

## SCHEDULE 22

### Staff Transfer

#### TRANSFER REGULATIONS

##### PART 1 - EMPLOYEE TRANSFER ARRANGEMENTS ON ENTRY

#### 1 DEFINITIONS

1.1 In this Schedule 22 Part 1, save where otherwise provided, words and terms defined in Schedule 1 (Definitions) of the Contract shall have the meaning ascribed to them in Schedule 1 (Definitions) of the Contract.

1.2 Without prejudice to Schedule 1 (Definitions) of the Contract, in this Schedule 22 Part 1 unless the context otherwise requires:

**Employing Sub-Contractor** any sub-contractor of the Contractor providing any part of the Services who is or is to be the employer of a Previous Contractor Employee;

**Expected Previous Contractor Employee** means an employee of a Previous Contractor who is, at the relevant time, assigned to the provision of services which are fundamentally the same as any or all of the Services to be provided by the Contractor and/or an Employing Sub-Contractor and expected to transfer to the Contractor or an Employing Sub-Contractor on the Relevant Transfer Date, and whose details are set out in the Initial HR Data;

**Former Authority Employee** 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;

**Initial HR Data** means the data as set out in the pdf spreadsheet at Appendix 1 of this Schedule 22 Part 1 which shows the employee information for Expected Previous Contractor Employees on which the Contractor based the employment costs used to calculate the Charges;

**New Provider** any replacement service provider or providers engaged to provide the Services (or part thereof) or substantially similar services or the Authority itself where the Services or substantially similar services or part thereof continue to be

provided by the Authority after partial termination, termination or expiry of this Contract;

<b>Previous Contractor</b>	being Serco Limited, a company registered in England with number 00242246, whose registered office is at Serco House, 16 Bartley Wood Business Park, Bartley Way Hook, Hampshire, RG27 9UY;
<b>Previous Contractor Employee</b>	an employee of a Previous Contractor (including but not limited to Former Authority Employees) who immediately before the 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 Relevant Transfer;
<b>Relevant Transfer</b>	a transfer to the Contractor or an Employing Sub-Contractor of a Previous Contractor Employee pursuant to this Contract and the Transfer Regulations;
<b>Relevant Transfer Date</b>	the date on which a Relevant Transfer is effected for Previous Contractor Employees;
<b>Relevant Statutory Scheme</b>	has the same meaning as in Regulation 8 of the Transfer Regulations;
<b>Services</b>	shall have the meaning specified in Schedule 1;
<b>Transfer Regulations</b>	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**

- (a) No later than three months prior to the Relevant Transfer Date the Authority shall provide to the Contractor the information listed in Part A of Appendix 2 of this Schedule 22 Part 1 in respect of Previous Contractor Employees to the extent that such information has been provided to the Authority by the Previous Contractor.
- (b) The Authority shall provide the Contractor with any update to the information provided under paragraph 2.1(a) as soon as is reasonably practicable, to the extent that such information has been provided to the Authority by the Previous Contractor.
- (c) The Contractor shall provide any information provided to it by the Authority pursuant to paragraph 2.1(a) to an Employing Sub-Contractor within seven (7) Business Days of

receipt to the extent that such Previous Contractor Employees are to transfer to an Employing Sub-Contractor under a Relevant Transfer on the Relevant Transfer Date.

- (d) Paragraph 2.1(a) 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(a) 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(a) above, the Authority shall provide full data no later than twenty-eight (28) days prior to the Relevant Transfer, together with the information set out in Parts B and C of Appendix 2 of this Schedule 22 Part 1 to the extent that such information has been provided to the Authority by the Previous Contractor
- (e) The Authority does not warrant the accuracy of the information provided under paragraphs 2.1(a), 2.1 (b) and 2.1(d).
- (f) Where, following the Relevant Transfer Date, the Contractor provides reasonable evidence to the Authority that any of the details in the Initial HR Data were, as at the Relevant Transfer Date, incomplete or inaccurate (other than details in respect of the identity of the Expected Previous Contractor Employee which shall not be taken into account in respect of any Charges adjustment due to additional costs) and such incompleteness or inaccuracy results in reasonable additional costs to the Contractor and/or any Employing Sub-Contractor, the Contractor may propose a reasonable adjustment to be made to the Charges to meet such reasonable additional costs that the Contractor and/or any Employing Sub-Contractor incurs as a result of such incompleteness or inaccuracy, and the Charges recalculated accordingly provided that:
  - (i) such incompleteness or inaccuracy is not as a result of an act or omission of the Contractor and/or any Employing Sub-Contractor;
  - (ii) 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 thirty (30) Business Days after such a request is made in writing prior to any adjustment being made; and
  - (iii) no adjustment shall be made to the Charges where there is a failure by the Contractor to produce such evidence within this timescale, or where the Authority reasonably considers such information factually insufficient on the basis of the data provided.
- (g) Where, following the Relevant Transfer Date, the Authority provides reasonable evidence to the Contractor that any of the details in the Initial HR Data were, as at the Relevant Transfer Date, inaccurate (other than details in respect of the identity of the Expected Previous Contractor Employee which shall not be taken into account in respect of any Charges adjustment due to a reduction in costs) and such inaccuracy results in a reasonable reduction in costs to the Contractor and/or any Employing Sub-Contractor, the Authority may propose a reasonable adjustment to be made to the Charges to reflect such reasonable reduction in costs to the Contractor and/or any Employing Sub-Contractor, and the Charges recalculated accordingly, provided that:

- (i) the Authority shall produce such reasonable evidence of the reduction in Costs incurred by the Contractor and/or Employing Sub-Contractor as the Contractor shall reasonably require as soon as is reasonably practicable and in any event no later than thirty (30) Business Days after such a request is made in writing in order to establish such a reduction in costs; and
- (ii) no reduction shall be made to the Charges where there is a failure by the Authority to produce such reasonable evidence within this timescale save where such failure is a result of an act or omission of the Contractor or Employing Sub-Contractor.
- (h) No adjustments shall be made to the Charges in respect of inaccuracies raised under paragraphs 2.1(f) or (g) of this Schedule 22 Part 1 more than three (3) months following the Relevant Transfer Date.
- (i) The Parties agree that any adjustments to the Charges under paragraphs 2.1(f) and 2.1(g) of this Schedule 22 Part 1 for each Relevant Transfer shall be made in accordance with the with the provisions of Schedule 19 (Change Control Procedure).

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

- (a) 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 Relevant Transfer.
- (b) The Contractor agrees (and will procure that the Employing Sub-Contractor 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) 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.
- (c) 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 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.
- (d) The Contractor shall (and shall procure that the Employing Sub-Contractor shall):
  - (i) liaise with the Previous Contractor before and in relation to any Relevant Transfer Date and shall cooperate with the Previous Contractor in order to

implement effectively the smooth transfer of the Previous Contractor Employees to the Contractor or Employing Sub-Contractor, as relevant;

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

### **2.3 Indemnities from the Contractor**

- (a) 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:
  - (i) any breach by the Contractor and/or any Employing Sub-Contractor of their obligations under Regulation 13 of the Transfer Regulations;
  - (ii) any act or proposal by the Contractor or any Employing Sub-Contractor 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; and
  - (iii) any collective agreement or any arrangement with any trade union or staff association after the Previous Contractor Relevant Transfer Date.
  - (iv) 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.

### **2.4 Indemnities from the Authority**

- (a) 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 the employment or termination of employment of any Previous Contractor Employee by the Previous Contractor at any time up to the Relevant Transfer Date 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.
- (b) 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 Previous Contractor Employee or trade union representative or Previous Contractor Employee

representative arising out of any failure by the Previous Contractor to comply with its obligations under Regulation 13 of the Transfer Regulations in respect of any Previous Contractor Employee, 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.

- (c) The Authority shall only be liable to the Contractor (for itself and on behalf of the Employing Sub-Contractor) under paragraphs 2.4(a) and (b) of this Schedule 22 Part 1 to the extent that the relevant loss, expense, damages, compensation, fines and liabilities are covered by a relevant indemnity from the Previous Contractor which benefits both the Authority and Contractor in the Authority's agreement with the Previous Contractor and such indemnity from the Authority shall only apply if and to the extent that the Contractor is unable to recover such relevant loss, expense, damages, compensation, fines and liabilities directly from the Previous Contractor.

2.5 The Contractor or any Employing Sub-Contractor shall not recover any costs and/or losses under this paragraph 2.4 where such costs/losses are recoverable by the Contractor or Employing Sub-Contractor elsewhere in this Contract and/or are recoverable under the Transfer Regulations or otherwise.

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

#### **3.1 Contractor Indemnity**

- (a) The Contractor shall indemnify the Authority, any Previous Provider 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 Previous Contractor Employees) engaged in connection with the provision of the Services during the term of this Contract.

#### **3.2 Post Transfer Reporting**

- (a) 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:
  - (i) any proposed, agreed or imposed changes to terms and conditions of service;
  - (ii) disputes relating to compliance with the Transfer Regulations which are regarded as unresolved by a recognised trade union;
  - (iii) any court action or tribunal proceedings relating to compliance with the Transfer Regulations;

- (iv) completed court action or tribunal proceedings relating to compliance with the Transfer Regulations; and
- (v) out of court settlements relating to compliance with the Transfer Regulations if possible having regard to the wording of the settlement.

**APPENDIX 1**

**EXPECTED PREVIOUS CONTRACTOR EMPLOYEES**

The Initial HR Data for Expected Previous Contractor Employees is set out in a pdf spreadsheet entitled 20240126\_DMS-NG\_Contract3\_TUPE as provided in the Shared Data Environment.



## APPENDIX 2

### PERSONNEL INFORMATION TO BE RELEASED PURSUANT TO THIS AGREEMENT

#### PART A

1 Pursuant to paragraph 2.1(a) of this Schedule 22 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 **Superannuation and Pay**

- (a) Maternity leave or other long-term leave of absence (meaning more than four 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) 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;
- (h) For pension purposes, the notional reckonable service date;
- (i) Pensionable pay history for three years to date of transfer;
- (j) Percentage of any pay currently contributed under additional voluntary contribution arrangements; and
- (k) Percentage of pay currently contributed under any added years arrangements.

## 1.3 **Medical**

- (a) Details of any period of sickness absence of three months or more in the preceding period of 12 months; and
- (b) Details of any active restoring efficiency case for health purposes.

## 1.4 **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.

## 1.5 **Further information**

- (a) Information about specific adjustments that have been made for an individual under 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 for public duties such as a School Governor; and

- (d) Information about any current or expected maternity or other statutory leave or other absence from work.

**PART B**

1.6 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;
- (d) Bank/building society account details for payroll purposes Tax Code.

**PART C**

1.7 Information to be provided within fourteen (14) days following a Relevant Transfer Date:

- (a) Performance Appraisal
  - (i) The current year's Performance Appraisal;
  - (ii) 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;
- (b) Superannuation and Pay
  - (i) Cumulative pay for tax and pension purposes;
  - (ii) Cumulative tax paid;
  - (iii) National Insurance Number;
  - (iv) National Insurance contribution rate;
  - (v) Other payments or deductions being made for statutory reasons;
  - (vi) Any other voluntary deductions from pay;

## PART 2 – STAFF TRANSFER ARRANGEMENTS ON EXIT

### 1 DEFINITIONS

1.1 In this Schedule 22 Part 2, save where otherwise provided, words and terms defined in Schedule 1 (Definitions) or Schedule 22 Part 1 of the Contract shall have the meaning ascribed to them in Schedule 1 (Definitions) or Schedule 22 Part 1 of the Contract.

1.2 Without prejudice to Schedule 1 (Definitions) of the Contract or Schedule 22, Part 1, in this Schedule 22 Part 2 unless the context otherwise requires:

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

**Employing Sub-Contractor** any sub-contractor of the Contractor providing all or any part of the Services who employs or engages any person in providing the Services;

**Former Authority Employee** 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;

**Subsequent Relevant Transfer** 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** the date on which the transfer of a Subsequent Transferring Employee takes place under the Transfer Regulations;

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

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

## **2 EMPLOYMENT**

### **2.1 Information on Re-tender, Partial Termination, Termination or Expiry**

- (a) 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 at any time on receipt of a written request by the Authority, the Contractor shall (and shall procure that any Employing Sub-Contractor shall):
- (i) 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;
  - (ii) 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 22 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 and who continue to be eligible under New Fair Deal (as defined and set out in Part 3 (Pension Matters) of this Schedule);
  - (iii) 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;
  - (iv) 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;
  - (v) inform the Authority of any changes to the information provided under paragraph 2.1(a)(i) or 2.1(a)(ii) up to the Subsequent Transfer Date as soon as reasonably practicable.
- (b) 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:
- (i) ensure that Employee Liability Information and such information listed in Part A of Appendix 2 of Part 2 of this Schedule 22 (Personnel Information) relating to the Subsequent Transferring Employees is provided to the Authority and/or any New Provider;
  - (ii) inform the Authority and/or any New Provider of any changes to the information provided under this paragraph 2.1(b) up to any Subsequent Transfer Date as soon as reasonably practicable;

- (iii) 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.
- (c) No later than twenty-eight (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 22 (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.
- (d) Within fourteen (14) days following the relevant Subsequent Transfer Date the Contractor shall provide to the Authority and/or any New Provider the information set out in Part C of Appendix 2 of this Schedule 22 Part 2 in respect of Subsequent Transferring Employees.
- (e) Paragraphs 2.1(a) and 2.1(b) of this Schedule are subject to the Contractor's obligations in respect of the Data Protection Legislation and the Contractor shall use its reasonable endeavours to obtain the consent of its employees (and shall procure that its Sub-Contractors use their reasonable endeavours to obtain the consent of their employees) to the extent necessary under the Data Protection Legislation or provide the data in an anonymous form in order to enable disclosure of the information required under paragraphs 2.1(a) and 2.1(b). To the extent anonymous data has been provided by the Contractor pursuant to its obligations under paragraph 2.1(a) and 2.1(b) above, the Contractor shall provide full data to the Authority no later than twenty-eight (28) days prior to the Subsequent Transfer Date.
- (f) 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:
  - (i) 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
  - (ii) 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
  - (iii) 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
  - (iv) 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 2.1(a), 2.1(b), 2.1(c), 2.1(d) or 2.1(f) of this Schedule 22 Part 2.

- (g) The Authority may at any time prior to the period set out in paragraph 2.1(e) of this Schedule 22 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 twenty-eight (28) days of receipt of that request.

## 2.2 Obligations in Respect of Subsequent Transferring Employees

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

## 2.3 Unexpected Subsequent Transferring Employees

- (a) 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 2.1(c) (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 (10) Business Days after receiving notification of the Unexpected Subsequent Transferring Employee's claim or allegation, whereupon:
  - (i) 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

- (ii) 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 2.3(a)(iii)(C)), serve notice to terminate the Unexpected Subsequent Transferring Employee's employment in accordance with his contract of employment; and
  
- (iii) 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:
  - (A) 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 2.3(a)(ii);
  - (B) any liabilities acquired by virtue of the Transfer Regulations in relation to the Unexpected Subsequent Transferring Employee;
  - (C) 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:
    - 1) to a failure by the Authority or a New Provider to act reasonably to mitigate the costs of dismissing such person;
    - 2) directly or indirectly to the procedure followed by the Authority or a New Provider in dismissing the Unexpected Subsequent Transferring Employee; or
    - 3) to the acts/omissions of the Authority or a New Provider not wholly connected to the dismissal of that person;
  - (D) any liabilities incurred under a settlement of the Unexpected Subsequent Transferring Employee's claim which was reached with the express permission of the Contractor (not to be unreasonably withheld or delayed);
  - (E) reasonable administrative costs incurred by the Authority or New Provider in dealing with the Unexpected Subsequent Transferring Employee's claim or allegation, subject to a cap per Unexpected Subsequent Transferring Employee of £5,000; and



(F) legal and other professional costs reasonably incurred;

- (b) the Authority shall be deemed to have waived its right to an indemnity under paragraph 2.3(a)(iii) if it fails without reasonable cause to take, or fails to procure any New Provider takes, any action in accordance with any of the timescales referred to in this paragraph 2.3.

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

- (a) 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.

- (b) 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:

- (i) 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;
- (ii) subject to paragraph 2.4(a) 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.

- (c) 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 2.4(c), 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.

## **2.5 Redundancy Liability on Partial Termination, Termination or Expiry**

- (a) 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.
- (b) For the avoidance of doubt, the indemnity set out in paragraph 2.5(a) 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.

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

- (a) A New Provider may enforce the terms of paragraph 2.3 and 2.4 against the Contractor in accordance with the Contracts (Rights of Third Parties) Act 1999.
- (b) The consent of a New Provider (save where the New Provider is the Authority) is not required to rescind, vary or terminate this Contract.
- (c) Nothing in this paragraph 2.6 shall affect the accrued rights of the New Provider prior to the rescission, variation, expiry or termination of this Contract.

## **2.7 General**

- (a) The Contractor shall not recover any Costs and/or other losses under this Schedule 22 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 2.1(a)(ii) of Part 2 of this Schedule 22, the following information will be provided:
  - 1.1 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;
  - 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;
  - 1.3 The preceding 12 months total pay costs – (Pay, benefits employee/employer national insurance contributions and overtime);
  - 1.4 Total redundancy liability including any enhanced contractual payments;
- 2 In respect of those employees included in the total at 1(a), the following information:
  - 2.1 Age (not date of Birth);
  - 2.2 Employment Status (i.e. Fixed Term, Casual, Permanent);
  - 2.3 Length of current period of continuous employment (in years, months) and notice entitlement;
  - 2.4 Weekly conditioned hours of attendance (gross);
  - 2.5 Standard Annual Holiday Entitlement (not "in year" holiday entitlement that may contain carry over or deficit from previous leave years);
  - 2.6 Pension Scheme Membership (including for Former Authority Employees or other former Civil Servants who are current members of the Civil Service Pension Schemes (PCSPS/alpha));
  - 2.7 Pension and redundancy liability information;
  - 2.8 Annual Salary;
  - 2.9 Details of any regular overtime commitments (these may be weekly, monthly or annual commitments for which staff may receive an overtime payment);
  - 2.10 Details of attendance patterns that attract enhanced rates of pay or allowances;
  - 2.11 Regular/recurring allowances;
  - 2.12 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 twenty-eight (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 1.1 of this Appendix 1.

## APPENDIX 2

### PERSONNEL INFORMATION TO BE RELEASED PURSUANT TO THIS CONTRACT

#### PART A

1 Pursuant to paragraph 2.1(b) of this Schedule 22, 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 **Superannuation and Pay**

- (a) Maternity leave or other long-term leave of absence (meaning more than four 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) 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;
- (h) For pension purposes, the notional reckonable service date;
- (i) Pensionable pay history for three years to date of transfer;
- (j) Percentage of any pay currently contributed under additional voluntary contribution arrangements; and
- (k) Percentage of pay currently contributed under any added years arrangements.

## 1.3 **Medical**

- (a) Details of any period of sickness absence of three months or more in the preceding period of 12 months; and
- (b) Details of any active restoring efficiency case for health purposes.

## 1.4 **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.

## 1.5 **Further information**

- (a) Information about specific adjustments that have been made for an individual under 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 for public duties such as a School Governor; and
- (d) Information about any current or expected maternity or other statutory leave or other absence from work.

#### **PART B**

1.6 Information to be provided twenty-eight (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 C**

1.7 Information to be provided within fourteen (14) days following a Relevant Transfer Date:

- (a) Performance Appraisal
  - (i) The current year's Performance Appraisal;
  - (ii) 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;
- (b) Superannuation and Pay
  - (i) Cumulative pay for tax and pension purposes;
  - (ii) Cumulative tax paid;
  - (iii) National Insurance Number;
  - (iv) National Insurance contribution rate;
  - (v) Other payments or deductions being made for statutory reasons;
  - (vi) Any other voluntary deductions from pay;

## PART 3 – PENSION MATTERS

### 1 DEFINITIONS

- 1.1 In this Schedule 22 Part 3, save where otherwise provided, words and terms defined in Schedule 1 (Definitions), Schedule 22 Part 1 or Schedule 22 Part 2 of the Contract shall have the meaning ascribed to them in Schedule 1 (Definitions), Schedule 22 Part 1 or Schedule 22 Part 2 of the Contract.
- 1.2 Without prejudice to Schedule 1 (Definitions) of the Contract, Schedule 22 Part 1, or Schedule 22, Part 2, in this Schedule 22 Part 3 unless the context otherwise requires:

**Active Member** an individual who has been admitted to and remains in active membership of any of the Schemes;

**Admission Agreement** 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 substantively in the form set out in Annex A to this Schedule;

**Alpha** the public service pension scheme for civil servants established under the Public Service Pensions Act 2013 introduced with effect on and from 1 April 2015 (and includes, unless the context otherwise requires, any successor scheme);

**Employer Contributions** the sums which are payable to the Pension Schemes in accordance with paragraph 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(d);

**Former Authority Employee** 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;

<b>New Fair Deal</b>	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;
<b>PCSPS</b>	the Principal Civil Service Pension Scheme established under The Superannuation Act 1972;
<b>Pension Schemes</b>	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);
<b>Relevant Benefits</b>	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);
<b>Relevant Transfer Date</b>	the date on which a transfer to the Contractor or a Sub-Contractor is effected pursuant to this Contract and the Transfer Regulations;
<b>Schemes</b>	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;
<b>Transfer Regulations</b>	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:

- (a) 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;
- (b) 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

- (c) 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:
  - (i) 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
  - (ii) each such Former Authority Employee is able to be and remain such an Active Member;
- (d) the Contractor agrees that the Employer Contributions shall be priced on a pass-through basis; and
- (e) 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:

- (a) 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;
- (b) 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;
- (c) a breach of the Admission Agreement which is not capable of remedy or which if it is capable of remedy is not remedied within ten (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;

- (d) 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;
- (e) 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);
- (f) 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
- (g) 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:

- (a) the date which is eighteen (18) months before the Expiry Date;

- (b) the Authority giving the Contractor a Termination Notice terminating the whole of this Agreement or any part of the Services;
- (c) the Contractor giving notice to terminate under Clause 57 (Termination for Authority Default);
- (d) on notification to the Contractor by the Authority of a replacement contractor; and
- (e) 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 the Authority Representative.
- 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.

# Applying to join the Civil Service Pension Schemes under New Fair Deal

## Application Guidance



**Please retain this guidance, as you may need to refer to it at a later date**

# Contents



Introduction.....	1
Roles .....	2
What pension schemes does New Fair Deal cover? ....	3
Pension schemes eligibility and participation.....	3
The admission process .....	4
Non Standard Situations.....	4
Setting up .....	5
Communicating with staff .....	6
Reporting to Cabinet Office.....	6
Sources of help and support .....	7

Application form

## ■ Introduction – What is New Fair Deal?

HM Treasury introduced the New Fair Deal Policy in October 2013. It is a non-statutory policy that sets out how pensions issues are dealt with when staff are compulsorily transferred from the public sector to independent providers delivering public services.

The objective of the policy is to provide an appropriate level of protection to public sector employees' pension provision when the services they deliver are outsourced.

We will help to guide you through the admission process where staff will be compulsorily transferred out for the first time, or, will be re-joining Civil Service Pensions under New Fair Deal.

## Roles

### **Contracting Authority**

This is the department or team involved in contracting, tendering and outsourcing services to an independent contractor.

As the department responsible for the transfer, you must notify Cabinet Office as soon as you expect that a transfer or an event triggers New Fair Deal.

Depending on the circumstances, the pension admission process typically takes between 3-6 months. It is essential that the Contracting Authority deals with Fair Deal issues early and in good time, if employees are to continue to have access to or re-join the Civil Service pension scheme.

### **The New Employer**

This is the independent organisation that enters into a contract with the Contracting Authority to deliver services. The organisation employs the Contracting Authority's former staff known as "Eligible Employees".

The new employer must be admitted to the Civil Service Pension Scheme in order for the "Eligible Employees" to have continued access to or re-join the pension scheme.

### **Cabinet Office**

The Civil Service Pensions Board (CSPB) is responsible for the management of the Civil Service Pension Schemes. Cabinet Office is the schemes manager and carries out the day to day management. Cabinet Office runs the admissions process.

### **Scheme Administrator (MyCSP)**

The Scheme Administrator carries out the day to day administration of the Civil Service Pension Schemes under contract with Cabinet Office.

The scheme administrator will act as project manager to prepare the new employer for participation in the Civil Service Pension Schemes.



## ■ What pension schemes does New Fair Deal cover?

The Pension Scheme arrangements cover

1. Principal Civil Service Pension Scheme (Classic, Classic Plus<sup>1</sup>, Premium and Nuvos)
2. Public Service (Civil Servants & Others) Pensions Regulations 2014 (Alpha)
3. Civil Service Additional Voluntary Contribution Scheme (CSAVCS)
4. Partnership Pension Account
5. Partnership Pension Account Death Benefit Arrangements (part of 2)
6. Partnership Pension Account Ill Health Benefit Arrangements (part of 2)

The Pension Scheme arrangements do **not** cover:

Civil Service Compensation Scheme (CSCS), or

Civil Service Injury Benefits Scheme

## ■ Pension Schemes eligibility and participation

### **Initial transfers (1<sup>st</sup> generation transfers)**

These are staff that are compulsorily transferred from a civil service employer into the private sector for the first time. The staff will be delivering the same services under contract but employed by an independent provider.

It is likely that staff will be in, or eligible to take part in the Civil Service Pension Schemes and therefore eligible to have continued access.

### **Retender and other situations (2<sup>nd</sup> generation transfers)**

These are staff that were compulsorily transferred out to an independent provider under old Fair Deal. An event, such as a renewal of a contract, has triggered New Fair Deal.

In order to re-join the Civil Service pension schemes the contracting authority's former employees must fulfil the eligibility criteria below:

1. were originally compulsorily transferred out of the public sector,
2. were former members of/or eligible to be members of the Civil Service Pension Schemes,
3. remain working for more than 50% of their contracted time on the transferred services,

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<sup>1</sup> Only Eligible Employees on a 1<sup>st</sup> generation transfer will continue in Classic Plus. Eligible Employees formerly in Classic Plus and re-joining the Principal Civil Service Pension Scheme rather than Alpha will join Premium.

4. remain in/or eligible to be in a broadly comparable pension scheme, and
5. have not otherwise lost eligibility.

Eligible staff who are re-joining the pension schemes will have the option of transferring the service/pension benefits they built up in the broadly comparable pension scheme back into the Civil Service pension scheme. The Contracting Authority will be responsible for commissioning Government Actuary's Department to carry out this work and to fund any shortfall payable to the Civil Service pension schemes.

Re-tendering and other 2nd generation situations are complex. Legal and actuarial advice must be taken well in advance.

### **Subsequent transfers**

These are compulsory staff transfers following a previous 2<sup>nd</sup> generation transfers. These cases will be treated in the same way as 1<sup>st</sup> generation transfers. The contracting authority must make the position clear in the application form.

## The admission process

Having established the New Fair Deal applies, please complete the application form and return it to the address given at the end of this guidance.

We will review your application and send a copy to the scheme administrator who will contact you as the contracting authority, the new employer and Cabinet Office to start the on-boarding project.

We will send you a draft Admission Agreement. This document sets out the obligations under the terms of the Admission Agreement and you must read the Admission Agreement carefully and provide the necessary information.

You must pass a copy of the Admission Agreement to the new employer. Either party may wish to seek legal advice so you must take account of the length of time to do this.

When the Admission Agreement is ready for signing, you must make a copy for each party. All copies need to be signed and dated with original signatures before sending the documents to Cabinet Office, for signature, in advance of the staff transfer date.

The on-boarding project will continue past the staff transfer date to make sure that the data passed to the scheme administrator from the new employer is correctly formatted.

## ■ Non – standard situations

In most cases the draft Admission Agreement will be a standard template. However, there are circumstances where the standard Agreement is not suitable and we will draft a bespoke document.

A list of non-standard situations is shown below but is not exhaustive. If you think you need a bespoke Admission Agreement please contact Cabinet Office as soon as possible.

- Transfer of a function
- Transfer to a sub-contractor where the contract is between the contracting authority and a prime contractor
- The commissioning body is not able to act as the contracting authority
- Transfers on more than one date
- Services performed by one contractor for a number of contracting authorities (framework agreement)
- Transfers involving more than one of the situations shown above

## ■ Setting up

Any new employer joining the Pension Schemes will have to meet all costs involved. These include:

### **On-boarding fee payable to the Scheme Administrator**

The Scheme Administrator will inform you of the on-boarding costs for this transfer. For details of the charges you should email [projects@mycsp.co.uk](mailto:projects@mycsp.co.uk)

### **Pension contributions and other charges**

These are set out in the Admission Agreement and, where appropriate, clarified on the scheme website.

Employer contribution rates (Accruing Superannuation Liability Charges):

[www.civilservicepensionscheme.org.uk/employers/employer-contribution-rates](http://www.civilservicepensionscheme.org.uk/employers/employer-contribution-rates)

Employee contribution rates:

<http://www.civilservicepensionscheme.org.uk/members/contribution-rates>

The new employer must not deduct contributions from employees until Cabinet Office confirms that there is an Admission Agreement in place.

### **Setting up a payroll interface**

The new employer must have a working payroll interface in place, as soon as possible, after the staff transfer. The new employer is required to pass accurate member data to the scheme administrator on a regular basis.

#### **Payroll data**

It is important that, alongside salary information, the new employer captures the information they will need to make the right pension deductions, at the right time.

#### **Historic member information**

When employees move between employers covered by Civil Service Pensions, their employment history should move with them. As the responsibility for holding and maintaining this information lies with the member's current employer, the new employer may be asked to validate and confirm pension records held on the pension administration system. The new employer should make sure that full personal data and employment details are obtained for each employee as part of the handover process for employees moving between employers.

**As contracting authority, you are required to facilitate this process between the former and new employers. You will retain responsibility for passing on information to the scheme administrator regarding legacy pension records, including those transferred in from other government departments.**

#### **HR staff**

The new employer is responsible for ensuring that their HR staff fully understand their roles and responsibilities regarding pensions. While the scheme administrator will deal with the technical aspects of pensions, HR staff must understand the impact that their decisions and actions have on pensions.

## Communicating with staff

The new employer is expected to write to their new staff on transfer but they must also have robust communication channels in place to tell all their employees about the benefits of the scheme and where to get answers to their questions. They will need to provide:

- easy access to member information such as the scheme website and scheme publications
- access to the scheme administrator's contact centre details

Occasionally, important notices are sent to employers from Cabinet Office or the scheme administrator. The new employer must ensure;

- all members have the chance to see these important notices
- the new employer retains these notices centrally so that they have their own audit trail of pension communications.

Cabinet Office also runs Regional Employer Forums (REFs) twice a year. All new employers are expected to attend at least one session each year. REFs provide employers with important information relevant to the operation of the pension schemes.

## ■ Reporting to Cabinet Office

At the end of each scheme year (1 April -31 March), all employers must give Cabinet Office information about how they have managed their responsibilities as set out in the Admission Agreement. This is done via an Annual Assurance Statement.

### **The Annual Assurance Statement**

The new employer is responsible for completing and signing a declaration, which must be submitted to Cabinet Office to meet the deadline for publishing our Accounts. It confirms that the employer has met its responsibilities as laid out in the Admission Agreement or that there are steps in place to take remedial action if there are any compliance issues. The employer will also need to update their list of pension scheme members.

### **Assurance Report**

From time to time, the employer's relationship manager will ask a series of questions as part of their regular review. This information is needed by Cabinet Office to ensure there are no compliance issues but it also gives the employer an opportunity to report any problems.

## ■ Sources of help and support

### **Admission Process**

#### **Website ([www.civilservicepensionscheme.org.uk/employers/applying-to-join-civil-service-pensions/new-fair-deal](http://www.civilservicepensionscheme.org.uk/employers/applying-to-join-civil-service-pensions/new-fair-deal))**

The Scheme website provides various important sources of information, including:

- Documentation and guidance regarding the application and administration of the New Fair Deal admission process
- Employers' Pension Guide
- Employer Pension Notices
- Forms and calculators
- Training materials for members and HR staff
- Employer Memos
- Scheme publications

See Fair Deal for Staff Pensions: staff transfer from central government  
[www.gov.uk/government/publications/fair-deal-guidance](http://www.gov.uk/government/publications/fair-deal-guidance)

If you have any queries about the content of this guidance, please contact Cabinet Office on 01256 846133 or email: [PCSPSadmissions@cabinetoffice.gov.uk](mailto:PCSPSadmissions@cabinetoffice.gov.uk)

### **The Employers' Pension Guide (EPG) Employer Pensions Notices (EPNs) and Employer Memos (MEMs)**

The EPG sets out the procedures that you need to follow. The new employer must be able to access this on the Scheme website. It is updated by Employer Pension Notices. The employer will need to give Cabinet Office the correct distribution contact details for EPNs and MEMs. The contact must make sure that the information in the Notices is communicated to all relevant staff and that the appropriate actions are taken.

See Section 3 of the Employers Pension Guide (EPG) for an overview of the Civil Service Pension arrangements  
[www.civilservicepensionscheme.org.uk/employers/employer-pension-guide](http://www.civilservicepensionscheme.org.uk/employers/employer-pension-guide)

### **Employer queries**

If the employer cannot find the answer to a query in the Employers' Pension Guide on the scheme website, or in an Employer Pension Notice, they should contact the scheme administrator. Their contact details are on the website under 'contact us'.

Please return the completed form to:  
[PCSPSadmissions@cabinetoffice.gov.uk](mailto:PCSPSadmissions@cabinetoffice.gov.uk)

**Please retain this guidance, as you may need to refer to it at a later date**

# Application Form

Application for admission of an independent employer to the pension schemes under New Fair Deal.

## PART ONE

To be completed by the department/authority acting as the contracting authority (see page 2)

Contact Name.....

Department.....

Postal address  
.....  
.....  
...  
.....  
...

Telephone number.....

Email address.....

Full legal name of the new employer to be admitted and Company no.  
.....  
...

Brief Description of the function/remit of the services being transferred to the employer –  
*this information will be published under Schedule 9, 3(6)(b) of the Public Service Pensions Act 2013*

.....  
...

From what organisation are the staff being transferred?  
.....  
..

If this is not a Government Department or other Civil Service employer currently participating in the civil service pension schemes please explain when staff originally transferred out of public service and from where?

.....  
.....

In cases where staff were compulsorily transferred to an independent provider and will be re-joining the civil service pension schemes, eligible employees, see pages 3 & 4, will

have the option of transferring pension benefits built up in their broadly comparable pension scheme back into the civil service pension scheme.

You must contact Government Actuary's Department (GAD) and provide the necessary information to start this process (email: [stafftransfers@gad.gov.uk](mailto:stafftransfers@gad.gov.uk))

Please indicate that you have acknowledged this requirement

.....

## PART TWO

Please answer the following questions.

### Details of body

**1** Number of staff transferring to or remaining with the employer

.....

**2** Please give name, address and contact details of the new employer's payroll provider

.....

.....

**3** Please confirm the contracting authority and former employer have arrangements in place to transfer member details and their pension information to the new employer. (See "Setting up" on pages 5-6)

.....

**4** Please state the date the new employer is to be admitted.

.....

**6** Contact details of the new employer you wish to be admitted.

Name

.....

Postal address

.....

.....

...



Telephone number

.....

Email address

.....

**7**

Signed.....Date.....  
(On behalf of the Contracting Authority)