
**DEFENCE AS A PLATFORM
TSP FINAL SCHEDULE 13
EMPLOYEE TRANSFER**

SCHEDULE 13

EMPLOYEE TRANSFER

PART I

EMPLOYEE TRANSFER ARRANGEMENTS ON ENTRY

1 DEFINITIONS

1.1 In this Part I of Schedule 13, save where otherwise provided, words and terms defined in Clause 1 (*Definitions and Interpretations*) of the Contract shall have the meaning ascribed to them in Clause 1 (*Definitions and Interpretations*) of the Contract.

1.2 Without prejudice to Schedule 1 (*Definitions*) of the Contract, in this Part I of Schedule 13 unless the context otherwise requires:

"Data Protection Legislation" means: (i) any legislation in force from time to time in the United Kingdom which implements the European Community's Directive 95/46/EC and Directive 2002/58/EC, including but not limited to the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2003; (ii) from 25 May 2018 only, Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (the **"General Data Protection Regulation"**); (iii) any other legislation in force from time to time in the United Kingdom relating to privacy and/or the processing of Personal Data; and (iv) any guidance or statutory codes of practice issued by the Information Commissioner or the European Data Protection set up under the General Data Protection Regulation in relation to such legislation;

"Employing Subcontractor" means any subcontractor of the Contractor providing any part of the Services who is or is to be the employer of an Authority employee, a Previous Contractor Employee or an Unexpected Transferring Employee;

"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 Atos IT Services UK Ltd;

"Previous Contractor Employee" means an employee of a Previous Contractor who immediately before the Relevant Transfer Date is assigned to carry out the services to be carried out by the Contractor or subcontractor under this Contract and who has not been dismissed, resigned, been reassigned or objected to the Relevant Transfer;

"Relevant Transfer" means a transfer to the Contractor or an Employing Subcontractor of a Previous Contractor Employee pursuant to this Contract and the Transfer Regulations;

"Relevant Transfer Date" means the date on which a Relevant Transfer is effected for Previous Contractor Employees;

"Relevant Statutory Scheme" has the same meaning as in Regulation 8 of the Transfer Regulations; and

"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.

2 PREVIOUS CONTRACTOR EMPLOYEES

2.1 Employee Information

- 2.1.1 No later than three (3) months prior to the Relevant Transfer Date the Authority shall provide to the Contractor the information listed in Appendix 1 of this Schedule 13 Part 1 (*Personnel Information to be Released Pursuant to this Agreement*) 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 Subcontractor within seven (7) Working Days of receipt to the extent that such Previous Contractor Employees are to transfer to an Employing Subcontractor under a Relevant Transfer on the 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 Data Protection Legislation 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 2.1.1 above, the Authority shall provide full data no later than twenty eight (28) days prior to the 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 Subcontractor acknowledges) that the provision of the Services under this Contract will constitute a Relevant Transfer.
- 2.2.2 The Contractor agrees (and will procure that the Employing Subcontractor agrees) that from the 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 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 Subcontractor 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 The Contractor agrees that it will comply with its obligations under sections 257 and 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005.
- 2.2.4 Save for any liabilities in respect of Previous Contractor Employees under a Relevant Statutory Scheme or Schemes, the Contractor or Employing Subcontractor (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 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 Relevant Transfer Date and shall indemnify the Authority and the Previous Contractor in respect of the same.

2.3 Unexpected Transferring Employees

2.3.1 If a claim or allegation is made by an employee or former employee of the Previous Contractor who is not named on the list provided under Paragraph 2.1.1 (an "**Unexpected Transferring Employee**") that he has or should have transferred to the Contractor by virtue of the Transfer Regulations, the Party receiving the claim or allegation shall notify the other Party (or the Authority shall notify the Contractor on the Previous Contractor's behalf) in writing as soon as reasonably practicable and no later than ten (10) Working Days after receiving notification of the Unexpected Transferring Employee's claim or allegation, whereupon:

- (a) the Authority shall procure that the Previous 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;
- (b) if the Unexpected Transferring Employee's claim or allegation is not withdrawn or resolved the Contractor shall notify the Authority, and the Contractor shall employ the Unexpected Transferring Employee or as soon as reasonably practicable, (subject to compliance with its obligations at Paragraph 2.3.1(c)(iii)), serve notice to terminate the Unexpected Transferring Employee's employment in accordance with his contract of employment; and
- (c) the Authority shall indemnify the Contractor (insofar as the Authority is indemnified by the Existing 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 of the following liabilities incurred by the Contractor in dealing with or disposing of the Unexpected Transferring Employee's claim or allegation:
 - (i) 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 2.3.1(b);
 - (ii) any liabilities acquired by virtue of the Transfer Regulations in relation to the Unexpected Transferring Employee;
 - (iii) 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:
 - (A) to a failure by the Contractor to act reasonably to mitigate the costs of dismissing such person);
 - (B) directly or indirectly to the procedure followed by the Contractor in dismissing the Unexpected Transferring Employee; or
 - (C) to the acts/omissions of the Contractor not wholly connected to the dismissal of that person;
 - (iv) any liabilities incurred under a settlement of the Unexpected Transferring Employee's claim which was reached with the express permission of the Authority;
 - (v) reasonable administrative costs incurred by the Contractor in dealing with the Unexpected Transferring Employee's claim or allegation, subject to a cap per Unexpected Transferring Employee of five thousand pounds (£5,000); and

(vi) legal and other professional costs reasonably incurred,

2.3.2 the Contractor shall be deemed to have waived its right to an indemnity under Paragraph 2.3.1(c) if it fails without reasonable cause to take any action in accordance with any of the timescales referred to in this Paragraph 2.3.

2.4 Authority Indemnities

2.4.1 If on the commencement of the Contract there is a Relevant Transfer, the Authority shall indemnify the Contractor (to the extent it is so indemnified by the Previous 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 by any employee or trade union representative or employee representative arising whether before or after the Transfer Date out of any failure by the Previous 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 Existing Contractor affected by the Relevant Transfer, 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.

2.5 Contractor Indemnities

2.5.1 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 Subcontractor of their obligations under Regulation 13 of the Transfer Regulations;
- (b) any act or proposal by the Contractor or any Employing Subcontractor prior to or following the 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;
- (c) any collective agreement or any arrangement with any trade union or staff association after the Relevant Transfer Date; and
- (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 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 Subcontractor of any person (including the 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 Subcontractor 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.

PERSONNEL INFORMATION TO BE RELEASED PURSUANT TO THIS AGREEMENT

PART A

1. Pursuant to Paragraph 2.1.1 of this Part I of this Schedule 13, 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 four (4) weeks) planned or taken within the last two (2) 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 (12) month period;
- e) Allowances and bonuses for the preceding twelve (12) 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) pension scheme membership;
- n) For pension purposes, the notional reckonable service date;
- o) Pensionable pay history for three (3) 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 (4) 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 ongoing.

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

1.1 Information to be provided twenty eight (28) days prior to the Relevant Transfer Date:

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

PART II
EMPLOYEE TRANSFER ON EXIT

Capitalised terms used but not defined in this Part II of Schedule 13 are defined in Clause 1.1 (*Definitions and Interpretation*).

- 1. INFORMATION ON RE-TENDER, PARTIAL TERMINATION, TERMINATION OR EXPIRY**
- 1.1 No earlier than nine (9) months preceding the planned termination, partial termination or expiry of this Agreement, or after the service of a Termination Notice, or on receipt of a written request by the Authority at any time, the Contractor shall (and shall procure that any Employing Subcontractor shall):
 - 1.1.1 supply to the Authority such information as the Authority may reasonably require in order to consider the application of the Employment Regulations on the termination, partial termination or expiry of this Agreement;
 - 1.1.2 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 relating to the employees who are wholly or mainly employed, assigned or engaged in providing the Services or part of the Services under this Agreement who may be subject to a Subsequent Relevant Transfer;
 - 1.1.3 provide the information promptly and in any event not later than twenty (20) Working Days from the date when a request for such information is made and at no cost to the Authority;
 - 1.1.4 acknowledge that the Authority will use the information for informing any prospective Replacement Contractor for any services which are substantially the same as the Services or part of the Services provided pursuant to this Agreement; and
 - 1.1.5 inform the Authority of any changes to the information provided under Paragraph 1.1.1 or 1.1.2 up to the Subsequent Transfer Date as soon as reasonably practicable.
- 1.2 No earlier than three (3) months preceding the planned termination, partial termination or expiry of this Agreement, or on receipt of a written request from the Authority at any time, the Contractor shall:
 - 1.2.1 ensure that employee liability information and such information listed in Part A of Appendix 2 relating to the Subsequent Transferring Employees is provided to the Authority and/or any Replacement Contractor;
 - 1.2.2 inform the Authority and/or any Replacement Contractor of any changes to the information provided under this Paragraph 1.2 up to any Subsequent Transfer Date as soon as reasonably practicable; and
 - 1.2.3 enable and assist the Authority and/or any Replacement Contractor or any subcontractor of a Replacement Contractor to communicate with and meet those employees and their trade union or other employee representatives.
- 1.3 No later than twenty eight (28) days prior to the Subsequent Transfer Date the Contractor shall provide the Authority and/or any Replacement Contractor with a final list of the Subsequent Transferring Employees together with the information listed in Part B of Appendix 2 relating to the Subsequent Transferring Employees. The Contractor shall inform the Authority and/or Replacement Contractor of any changes to this list or information up to the Subsequent Transfer Date.
- 1.4 Paragraphs 1.1 and 1.2 are subject to the Contractor's obligations in respect of Data Protection Legislation and the Contractor shall use its best endeavours to obtain the consent of its employees (and shall procure that its Approved Subcontractors use their best endeavours to obtain the consent of their employees) to the extent necessary under Data Protection Legislation or provide the data in an anonymous form in order to enable disclosure

of the information required under Paragraphs 1.1 and 1.2. Notwithstanding this Paragraph 1.4, the Contractor acknowledges (and shall procure that its Approved Subcontractors 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 Employment 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 Paragraphs 1.1 and 1.2 above, the Contractor shall provide full data to the Authority no later than twenty eight (28) days prior to the Subsequent Transfer Date.

- 1.5 On notification to the Contractor by the Authority of a Replacement Contractor or within the period of six (6) months prior to the planned expiry, partial termination or termination of this Agreement or after service of a Termination Notice, whichever is earlier and in any event on receipt of a written request by the Authority at any time, the Contractor shall not and shall procure that an Employing Subcontractor shall not:
- 1.5.1 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 Agreement;
 - 1.5.2 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 Agreement or the working time spent on the Services (or any part thereof);
 - 1.5.3 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 Agreement; or
 - 1.5.4 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 Agreement 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 1.1, 1.2, 1.3 or 1.5.
- 1.6 The Authority may at any time prior to the period set out in Paragraph 1.5 request from the Contractor any of the information in Paragraphs 1.1.1 to 1.1.4 of Appendix 1 (*Contractor Personnel – Related Information to be Released upon Re-tendering where the Employment Regulations Apply*) and the Contractor shall and shall procure any Approved Subcontractor will provide the information requested within twenty eight (28) days of receipt of that request.

2. OBLIGATIONS IN RESPECT OF SUBSEQUENT TRANSFERRING EMPLOYEES

- 2.1 To the extent that the Employment Regulations apply on expiry, partial termination or termination of this Agreement, the Contractor shall and shall procure any Employing Subcontractor shall and the Authority shall and shall procure that a Replacement Contractor shall in such circumstances:
- 2.1.1 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 Replacement Contractor; and
 - 2.1.2 comply with their respective obligations under the Employment Regulations including their obligations to inform and consult under regulation 13 of the Employment Regulations.

3. UNEXPECTED SUBSEQUENT TRANSFERRING EMPLOYEES

- 3.1 If a claim or allegation is made by an employee or former employee of the Contractor or any Employing Subcontractor who is not named on the list of Subsequent Transferring Employees provided under Paragraph 1.3 (an "**Unexpected Subsequent Transferring Employee**") that he has or should have transferred to the Authority and/or Replacement Contractor by virtue of

the Employment Regulations, the Party receiving the claim or allegation shall notify the other Party (or the Contractor shall notify the Authority on the Approved Subcontractor's behalf and the Authority shall notify the Contractor on the Replacement Contractor's behalf) in writing as soon as reasonably practicable and no later than ten (10) Working Days after receiving notification of the Unexpected Subsequent Transferring Employee's claim or allegation, whereupon:

- 3.1.1 the Contractor shall (or shall procure that the Employing Subcontractor 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;
 - 3.1.2 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 Replacement Contractor who is a party to such claim or allegation), and the Authority (insofar as it is permitted) and/or Replacement Contractor (as appropriate) shall employ the Unexpected Subsequent Transferring Employee or as soon as reasonably practicable, (subject to compliance with its obligations at Paragraph 3.1.3(iii)), serve notice to terminate the Unexpected Subsequent Transferring Employee's employment in accordance with his contract of employment; and
 - 3.1.3 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 Replacement Contractor 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 3.1.2;
 - (ii) any liabilities acquired by virtue of the Employment 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 Replacement Contractor to act reasonably to mitigate the costs of dismissing such person;
 - (b) directly or indirectly to the procedure followed by the Authority or a Replacement Contractor in dismissing the Unexpected Subsequent Transferring Employee; or
 - (c) to the acts/omissions of the Authority or a Replacement Contractor 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 Replacement Contractor in dealing with the Unexpected Subsequent Transferring Employee's claim or allegation, subject to a cap per Unexpected Subsequent Transferring Employee of five thousand pounds (£5,000); and
 - (vi) legal and other professional costs reasonably incurred.
- 3.2 The Authority shall be deemed to have waived its right to an indemnity under Paragraph 3.1.3 if it fails without reasonable cause to take, or fails to procure any Replacement Contractor takes, any action in accordance with any of the timescales referred to in this Paragraph 3.

4. INDEMNITIES ON SUBSEQUENT TRANSFER UNDER THE EMPLOYMENT REGULATIONS ON PARTIAL TERMINATION, TERMINATION OR EXPIRY OF THIS AGREEMENT

4.1 If on the expiry, partial termination or termination of this Agreement there is a Subsequent Relevant Transfer, the Contractor shall indemnify the Authority and any Replacement 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 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 Approved Subcontractor to comply with their obligations under regulation 13 of the Employment Regulations in relation to any Subsequent Transferring Employee or any other employee of the Contractor or any Approved Subcontractor affected by the Subsequent Relevant Transfer (as defined by regulation 13 of the Employment 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 Replacement Contractor.

4.2 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:

4.2.1 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 Replacement Contractor or a subcontractor of a Replacement Contractor during the period from and including the Subsequent Transfer Date;

4.2.2 subject to Paragraph 4.1 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 Replacement Contractor or a subcontractor of a Replacement Contractor to comply with their obligations under regulation 13 of the Employment Regulations in relation to any Subsequent Transferring Employee or any other employee engaged wholly or mainly in connection with the Services by the Replacement Contractor or any other employee of the Authority or any Replacement Contractor affected by the Subsequent Relevant Transfer effected by this Agreement (as defined by regulation 13 of the Employment 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 Subcontractor.

4.3 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 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 4.3, 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 Employment Regulations.

5. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

5.1 A Replacement Contractor may enforce the terms of Paragraphs 3 (*Unexpected Subsequent Transferring Employees*) and 4 (*Indemnities on Subsequent Transfer under the Employment Regulations on Partial Termination, Termination or Expiry of this Agreement*) against the Contractor in accordance with the Contracts (Rights of Third Parties) Act 1999.

5.2 The consent of a Replacement Contractor (save where the Replacement Contractor is the Authority) is not required to rescind, vary or terminate this Agreement.

5.3 Nothing in this Paragraph 5 shall affect the accrued rights of the Replacement Contractor prior to the rescission, variation, expiry or termination of this Agreement.

6. GENERAL

- 6.1 The Contractor shall not recover any costs and/or other Losses under this Schedule where such costs and/or Losses are recoverable by the Contractor elsewhere in this Agreement and/or are recoverable under the Employment Regulations or otherwise.

APPENDIX 1

1. **CONTRACTOR PERSONNEL-RELATED INFORMATION TO BE RELEASED UPON RE-TENDERING WHERE THE EMPLOYMENT REGULATIONS APPLY**
- 1.1 Pursuant to Paragraph 1.1.2 (*Information on Re-Tender, Partial Termination, Termination or Expiry*) above, the following information will be provided:
 - 1.1.1 the total number of individual employees (including any employees of Approved Subcontractors) 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 its employees or those of its Approved Subcontractors 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 twelve (12) months' total pay costs (including pay, benefits employee/employer ERNIC and overtime); and
 - 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 of Appendix 1, the following information will be provided:
 - 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 job title;
 - 1.2.10 work location;
 - 1.2.11 details of any regular overtime commitments (these may be weekly, monthly or annual commitments for which staff may receive an overtime payment);
 - 1.2.12 details of attendance patterns that attract enhanced rates of pay or allowances;
 - 1.2.13 regular and/or recurring allowances; and
 - 1.2.14 outstanding financial claims arising from employment (i.e. season ticket loans, transfer grants).
- 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 twenty eight (28) days prior to the Subsequent Transfer Date.
- 1.4 The Contractor will provide (and will procure that the Approved Subcontractors provide) the Authority with access to the Contractor's and Approved Subcontractor's general employment terms and conditions applicable to those employees identified at Paragraph 1.1.1 of this Appendix 1.

APPENDIX 2

1. PERSONNEL INFORMATION TO BE RELEASED PURSUANT TO THIS AGREEMENT

PART A

1.1 Pursuant to Paragraph 1.2 above , 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 such statement) which will be provided to the extent it is not included within the written statement of employment particulars:

1.1.1 **Personal, Employment and Career:**

- (i) age;
- (ii) security vetting clearance;
- (iii) job title;
- (iv) work location;
- (v) conditioned hours of work;
- (vi) employment status;
- (vii) details of training and operating licensing required for statutory and health and safety reasons;
- (viii) details of training or sponsorship commitments;
- (ix) standard annual leave entitlement and current leave year entitlement and record;
- (x) annual leave reckonable service date;
- (xi) details of disciplinary or grievance proceedings taken by or against transferring employees in the last two (2) years;
- (xii) 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;
- (xiii) issue of uniform/protective clothing;
- (xiv) Working Time Directive opt-out forms; and
- (xv) the date from which the latest period of continuous employment began.

1.1.2 **Performance appraisal:**

- (i) the current year's performance appraisal;
- (ii) the current year's training plan (if it exists); and
- (iii) performance pay recommendations (PPR) forms completed in the current reporting year, or where relevant, any bonus entitlements.

1.1.3 **Superannuation and pay:**

- (i) maternity leave or other long-term leave of absence (meaning more than four (4) weeks) planned or taken during the last two (2) years;
- (ii) annual salary and rates of pay band/grade;
- (iii) shifts, unsociable hours or other premium rates of pay;
- (iv) overtime history for the preceding twelve (12) month period;
- (v) allowances and bonuses for the preceding twelve (12) month period;
- (vi) details of outstanding loans and/or advances on salary or debts;
- (vii) cumulative pay for tax and pension purposes;
- (viii) cumulative tax paid;
- (ix) National Insurance number;

- (x) National Insurance contribution rate;
- (xi) other payments or deductions being made for statutory reasons;
- (xii) any other voluntary deductions from pay;
- (xiii) pension scheme membership;
- (xiv) for pension purposes, the notional reckonable service date;
- (xv) pensionable pay history for three (3) years to date of transfer;
- (xvi) percentage of any pay currently contributed under additional voluntary contribution arrangements; and
- (xvii) percentage of pay currently contributed under any added years arrangements.

1.1.4 **Medical:**

- (i) sickness and absence records for the immediately preceding four (4) year period; and
- (ii) details of any active restoring efficiency case for health purposes.

1.1.5 **Disciplinary:**

- (i) details of any active restoring efficiency case for reasons of performance; and
- (ii) details of any active disciplinary cases where corrective action is on going.

1.1.6 **Further information:**

- (i) information about specific adjustments that have been made for an individual under the Disability Discrimination Act 1995 or the Equality Act 2010;
- (ii) short term variations to attendance hours to accommodate a domestic situation;
- (iii) individuals that are members of the Armed Forces Reserves, or staff that may have been granted special leave as a School Governor; and
- (iv) information about any maternity or other statutory leave or other absence from work.

PART B

1.2 Information to be provided twenty eight (28) days prior to the Subsequent Transfer Date:

- 1.2.1 employee's full name;
- 1.2.2 date of birth;
- 1.2.3 home address; and
- 1.2.4 bank/building society account details for payroll purposes tax code.