3 Information of any legal proceedings between employees and their employer within the previous two years or such proceedings that the transferor has reasonable grounds to believe that an employee may bring against the transferee arising out of their employment with the transferor;