

**SCHEDULE 16 TUPE  
TRANSFER REGULATIONS**

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**SCHEDULE 16 TUPE****TRANSFER REGULATIONS****PART 1 - EMPLOYEE TRANSFER ARRANGEMENTS ON ENTRY****1 DEFINITIONS**

Without prejudice to Schedule 1 (Definitions and Interpretations), for the purpose of this Schedule 16, the following terms shall have the following meaning:

<b>Term</b>	<b>Definition</b>
Authority	means the Secretary of State for Defence
Authority Employees	means those employees of the Authority who are listed in the Final List;
Costs	means recruitment costs in respect of the provision of the Services, those costs of employing the employees of the Authority and/or any reasonable termination costs, including, without limitation, redundancy payments (but excluding costs arising from acts or omissions of the Contractor and/or Employing Sub-Contractor, and/or any payment which the Contractor and/or any Employing Sub-Contractor is not obliged to make by contract or statute and/or any compensation, payment, costs or awards (whether protective or otherwise) in connection with claims of unfair dismissal, discrimination and claims in respect of a protective award under the Trade Union and Labour Relations (Consolidation) Act 1992 (save where such claims are as a result of an act or omission of the Authority);
Employee Liability Information	has the same meaning as in Regulation 11(2) of the Transfer Regulations;
Employee List	means the list of Expected Authority Transferees plus the information listed in Part A of Appendix 3 of this Schedule 16 Part 1 for those Expected Authority Transferees;

Term	Definition
Expected Authority Transferee	means an employee of the Authority whom the Authority considers is assigned or whose principal purpose is to provide the Services to be provided by the Contractor and/or an Employing Sub-Contractor prior to the Relevant Transfer Date and who the Authority expects to transfer to the Contractor or an Employing Sub-Contractor on the Relevant Transfer Date;
Final List	means the list of Expected Authority Transferees as at 28 days prior to the Relevant Transfer Date, plus the information listed in Part B of Appendix 3 of this Schedule 16 Part 1 in respect of those Expected Authority Transferees;
Former Authority Employee	means at any time any person whose employment previously transferred to a contractor or its sub-contractor pursuant to the Transfer Regulations and who has, pursuant to this Contract and the Transfer Regulations, transferred to the Contractor or any Sub-contractor provided that since such person was employed by the Authority (a) he has not ceased to be eligible for membership of the Schemes; and (b) any change in his employer has been effected pursuant to the Transfer Regulations;
New Provider	means 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;
Previous Contractor	Means Babcock Flagship Ltd.

Term	Definition
Previous Contractor Employee	means an employee of a Previous Contractor (including but not limited to Former Authority Employees) who immediately before the Previous Contractor Relevant Transfer Date is assigned to carry out the services to be carried out by the Contractor or Sub-Contractor under this Contract and who has not been dismissed, resigned, been reassigned or objected to the Previous Contractor Relevant Transfer;
Previous Contractor Relevant Transfer	means a transfer to the Contractor or an Employing Sub-Contractor of a Previous Contractor Employee pursuant to this Contract and the Transfer Regulations;
Previous Contractor Relevant Transfer Date	means the date on which a Previous Contractor Relevant Transfer is effected for Previous Contractor Employees;
Relevant Statutory Scheme	has the same meaning as in Regulation 8 of the Transfer Regulations;
Relevant Transfer	means a transfer to the Contractor or an Employing Sub-Contractor of the Authority Employees pursuant to this Contract and the Transfer Regulations;
Relevant Transfer Date	means the date on which a Relevant Transfer is effected for Authority Employees;
Replacement Contractor	POTS Contractor
Services	shall have the meaning specified in POTS Schedule 2 Statement of Requirements;

Term	Definition
Transfer Regulations	means 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;
Unexpected Employee	means any employee of the Authority or former employee of the Authority (excluding any Former Authority Employee) who is not on the Final List provided in accordance with paragraph 1.1.4 and who is or was assigned by the Authority to the Services to be provided by the Contractor and/or an Employing Sub-Contractor prior to the Relevant Transfer Date;

## 1.1 Authority Employee Information / Contract Price Adjustment

- 1.1.1 Three months prior to the Relevant Transfer Date, the Authority shall provide to the Contractor :
- (a) The Employee List; and
  - (b) Employee Liability Information in respect of the Expected Authority Transferees;
- 1.1.2 Up to 28 days prior to the Relevant Transfer Date the Authority shall inform the Contractor of, and provide any information related to, any changes to the information provided pursuant to paragraph 2.1.1 as soon as reasonably practicable.
- 1.1.3 The Contractor's Representative shall provide any information provided to it by the Authority under paragraph 1.1.1 to an Employing Sub-Contractor within seven Business Days of receipt to the extent that such Expected Authority Transferees are to transfer to an Employing Sub-Contractor under a Relevant Transfer on the Relevant Transfer Date.
- 1.1.4 No later than 28 days prior to the Relevant Transfer Date the Authority shall provide to the Contractor the Final List.
- 1.1.5 Paragraph 1.1.1 is subject to the Authority's obligations in respect of the DPA and the Authority shall use its reasonable endeavours to obtain the consent of its employees to the extent necessary under the DPA or provide the data in anonymous form in order to enable disclosure of the information required under paragraph 1.1.1. To the extent anonymous data has been provided by the Authority

to the Contractor pursuant to its obligations under Paragraph 1.1.1 above, the Authority shall provide full data to the Contractor no later than 28 days prior to the Relevant Transfer.

- 1.1.6 Where any differences between the employee lists at Appendix 1 (which shows the employee information on which the Contractor based the employment costs used to calculate the Contract Price, those employment costs being £(insert sum) and the Final List result in reasonable additional Costs to the Contractor and/or any Employing Sub-Contractor, the Contractor may propose a reasonable adjustment to the Contract Price to meet such reasonable additional Costs that the Contractor and/or any Employing Sub-Contractor incurs as a result of such a change provided that such a change is not as a result of an act or omission of the Contractor and/or any Employing Sub-Contractor. The Contractor shall produce such evidence of the reasonable additional Costs incurred as the Authority may reasonably require as soon as is reasonably practicable and in any event no later than 28 days following the receipt of such a written request prior to any adjustment being made. No adjustment to the Contract Price shall be made where there is a failure to produce such evidence within this timescale or where the Authority considers such information insufficient.
- 1.1.7 Where the Authority considers that any differences between the employee lists at Appendix 1 (which shows the employee information on which the Contractor based the employment costs used to calculate the Contract Price, those employment costs being £(insert sum) and the Final List result in a reduction of Costs to the Contractor and/or any Employing Sub-Contractor, the Authority shall propose a reasonable adjustment to the Contract Price to reflect any reasonable reduction in Costs to the Contractor and/or any Employing Sub-Contractor. The Authority and the Contractor shall produce such reasonable evidence as the other Party shall reasonably require as soon as is reasonably practicable and in any event no later than 28 days after a request is made in writing in order to establish such a reduction in Costs. A failure by the Contractor to produce such evidence shall preclude the Contractor from objecting to an adjustment to the Contract Price. A failure by the Authority to produce such evidence, save where such a failure is as a result of an act or omission of the Contractor or Employing Sub-Contractor, shall result in no adjustment to the Contract Price.
- 1.1.8 Where, following the Relevant Transfer Date, the Contractor and/or the Authority provides reasonable evidence to the other Party that any of the details in the Final List were inaccurate (other than details in respect of the number or identity of the Expected Authority Transferees which shall not be taken into account in respect of any Contract Price adjustment due to additional Costs) the Contract Price shall be adjusted to reflect the adjustment which would have been made under paragraphs 1.1.6 and/or 1.1.7 (if any) had the Final List been accurate on the Relevant Transfer Date. The Authority and the Contractor shall produce such reasonable evidence of the inaccuracies and/or the additional Costs and/or reduction in Costs incurred as the other Party may reasonably require as soon as is reasonably practicable and in any event, no later than 28 days following the receipt of such a request prior to any adjustments being made. Where there is a failure by the Contractor to produce such evidence within this timescale or where the Authority reasonably considers such information insufficient, no adjustment to the Contract Price shall be made. A failure by the Authority to produce reasonable evidence to demonstrate inaccuracies and/or the reduction in Costs, save where such a failure is as a result of an act or omission of the Contractor or Employing Sub-Contractor, shall result in no adjustment to the Contract Price.

- 1.1.9 No adjustments shall be made to the Contract Price in respect of inaccuracies raised under paragraphs 1.1.6, 1.1.7 or 1.1.8 more than six months following the Relevant Transfer Date.
- 1.1.10 The Parties agree that any adjustments to the Contract Price under paragraphs 1.1.6, 1.1.7 or 1.1.8 for each Relevant Transfer shall be made at the same time which shall be no earlier than six months after the Relevant Transfer Date.
- 1.1.11 If a claim or allegation is made by an Unexpected Employee that he has or should have transferred to the Contractor and/or any Sub-Contractor and/or (in the case of an Unexpected Employee whose employment terminated on or before the Relevant Transfer Date) that any liability relating to him has transferred to the Contractor and/or any Sub-Contractor by virtue of the Transfer Regulations and this Contract, 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) in writing as soon as reasonably practicable and no later than ten Business Days after receiving notification of the Unexpected Employee's claim or allegation, whereupon:
- (a) the Authority shall, as soon as reasonably practicable, offer and/or confirm continued employment to the Unexpected Employee or take such other steps so as to effect a written withdrawal of the claim or allegation; and
  - (b) if the Unexpected Employee's claim or allegation is not withdrawn or resolved the Authority shall notify the Contractor (who will notify any Sub-Contractor who is a party to such claim or allegation), and the Contractor or Sub-Contractor shall employ the Unexpected Employee or as soon as reasonably practicable (subject to compliance with its obligations at paragraph 1.1.11(c)(iii)), serve notice to terminate the Unexpected Employee's employment in accordance with his contract of employment and/or (in the case of an Unexpected Employee whose employment terminated on or before the Relevant Transfer Date) shall resist any claim brought by the Unexpected Employee against the Contractor and/or any Sub-Contractor; and
  - (c) the Authority shall effect an adjustment to the Contract Price which has the effect of reimbursing the Contractor for any of the following liabilities incurred by the Contractor or Sub-Contractor in dealing with or disposing of the Unexpected Employee's claim or allegation:
    - (i) any additional Costs of employing the Unexpected Employee to provide the Services under this Contract up to the date of dismissal where the Unexpected Employee has been dismissed in accordance with paragraph 1.1.11(b);
    - (ii) any liabilities acquired by virtue of the Transfer Regulations in relation to the Unexpected Employee;
    - (iii) any liabilities relating to the termination of the Unexpected Employee's employment provided the Contractor or Sub-Contractor has used reasonable endeavours to find alternative employment for the Unexpected Employee, but excluding such proportion or amount of any liability for unfair dismissal, breach of contract or discrimination attributable:

- (A) to a failure by the Contractor or an Employing Subcontractor to act reasonably to mitigate the costs of dismissing such person);
  - (B) directly or indirectly to the procedure followed by the Contractor or an Employing Subcontractor in dismissing the Unexpected Transferee; or
  - (C) to the acts/omissions of the Contractor or an Employing Subcontractor not wholly connected to the dismissal of that person;
  - (iv) any liabilities incurred under a settlement of the Unexpected Employee's claim which was reached with the express permission of the Authority (not to be unreasonably withheld or delayed);
  - (v) reasonable administrative costs incurred by the Contractor or Sub-Contractor in dealing with the Unexpected Employee's claim or allegation, subject to a cap per Unexpected Employee of £5,000; and
  - (vi) legal and other professional costs reasonably incurred;
- (d) the Contractor shall be deemed to have waived its right to an adjustment as per paragraph 1.1.11(c) if it fails without reasonable cause to take, or fails to procure any Sub-Contractor takes, any action in accordance with any of the timescales referred to in this paragraph 1.1.11.

## **1.2 Obligations in Respect of Authority Employees**

- 1.2.1 The Contractor and the Authority acknowledge, and the Contractor shall procure that the Employing Sub-Contractors acknowledge, that the provision of the Services under this Contract will constitute one or more Relevant Transfers for the purposes of the Transfer Regulations.
- 1.2.2 The Contractor agrees and shall procure that the Employing Sub-Contractors agree that from the Relevant Transfer Date the contracts of employment of any Authority Employees together with any collective agreements (save insofar as such contracts and such agreements relate to benefits for old age, invalidity or survivors under any occupational pension scheme or otherwise do not transfer pursuant to regulation 4A of the Transfer Regulations) will take effect as if originally made between the Contractor or an Employing Sub-Contractor and the Authority Employees (or the relevant trade union, as the case may be).
- 1.2.3 The Authority and the Contractor shall (and the Contractor shall procure that any Employing Sub-Contractors shall):
- (a) before and in relation to the Relevant Transfer Date liaise with each other and shall co-operate with each other in order to implement effectively the smooth transfer of the Authority Employees to the Contractor or Employing Sub-Contractor; and
  - (b) comply with their respective obligations under the Transfer Regulations including their obligations to inform and consult under Regulation 13.

- 1.2.4 The Authority shall be responsible for all emoluments and outgoings in respect of an Authority Employee (including without limitation all wages, bonuses, commissions, payments in respect of holiday taken up to the Relevant Transfer Date, PAYE, national insurance contributions and contributions to retirement benefit schemes) in respect of the period prior to the Relevant Transfer Date and shall indemnify the Contractor in respect of the same.
- 1.2.5 The Contractor or Employing Sub-Contractor (as the case may be) shall have responsibility for all emoluments and outgoings (including without limitation all wages, bonuses, commissions, payments in respect of holiday taken after the Relevant Transfer Date, PAYE, national insurance contributions and contributions to retirement benefit schemes) in relation to the Authority Employees with effect from and including the Relevant Transfer Date and the Contractor shall indemnify the Authority in respect of the same.
- 1.2.6 No later than three months after the Relevant Transfer Date the Contractor shall pay to the Authority a sum equal to the outstanding balance on the Relevant Transfer Date of any loan, advance or other indebtedness of any Authority Employee to the Authority which is outstanding immediately prior to the Relevant Transfer save to the extent that such sums are recovered by the Authority pursuant to paragraph 1.2.5.
- 1.2.7 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 any claim or claims by any Authority Employee brought against the Contractor and/or any Employing Sub-Contractor at any time up to the Subsequent Transfer Date arising out of or in connection with any acts or omissions of the Authority which occurred prior to the Relevant Transfer Date for that Authority Employee provided that all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with such claims are not the result of any act or omission of the Contractor and/or Employing Sub-Contractor.
- 1.2.8 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 any claim or claims by any Authority Employee or trade union representative or Authority Employee representative brought against the Contractor, whether before or after the Relevant Transfer Date, arising out of any failure by the Authority to comply with its obligations under Regulation 13 of the Transfer Regulations in respect of any Authority Employee or any other employee of the Authority affected by the Relevant Transfer effected by this Contract (as defined by Regulation 13 of the Transfer Regulations), except to the extent that all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with such claims are the result of any act or omission of the Contractor and/or Employing Sub-Contractor.

- 1.2.9 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 claim or claims by any employee or trade union representative or employee representative brought against the Authority, whether before or after the Relevant Transfer Date, arising out of any failure by the Contractor or any Employing Sub-Contractor to comply with its or their obligations under Regulation 13 of the Transfer Regulations save to the extent that any reasonable costs (including reasonable legal costs), losses, and expenses and all damages, compensation, fines and liabilities arising out of such claims are the result of the act or omission of the Authority.
- 1.2.10 The Contractor shall indemnify the Authority 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 proposed or made by the Contractor or any Employing Sub-Contractor to the working conditions of all or any Authority Employees to the material detriment of such Authority Employees. For the purposes of this paragraph the expressions "substantial change" and "material detriment" shall have the same meaning as for the purposes of Regulation 4(9) of the Transfer Regulations.
- 1.2.11 The Contractor shall indemnify the Authority 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 any variations or proposed variations to any Authority Employee's terms and conditions of employment pursuant to regulations 4(5) and 4(5B) of the Transfer Regulations.
- 1.3 Application of Paragraphs in this Schedule to employed Unexpected Employees**
- 1.3.1 Paragraph 1.2.2, 1.2.4 to 1.2.6, 1.2.7 and 1.2.10 of Part 1, paragraph 1.7 of Part 2 (Staff Transfer on Exit) and Part 3 (Pension Matters) of this Schedule 16 shall apply to any Unexpected Employee whom the Contractor and/or any Sub-Contractor has decided to employ in accordance with paragraph 1.1.11(b) save that references to "the Relevant Transfer Date" in paragraphs 2.2.2, 1.2.4 to 1.2.6 and 1.2.7 of this Schedule 16 Part 1 shall be construed as being references to the date on which that Unexpected Employee took up employment with the Contractor or Sub-Contractor and any reference to an "Authority Employee" shall be construed as being a reference to the Unexpected Employee.
- 1.4 Employee Liability Information**
- 1.4.1 The Parties consider that the provisions of this Contract (and in particular paragraph 1.1.6 of this Part 1) provide sufficient protection and opportunity for compensation to the Contractor or Employing Sub-Contractors in the event of any breach by the Authority of its obligations under Regulation 11 of the Transfer Regulations and that as anticipated by Regulation 12(5) of the Transfer Regulations it is just and equitable that the Tribunal make no award for compensation under Regulation 12(3)(b) and, in the alternative, if the Tribunal determines that it is just and equitable for an award of compensation to be made then the Contractor for itself and on behalf of any Employing Subcontractor agrees that such award should be no more than £500 for the relevant employee.

**1.5 General**

- 1.5.1 The Contractor shall not recover any Costs and/or other losses under this Schedule 16 Part 1 where such Costs and/or losses are recoverable by the Contractor elsewhere in this Contract and/or have been recovered under the Transfer Regulations or otherwise.

**2 PREVIOUS CONTRACTOR EMPLOYEES****2.1 Employee Information**

- 2.1.1 No later than three months prior to the Previous Contractor Relevant Transfer Date the Authority shall provide to the Contractor the information listed in Appendix 3 of this Schedule 16 Part 1 in respect of Previous Contractor Employees to the extent that such information has been provided to the Authority by the Previous Contractor.
- 2.1.2 The Authority shall provide the Contractor with any update to the information provided under paragraph 2.1.1 as soon as is reasonably practicable, to the extent that such information has been provided to the Authority by the Previous Contractor.
- 2.1.3 The Contractor shall provide any information provided to it by the Authority pursuant to paragraph 2.1.1 to an Employing Sub-Contractor within seven Business Days of receipt to the extent that such Previous Contractor Employees are to transfer to an Employing Sub-Contractor under a Previous Contractor Relevant Transfer on the Previous Contractor Relevant Transfer Date.
- 2.1.4 Paragraph 2.1.1 is subject to the Authority and any Previous Contractor's obligations in respect of the DPA and any data provided by the Authority in accordance with paragraph 2.1.1 shall be provided in anonymous form in order to enable its disclosure. To the extent anonymous data has been provided by the Authority pursuant to its obligations under Paragraph 3.1.1 above, the Authority shall provide full data no later than 28 days prior to the Previous Contractor Relevant Transfer.
- 2.1.5 The Authority does not warrant the accuracy of the information provided under paragraph 2.1.1.

**2.2 Obligations in respect of Previous Contractor Employees**

- 2.2.1 The Contractor and the Authority acknowledge (and the Contractor shall procure that the Employing Sub-Contractor acknowledges) that the provision of the Services under this Contract will constitute a Previous Contractor Relevant Transfer.
- 2.2.2 The Contractor agrees (and will procure that the Employing Sub-Contractor agrees) that from the Previous Contractor Relevant Transfer Date the contracts of employment of any Previous Contractor Employees together with any collective agreements (save insofar as such contracts and such agreements relate to benefits for old age, invalidity or survivors under any occupational pension scheme) will take effect as if originally made between the Contractor or an Employing Sub-Contractor and the Previous Contractor Employees (or the relevant trade union, as the case may be) subject to any variations to such contracts of employment made pursuant to Regulation 9 of the Transfer Regulations, where applicable.

- 2.2.3 Save for any liabilities in respect of Previous Contractor Employees under a Relevant Statutory Scheme or Schemes, the Contractor or Employing Sub-Contractor (as the case may be) shall have responsibility for all emoluments and outgoings (including without limitation all wages, bonuses, commissions, payments in respect of holiday taken after the Previous Contractor Relevant Transfer Date as appropriate, PAYE, national insurance contributions and contributions to retirement benefit schemes) in relation to the Previous Contractor Employees with effect from and including the Previous Contractor Relevant Transfer Date and shall indemnify the Authority and the Previous Contractor in respect of the same.

### **2.3 Indemnities**

- 2.3.1 The Contractor shall indemnify and hold harmless the Authority and any Previous Contractor against all demands, claims, liabilities, losses and damages, costs and expenses (including all interest, penalties, legal and other costs and expenses) together with any applicable Value Added and similar taxes or liability for deduction of PAYE tax properly incurred by the Authority or any Previous Contractor arising out of or in connection with:
- (a) any breach by the Contractor and/or any Employing Sub-Contractor of their obligations under Regulation 13 of the Transfer Regulations;
  - (b) any act or proposal by the Contractor or any Employing Sub-Contractor prior to or following the Previous Contractor Relevant Transfer Date which amounts to a repudiatory breach of contract as referred to in Regulation 4(11) of the Transfer Regulations and/or to make a substantial change in working conditions of any Previous Contractor Employee to the material detriment of that employee. For the purposes of this sub-clause the expressions “repudiatory breach”, “substantial change” and “material detriment” shall have the same meanings as for the purposes of Regulation 4(9) and 4(11) of the Transfer Regulations; and
  - (c) any collective agreement or any arrangement with any trade union or staff association after the Previous Contractor Relevant Transfer Date.
  - (d) any variations or proposed variations to any Previous Contractor Employee’s terms and conditions of employment pursuant to regulations 4(5) and 4(5B) of the Transfer Regulations.

## **3 GENERAL PROVISIONS APPLICABLE TO AUTHORITY EMPLOYEES, PREVIOUS CONTRACTOR EMPLOYEES AND CONTRACTOR PERSONNEL**

### **3.1 Contractor Indemnity**

- 3.1.1 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 the employment or termination of employment by the Contractor or any Employing Sub-Contractor of any person (including the Authority Employees and Previous Contractor Employees) engaged in connection with the provision of the Services during the term of this Agreement.

**3.2 Post Transfer Reporting**

- 3.2.1 The Contractor shall upon request by the Authority provide (or shall procure that an Employing Sub-Contractor shall provide) the Authority with the following information in respect of the employees who are wholly or mainly employed, assigned or engaged in providing the Services:
- (a) any proposed, agreed or imposed changes to terms and conditions of service;
  - (b) disputes relating to compliance with the Transfer Regulations which are regarded as unresolved by a recognised Trade Union;
  - (c) any court action or tribunal proceedings relating to compliance with the Transfer Regulations;
  - (d) completed court action or tribunal proceedings relating to compliance with the Transfer Regulations; and
  - (e) out of court settlements relating to compliance with the Transfer Regulations if possible having regard to the wording of the settlement.

**Appendix 1**

**[LIST OF EMPLOYMENT INFORMATION ON WHICH THE CONTRACTOR BASED THE  
AUTHORITY PERSONNEL COSTS OF THE CONTRACT PRICE]**

**Appendix 2**

**[LIST OF FORMER AUTHORITY EMPLOYEES]**

**Appendix 3****PERSONNEL INFORMATION TO BE RELEASED PURSUANT TO THIS AGREEMENT****PART A**

1. Pursuant to paragraphs 1.1.1 and 2.1.1 of this Schedule 16 Part 1, 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) will be provided to the extent it is not included within the written statement of employment particulars:
  - 1.1 **Personal, Employment and Career**
    - a) Age;
    - b) Security Vetting Clearance;
    - c) Job title;
    - d) Work location;
    - e) Conditioned hours of work;
    - f) Employment Status;
    - g) Details of training and operating licensing required for Statutory and Health and Safety reasons;
    - h) Details of training or sponsorship commitments;
    - i) Standard Annual leave entitlement and current leave year entitlement and record;
    - j) Annual leave reckonable service date;
    - k) Details of disciplinary or grievance proceedings taken by or against transferring employees in the last two years;
    - l) Information of any legal proceedings between employees and their employer within the previous two years or any 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;
    - m) Issue of Uniform/Protective Clothing;
    - n) Working Time Directive opt-out forms; and
    - o) Date from which the latest period of continuous employment began.
  - 1.2 **Performance Appraisal**
    - a) The current year's Performance Appraisal;
    - b) Current year's training plan (if it exists); and
    - c) Performance Pay Recommendations (PPR) forms completed in the current reporting year, or where relevant, any bonus entitlements;

**1.3 Superannuation and Pay**

- a) Maternity leave or other long-term leave of absence (meaning more than 4 weeks) planned or taken within the last two years;
- b) Annual salary and rates of pay band/grade;
- c) Shifts, unsociable hours or other premium rates of pay;
- d) Overtime history for the preceding twelve-month period;
- e) Allowances and bonuses for the preceding twelve-month period;
- f) Details of outstanding loan, advances on salary or debts;
- g) Cumulative pay for tax and pension purposes;
- h) Cumulative tax paid;
- i) National Insurance Number;
- j) National Insurance contribution rate;
- k) Other payments or deductions being made for statutory reasons;
- l) Any other voluntary deductions from pay;
- m) Civil Service Pension Scheme Membership (Opt-out of Civil Service Pension Scheme, Classic, Classic Plus, Premium, Defined Contribution) or, where relevant Contractor Scheme or other Contractor/Sub-Contractor pension scheme membership;
- n) For pension purposes, the notional reckonable service date;
- o) Pensionable pay history for three years to date of transfer;
- p) Percentage of any pay currently contributed under additional voluntary contribution arrangements; and
- q) Percentage of pay currently contributed under any added years arrangements.

**1.4 Medical**

- a) Sickness and absence records for the immediately preceding four-year period; and
- b) Details of any active restoring efficiency case for health purposes.

**1.5 Disciplinary**

- a) Details of any active restoring efficiency case for reasons of performance; and
- b) Details of any active disciplinary cases where corrective action is on going.

**1.6 Further information**

- a) Information about specific adjustments that have been made for an individual under the Disability Discrimination Act 1995 or the Equality Act 2010;
- b) Short term variations to attendance hours to accommodate a domestic situation;
- c) Individuals that are members of the Reserves, or staff may have been granted special leave as a School Governor; and
- d) Information about any maternity or other statutory leave or other absence from work.

**Part B**

1.7 Information to be provided 28 days prior to the Relevant Transfer Date, or Previous Contractor Relevant Transfer Date:

- a) Employee's full name;
- b) Date of Birth
- c) Home address;
- d) Bank/building society account details for payroll purposes Tax Code.

**PART 2 – STAFF TRANSFER ARRANGEMENTS ON EXIT****1. DEFINITIONS**

- 1.1 In this Schedule 16 Part 2, save where otherwise provided, words and terms defined in Schedule 1 (Definitions) or Schedule 16 Part 1 of the Contract shall have the meaning ascribed to them in Schedule 1 (Definitions) or Schedule 16 Part 1 of the Contract.
- 1.2 Without prejudice to Schedule 1 (Definitions) of the Contract or Schedule 16, Part 1, in this Schedule 16 Part 2 unless the context otherwise requires:

<b>Term</b>	<b>Definition</b>
Authority Employees	means those employees of the Authority who transferred to the Contractor or an Employing Sub-Contractor under the Transfer Regulations and pursuant to this Contract on the Relevant Transfer Date;
CSCS	means Civil Service Compensation Scheme;
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;
Subsequent Relevant Transfer	means a transfer of the employment of Subsequent Transferring Employees from the Contractor or any Employing Sub-Contractor to a New Provider or the Authority under the Transfer Regulations;
Subsequent Transfer Date	means the date on which the transfer of a Subsequent Transferring Employee takes place under the Transfer Regulations;

Term	Definition
Subsequent Transferring Employee	means 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;
Transfer Regulations	means 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.

### 1.3 Information on Re-tender, Partial Termination, Termination or Expiry

- 1.3.1 No earlier than two years preceding the termination, partial termination or Expiry of this Contract or a potential Subsequent Transfer Date or at any time after the service of a notice to terminate this Contract or the provision of any of the Services (whether in whole or part) or on receipt of a written request by the Authority, the Contractor shall (and shall procure that any Employing Sub-Contractor shall):
- (a) 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;
  - (b) supply to the Authority such full and accurate and up-to-date information as may be requested by the Authority including the information listed in Appendix 1 to this Schedule 16 Part 2 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 Subsequent Relevant Transfer, separately identifying those former employees of the Authority whose employment previously transferred to the Contractor and/or Employing Sub-Contractor who continue to be eligible under New Fair Deal (as defined and set out in Part 3 (Pension Matters) of this Schedule);

- (c) 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;
  - (d) 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;
  - (e) inform the Authority of any changes to the information provided under paragraph 1.3.1(a) or 1.3.1(b) up to the Subsequent Transfer Date as soon as reasonably practicable.
- 1.3.2 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:
- (a) ensure that Employee Liability Information and such information listed in Part A of Appendix 2 of Part 2 of this Schedule 16 (Personnel Information) relating to the Subsequent Transferring Employees is provided to the Authority and/or any New Provider;
  - (b) inform the Authority and/or any New Provider of any changes to the information provided under this Paragraph 1.3.2 up to any Subsequent Transfer Date as soon as reasonably practicable;
  - (c) 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.
- 1.3.3 No later than 28 days prior to the Subsequent Transfer Date the Contractor shall provide the Authority and/or any New Provider with a final list of the Subsequent Transferring Employees together with the information listed in Part B of Appendix 2 of Part 2 of this Schedule 16 (Personnel Information) relating to the Subsequent Transferring Employees. The Contractor shall inform the Authority and/or New Provider of any changes to this list or information up to the Subsequent Transfer Date.
- 1.3.4 Paragraphs 1.3.1 and 1.3.2 of this Appendix are subject to the Contractor's obligations in respect of the DPA and the Contractor shall use its best endeavours to obtain the consent of its employees (and shall procure that its Sub-Contractors use their best endeavours to obtain the consent of their employees) to the extent necessary under the DPA or provide the data in an anonymous form in order to enable disclosure of the information required under paragraphs 1.3.1 and 1.3.2. Notwithstanding this paragraph 1.3.4, the Contractor acknowledges (and shall procure that its Sub-Contractors acknowledge) that they are required to provide sufficient information to the Authority to enable the Authority to determine the nature of the activities being undertaken by employees engaged in providing the Services, to assess whether there is an organised grouping for the purposes of the Transfer Regulations and to assess who is assigned to such organised grouping. To the extent that anonymous data has been provided by the Contractor pursuant to its obligations under Paragraph 1.3.1 or 1.3.2 above, the Contractor shall provide full data to the Authority no later than 28 days prior to the Subsequent Transfer Date.

- 1.3.5 On notification to the Contractor by the Authority of a New Provider or within the period of six months prior to the Termination Date or after service of a notice to terminate this Contract (whether in whole or in part), whichever is earlier and in any event on receipt of a written request by the Authority, the Contractor shall not and shall procure that an Employing Sub-Contractor shall not:
- (a) 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
  - (b) 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
  - (c) 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
  - (d) 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) 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 1.3.1, 1.3.2, 1.3.3 or 1.3.5 of this Schedule 16 Part 2.

- 1.3.6 The Authority may at any time prior to the period set out in paragraph 1.3.5 of this Schedule 16 Part 2 request from the Contractor any of the information in sections 1(a) to (d) of Appendix 1 and the Contractor shall and shall procure any Sub-Contractor will provide the information requested within 28 days of receipt of that request.

#### 1.4 **Obligations in Respect of Subsequent Transferring Employees**

- 1.4.1 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:
- (a) before and in relation to the Subsequent Transfer Date liaise with each other and shall co-operate with each other in order to implement effectively the smooth transfer of the Subsequent Transferring Employees to the Authority and/or a New Provider; and

- (b) comply with their respective obligations under the Transfer Regulations including their obligations to inform and consult under Regulation 13 of the Transfer Regulations.

## 1.5 **Unexpected Subsequent Transferring Employees**

1.5.1 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 Subsequent Transferring Employees provided under paragraph 1.3.3 (an "**Unexpected Subsequent 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 ten Business Days after receiving notification of the Unexpected Subsequent Transferring Employee's claim or allegation, whereupon:

- (a) 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 Subsequent Transferring Employee or take such other steps so as to effect a written withdrawal of the claim or allegation; and
- (b) if the Unexpected Subsequent 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 Subsequent Transferring Employee or as soon as reasonably practicable, (subject to compliance with its obligations at paragraph 1.5.1(c)(iii)), serve notice to terminate the Unexpected Subsequent Transferring Employee's employment in accordance with his contract of employment; and
- (c) 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 Subsequent Transferring Employee's claim or allegation:
  - (i) any additional costs of employing the Unexpected Subsequent Transferring Employee up to the date of dismissal where the Unexpected Subsequent Transferring Employee has been dismissed in accordance with paragraph 1.5.1(b);
  - (ii) any liabilities acquired by virtue of the Transfer Regulations in relation to the Unexpected Subsequent Transferring Employee;

- (iii) any liabilities relating to the termination of the Unexpected Subsequent Transferring Employee's employment but excluding such proportion or amount of any liability for unfair dismissal, breach of contract or discrimination attributable:
  - (A) to a failure by the Authority or a New Provider to act reasonably to mitigate the costs of dismissing such person);
  - (B) directly or indirectly to the procedure followed by the Authority or a New Provider in dismissing the Unexpected Transferee; or
  - (C) to the acts/omissions of the Authority or a New Provider not wholly connected to the dismissal of that person;
- (iv) any liabilities incurred under a settlement of the Unexpected Subsequent Transferring Employee's claim which was reached with the express permission of the Contractor (not to be unreasonably withheld or delayed);
- (v) reasonable administrative costs incurred by the Authority or New Provider in dealing with the Unexpected Subsequent Transferring Employee's claim or allegation, subject to a cap per Unexpected Subsequent Transferring Employee of £5,000; and
- (vi) legal and other professional costs reasonably incurred;

1.5.2 the Authority shall be deemed to have waived its right to an indemnity under paragraph 1.5.1(c) 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 1.5.

## 1.6 **Indemnities on Subsequent transfer under the Transfer Regulations on Partial Termination, Termination or Expiry of the Contract**

1.6.1 If on the expiry, termination or partial termination of the Contract there is a Subsequent 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 Subsequent 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 Subsequent Transferring Employee or any other employee of the Contractor or any Sub-Contractor affected by the Subsequent 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.

- 1.6.2 If there is a Subsequent 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:
- (a) any claim or claims by a Subsequent Transferring Employee at any time on or after the Subsequent 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 Subsequent Transfer Date;
  - (b) subject to paragraph 1.6.1 any claim by any employee or trade union representative or employee representative arising whether before or after the Subsequent 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 Subsequent Transferring Employee or any other employee engaged wholly or mainly in connection with the Services by the New Provider or any other employee of the Authority or any New Provider affected by the Subsequent 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.

- 1.6.3 In the event of a Subsequent 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 a New Provider or any sub-contractor of a New Provider] on or after the Subsequent Transfer Date to the working conditions of any Subsequent Transferring Employee to the material detriment of any such Subsequent Transferring Employee. For the purposes of this paragraph 1.6.3, 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.

## 1.7 **[Redundancy Liability on Partial Termination, Termination or Expiry]**

- 1.7.1 The Authority shall indemnify the Contractor against any liability of the Contractor and/or any Employing Sub-Contractor to make redundancy payments to the Authority Employees as a consequence of dismissal by reason of redundancy for a sum equivalent to that to which Authority Employees would have been entitled under the CSCS as if that Authority Employee had still been serving the Crown as a Civil Servant and been entitled to compensation under the CSCS as at the date of termination of their contract of employment provided that the dismissal by reason of redundancy (as defined by section 139 of the Employment Rights Act 1996) arises from the expiry or termination or partial termination of this Contract otherwise than by reason of a Default of the Contractor and that such a dismissal takes place within six months of such expiry or termination or partial termination in the event that the Authority Employees are not

transferred to a New Provider under the Transfer Regulations by reason other than a failure by the Contractor or any Sub-Contractor to comply with its or their obligations under the Transfer Regulations.

- 1.7.2 The Authority shall indemnify the Contractor against any liability of the Contractor and/or any Employing Sub-Contractor to make redundancy payments to the Former Authority Employees as a consequence of dismissal by reason of redundancy for a sum equivalent to that to which Former Authority Employees would have been entitled under the CSCS as if that Former Authority Employee had still been serving the Crown as a Civil Servant and been entitled to compensation under the CSCS as at the date of termination of their contract of employment provided that the dismissal by reason of redundancy (as defined by section 139 of the Employment Rights Act 1996) arises from the expiry or termination or partial termination of this Contract otherwise than by reason of a Default of the Contractor and that such a dismissal takes place within six months of such expiry or termination or partial termination in the event that the Former Authority Employees are not transferred to a New Provider under the Transfer Regulations by reason other than a failure by the Contractor or any Sub-Contractor to comply with its or their obligations under the Transfer Regulations.
- 1.7.3 For the avoidance of doubt, the indemnity set out in paragraph 1.7.1 and 1.7.2 of Part 2 of this Schedule shall not include claims for payments for monies paid in lieu of notice or costs arising out of unfair dismissal claims or any other contractual or statutory claim.]

## 1.8 **Contracts (Rights of Third Parties) Act 1999**

- 1.8.1 A New Provider may enforce the terms of paragraph 1.5 and 1.6 against the Contractor in accordance with the Contracts (Rights of Third Parties) Act 1999.
- 1.8.2 The consent of a New Provider (save where the New Provider is the Authority) is not required to rescind, vary or terminate this Contract.
- 1.8.3 Nothing in this paragraph 1.8 shall affect the accrued rights of the New Provider prior to the rescission, variation, expiry or termination of this Contract.

## 1.9 **General**

- 1.9.1 The Contractor shall not recover any Costs and/or other losses under this Schedule 16 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

**CONTRACTOR PERSONNEL-RELATED INFORMATION TO BE RELEASED UPON RE-TENDERING WHERE THE TRANSFER REGULATIONS APPLIES**

1. Pursuant to paragraph 1.3.1(b) of Part 2 of this Schedule 16, the following information will be provided:
  - a) The total number of individual employees (including any employees of Sub-Contractors) that are currently 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;
  - b) 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;
  - c) The preceding 12 months total pay costs – (Pay, benefits employee/employer ERNIC and Overtime);
  - d) Total redundancy liability including any enhanced contractual payments;
  
2. In respect of those employees included in the total at 1(a), the following information:
  - a) Age (not date of Birth);
  - b) Employment Status (i.e. Fixed Term, Casual, Permanent);
  - c) Length of current period of continuous employment (in years, months) and notice entitlement;
  - d) Weekly conditioned hours of attendance (gross);
  - e) Standard Annual Holiday Entitlement (not "in year" holiday entitlement that may contain carry over or deficit from previous leave years);
  - f) Pension Scheme Membership (including for Former Authority Employees or other former Civil Servants who are current members of the Contractor's Scheme or other Contractor pension scheme certified by GAD which was set up following a transfer to the Contractor or Sub-Contractor of former Civil Servants);
  - g) Pension and redundancy liability information;
  - h) Annual Salary;
  - i) Details of any regular overtime commitments (these may be weekly, monthly or annual commitments for which staff may receive an overtime payment);
  - j) Details of attendance patterns that attract enhanced rates of pay or allowances;
  - k) Regular/recurring allowances;
  - l) Outstanding financial claims arising from employment (i.e. season ticket loans, transfer grants);
  
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 Subsequent Transfer Date.

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(a) of this Appendix 1.

**PERSONNEL INFORMATION TO BE RELEASED PURSUANT TO THIS CONTRACT****Part A**

1. Pursuant to paragraph 1.3.2 of this Schedule 16, part 2, 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:

**1.1 Personal, Employment and Career**

- a) Age;
- b) Security Vetting Clearance;
- c) Job title;
- d) Work location;
- e) Conditioned hours of work;
- f) Employment Status;
- g) Details of training and operating licensing required for Statutory and Health and Safety reasons;
- h) Details of training or sponsorship commitments;
- i) Standard Annual leave entitlement and current leave year entitlement and record;
- j) Annual leave reckonable service date;
- k) Details of disciplinary or grievance proceedings taken by or against transferring employees in the last two years;
- l) 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;
- m) Issue of Uniform/Protective Clothing;
- n) Working Time Directive opt-out forms; and
- o) Date from which the latest period of continuous employment began.

**1.2 Performance Appraisal**

- a) The current year's Performance Appraisal;
- b) Current year's training plan (if it exists); and
- c) Performance Pay Recommendations (PPR) forms completed in the current reporting year, or where relevant, any bonus entitlements.

**1.3 Superannuation and Pay**

- a) Maternity leave or other long-term leave of absence (meaning more than 4 weeks) planned or taken during the last two years;
- b) Annual salary and rates of pay band/grade;
- c) Shifts, unsociable hours or other premium rates of pay;
- d) Overtime history for the preceding twelve-month period;
- e) Allowances and bonuses for the preceding twelve-month period;
- f) Details of outstanding loan, advances on salary or debts;
- g) Cumulative pay for tax and pension purposes;
- h) Cumulative tax paid;
- i) National Insurance Number;
- j) National Insurance contribution rate;
- k) Other payments or deductions being made for statutory reasons;
- l) Any other voluntary deductions from pay;
- m) Civil Service Pension Scheme Membership (Opt-out of Civil Service Pension Scheme, Classic, Classic Plus, Premium, Defined Contribution) or, where relevant Contractor Scheme or other Contractor/Sub-Contractor pension scheme membership;
- n) For pension purposes, the notional reckonable service date;
- o) Pensionable pay history for three years to date of transfer;
- p) Percentage of any pay currently contributed under additional voluntary contribution arrangements; and
- q) Percentage of pay currently contributed under any added years arrangements.

**1.4 Medical**

- a) Sickness and absence records for the immediately preceding four-year period; and
- b) Details of any active restoring efficiency case for health purposes.

**1.5 Disciplinary**

- a) Details of any active restoring efficiency case for reasons of performance; and
- b) Details of any active disciplinary cases where corrective action is on going.

**1.6 Further information**

- a) Information about specific adjustments that have been made for an individual under the Disability Discrimination Act 1995 or the Equality Act 2010;
- b) Short term variations to attendance hours to accommodate a domestic situation;

- c) Individuals that are members of the Reserves, or staff that may have been granted special leave as a School Governor; and
- d) Information about any maternity or other statutory leave or other absence from work.

### **Part B**

1.7 Information to be provided 28 days prior to the Subsequent Transfer Date:

- a) Employee's full name;
- b) Date of Birth
- c) Home address;
- d) Bank/building society account details for payroll purposes Tax Code.

**PART 3 – PENSION MATTERS**

- 1.1 In this Schedule 16 Part 3, save where otherwise provided, words and terms defined in Schedule 1 (Definitions and Interpretations), Schedule 16 Part 1 or Schedule 16 Part 2 of the Contract shall have the meaning ascribed to them in Schedule 1 (Definitions and Interpretations), Schedule 16 Part 1 or Schedule 16 Part 2 of the Contract.
- 1.2 Without prejudice to Schedule 1 (Definitions and Interpretations) of the Contract, Schedule 16 Part 1, or Schedule 16, Part 2, in this Schedule 16 Part 3 unless the context otherwise requires:

<b>Term</b>	<b>Definition</b>
Active Member	means an individual who has been admitted to and remains in active membership of any of the Schemes.
Admission Agreement	means in relation to the Contractor or a Sub-contractor an agreement made (or to be made) between (1) The Minister for the Cabinet Office (2) the Contractor or the Sub-contractor, as the case may be, and (3) the Authority relating to the participation of the Contractor or the Sub-contractor, as applicable, in the Schemes for the benefit of those of the Former Authority Employees who are for the time being employed by the Contractor or the Sub-contractor, as applicable, and which is in the form set out in Annex A to this Schedule.
alpha	means the public service pension scheme for civil servants established under the Public Services Pensions Act 2013 introduced with effect on and from 1 April 2015 (and includes, unless the context otherwise requires, any successor scheme).
Employer Contributions	means the sums which are payable to the Pension Schemes in accordance with clauses 7.1.5, 7.1.7 and 7.2 of the Admission Agreement in respect of the Former Authority Employees, whether by the Contractor, Sub-contractor or Sub-sub-contractor. For the avoidance of doubt, the employee redundancy compensation payment amount which is taken into account under clause 7.2 of the Admission Agreement is not included as part of the pass-through under paragraph 2.1.4.

Term	Definition
Former Authority Employee	means at any time any person whose employment with the Authority is transferred to the Contractor or a Sub-contractor pursuant to the Transfer Regulations and/or any person who is an ex-employee of the Authority and whose employment with a Previous Contractor is transferred to the Contractor or a Sub-contractor pursuant to the Transfer Regulations and who is for the time being employed by the Contractor or a Sub-contractor provided that since such person was employed by the Authority (a) he has not ceased to be eligible for membership of the Schemes; and (b) any change in his employer has been effected pursuant to the Transfer Regulations;
New Fair Deal	means the revised Fair Deal policy set out in HM Treasury's guidance "Fair Deal for staff pensions: staff transfers from central government" issued in October 2013.
PCSPS	means the Principal Civil Service Pension Scheme established under The Superannuation Act 1972.
Pension Schemes	means alpha and/or the PCSPS whichever is or are relevant in the context (and includes, unless the context otherwise requires, the respective managers from time to time of such scheme or schemes).
Previous Contractor	Means Babcock Flagship Ltd.
Relevant Benefits	means any benefit payable on retirement, on death, on reaching a particular age, on the onset of serious ill-health or incapacity or in similar circumstances (including the provision of medical, dental or similar benefits).

Term	Definition
Relevant Transfer Date	means the date on which a transfer to the Contractor or a Sub-contractor is effected pursuant to this Contract and the Transfer Regulations.
Schemes	means the PCSPS, the Partnership Pension Account and its (i) Ill-health Benefits Scheme and (ii) Death Benefits Scheme, the Civil Service Additional Voluntary Contribution Scheme, and alpha each as amended or replaced from time to time, or such one of them as is or are relevant in context. Any reference to the Schemes includes, unless the context otherwise requires, a reference to the respective managers from time to time of the Schemes.
Transfer Regulations	means the means 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. **Pensions**

### 2.1 The Contractor shall:

2.1.1 comply with the Admission Agreement to which it is a party and shall not terminate the Admission Agreement while the Contractor is providing any of the Services;

2.1.2 ensure that on each occasion (including, but without limitation, on the termination of a contract between the Contractor and a Sub-contractor) any Former Authority Employee becomes an employee of the Contractor pursuant to the Transfer Regulations (and the date upon which he becomes such an employee is called the "Employment Date") the Former Authority Employee if not already an Active Member of the Pension Schemes becomes such an Active Member with effect as on and from the Employment Date provided that this is permitted under the terms of the Pension Schemes and the Admission Agreement as applicable; and

2.1.3 ensure that in relation to each Former Authority Employee who immediately prior to the Employment Date is an Active Member or who becomes an Active Member with effect from that date and for so long as the Former Authority Employee is employed by the Contractor and is assigned to or otherwise engaged at least to the minimum extent specified in the Admission Agreement in the provision of the Services or any of them:

2.1.3.1 it is an express term of the contract of employment of the Former Authority Employee with the Contractor that the Contractor shall ensure that (subject to the terms from time to time of the Schemes and the Admission Agreement) the Former Authority Employee may be and may continue to be an Active Member; and

2.1.3.2 each such Former Authority Employee is able to be and remain such an Active Member;

2.1.4 The contractor agrees that the Employer Contributions shall be priced on a pass-through basis in accordance with Schedule 6 (Pricing Mechanism)

2.1.5 if it is in arrears in respect of any contributions due to the Schemes in respect of any Former Authority Employee, agree (which agreement the Contractor hereby irrevocably gives) that the Authority may deduct an amount equal to that which is overdue from any monies due to the Contractor and pay that amount to the relevant Scheme.

2.2 The Contractor shall ensure that no Sub-contractor by whom any of the Former Authority Employees become employed pursuant to the Transfer Regulations is appointed unless the contract under which the Sub-contractor is to provide any of the Services (the "Contract") contains terms which provide for the following:

2.2.1 a condition precedent (which may not be waived) to such contract becoming effective is that there is in force an Admission Agreement between (1) The Minister for the Cabinet Office (2) the Sub-contractor, and (3) the Authority;

2.2.2 the Sub-contractor must at all material times comply with the Admission Agreement and will not terminate the Admission Agreement while the Sub-contractor is providing any of the Services;

2.2.3 a breach of the Admission Agreement which is not capable of remedy or which if it is capable of remedy is not remedied within 10 Business Days of the Sub-contractor being given notice of such breach by the Schemes, the Minister for the Cabinet Office (in respect of the Admission Agreement) or the Authority is an event of default by the Sub-contractor enabling the other party to the Contract to terminate the Contract or the Contractor to terminate the Sub-contract (which the Contractor undertakes to the authority to do if directed to do so by the Authority) immediately on the giving of notice and no notice to waive the event of default or which states that termination is not immediate and reserves a future right to terminate may be given without the consent in writing of the Authority;

2.2.4 on each occasion (including, but without limitation, the termination of any contract pursuant to which the Sub-contractor sub-subcontracts the provisions

of any of the Services) any Former Authority Employee becomes an employee of the Sub-contractor pursuant to the Transfer Regulations the Former Authority Employee shall if he is not already an Active Member of the Pension Schemes become such an Active Member with effect as on and from the date upon which he becomes such an employee provided that this is permitted under the terms of the Pension Schemes and the Admission Agreement;

- 2.2.5 on each such occasion the Sub-contractor must make it a term of the contract of employment of each Former Authority Employee employed by the Sub-contractor that the Sub-contractor must ensure that the Former Authority Employee may be an Active Member at all times he is assigned to or otherwise engaged at least to the minimum extent specified in the Admission Agreement in the provision of any of the Services (subject to the terms of the Schemes from time to time and the Admission Agreement);
- 2.2.6 any contract pursuant to which the Sub-contractor sub-contracts to another person (the "Sub-sub-contractor") and which results in any Former Authority Employer becoming an employee of the Sub-sub-contractor pursuant to the Transfer Regulations must contain the same terms as must be included in the Sub-contractor's contract in accordance with this paragraph 2.2 and such contract shall not take effect unless and until there is in force an Admission Agreement to which the Sub-sub-contractor is a party; and
- 2.2.7 the Sub-contractor must use its best endeavours to enforce the terms of his contract with the Sub-sub-contractor which must be included in that contract in accordance with this paragraph 2.2.
- 2.3 The Contractor shall indemnify the Authority and at all times keep the Authority indemnified in respect of any Claim in connection with any failure or alleged failure by the Contractor, the Sub-contractor or Sub-sub-contractor as the case may be, to comply with the Schemes or the Admission Agreement to which the Contractor, the Sub-contractor or the Sub-sub-contractor as the case may be, is a party or to comply with (in the case of the Contractor) the provisions of this paragraph 2 or (in the case of a Sub-contractor or Sub-sub-contractor) the provisions to be included in the Contract pursuant to paragraph 2.2.
- 2.4 If the Sub-contractor or Sub-sub-contractor fails to pay by the due date any amount payable to any of the Schemes the Authority may deduct an amount equal to that which has not been paid from any money otherwise payable by the Authority to the Contractor and pay that amount to the Schemes.
- 2.5 Save with the approval of the Authority the Contractor shall not and shall procure any Sub-contractor and/or Sub-sub contractor as applicable shall not on or after the earliest of:
- 2.5.1 the date which is eighteen (18) months before the Expiry Date;
- 2.5.2 the Authority giving the Contractor a Termination Notice terminating the whole of this Agreement or any part of the Services;
- 2.5.3 the Contractor giving notice under clause 71 (termination for Force Majeure) and such notice is accepted by the Authority;
- 2.5.4 on notification to the Contractor by the Authority of a replacement contractor; and
- 2.5.5 on receipt by the Contractor of a written request by the Authority,

allow (other than as required by law or an amendment to the Schemes) the grant or variation of any new or existing Relevant Benefits for or in respect of any employee of the Contractor to be made, announced or proposed.

- 2.6 The Contractor shall not and shall procure that the Sub-contractor and/or Sub-sub contractor shall not issue any announcements to Former Authority Employees prior to the Relevant Transfer Date concerning the matters in this paragraph 2 without the consent in writing of the Authority (such consent not to be unreasonably withheld or delayed) and the Authority shall not issue any such announcement without the consent of the Contractor (such consent not to be unreasonably withheld or delayed).
- 2.7 The Contractor shall procure, and shall ensure that any Sub-contractor or Sub-sub-contractor shall procure, that any information to be provided to the Authority pursuant to the Admission Agreement is sent to:

**Defence Commercial Navy**  
**Building 1/80**  
**Jago Road**  
**HM Naval Base Portsmouth**  
**PO1 3LU**

- 2.8 The Contractor shall not recover any costs and/or other payments in relation to New Fair Deal where such costs and/or payments are recoverable or have already been recovered by the Contractor elsewhere in this Contract or otherwise. If the Contractor does recover costs and/or other payments as set out in this paragraph 2.8 the Authority may deduct an amount equal to the amount of such costs and/or other payments from any money otherwise payable by the Authority to the Contractor.
- 2.9 The Contractor shall provide and shall procure each Sub-contractor or Sub-sub-contractor as appropriate provides all such co-operation and assistance as the Schemes and a Replacement contractor or sub-contractor of a replacement contractor and/or the Authority may reasonably require to enable the replacement contractor or sub-contractor of a replacement contractor to participate in the Schemes in respect of any Former Authority Employee and to give effect to any transfer of accrued rights required as part of the participation under New Fair Deal.
- 2.10 The Contractor undertakes to the Authority to indemnify and keep indemnified the Authority on demand against any liability out of or attributable to or in any way connected with the transmission of information supplied to it by the Contractor, Sub-contractor or Sub-sub-contractor as in connection with a re-tendering or proposed re-tendering of all or any of the Services.

**Annex A to Schedule 16**

***Insert form of Admission Agreement***

[Admission Agreement form may be found at:

<http://www.civilservicepensionscheme.org.uk/employers/applying-to-join-civil-service-pensions/new-fair-deal/>]

**Annex B**  
**to Schedule 16**

*Insert form of Parent Company Guarantee (if applicable)*