ANNEX W

TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) (TUPE)

TRANSFER REGULATIONS

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PART 1 - EMPLOYEE TRANSFER ARRANGEMENTS ON ENTRY

1 DEFINITIONS

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

1.2 Without prejudice to Annex L (Definitions and Interpretations) of the Contract, in this Annex W Part 1 unless the context otherwise requires:

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

(i) the General Data Protection Regulation ((EU) 2016/679) as retained in UK law by the EU (Withdrawal) Act 2018 and the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (the "UK General Data Protection Regulation" or "UK GDPR");

(ii) the Data Protection Act 2018;

(iii) the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended; and

(iv) all applicable legislation and regulatory requirements in force from time to time which apply to a party relating to the processing of personal data and privacy and the guidance and codes of practice issued by the Information Commissioner's Office which apply to a party;

"**Employing Sub-Contractor**" means 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;

"**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 [INFORMATION REDACTED].;

"**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 Sub-Contractor 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 Sub-Contractor 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;

"Services" shall have the meaning specified in the Contract Terms and Conditions;

"**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 months prior to the Relevant Transfer Date the Authority shall provide to the Contractor the information listed in Appendix 1 of this Annex W Part 1 in respect of Previous Contractor Employees to the extent that such information has been provided to the Authority by the Previous Contractor.

2.1.2 The Authority shall provide the Contractor with any update to the information provided under paragraph 2.1.1 as soon as is reasonably practicable, to the extent that such information has been provided to the Authority by the Previous Contractor.

2.1.3 The Contractor shall provide any information provided to it by the Authority pursuant to paragraph 2.1.1 to an Employing Sub-Contractor within seven Business Days of receipt to the extent that such Previous Contractor Employees are to transfer to an Employing Sub-Contractor under a 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 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 Sub-Contractor 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 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 or otherwise do not transfer pursuant to regulation 4A of the Transfer Regulations) will take effect as if originally made between the Contractor or an Employing Sub-Contractor and the 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 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.

2.3 Indemnities

2.3.1 The Contractor shall indemnify and hold harmless the Authority and any Previous Contractor against all demands, claims, liabilities, losses and damages, costs and expenses (including all interest, penalties, legal and other costs and expenses) together with any applicable Value Added and similar taxes or liability for deduction of PAYE tax properly incurred by the Authority or any Previous Contractor arising out of or in connection with:

(a) any breach by the Contractor and/or any Employing Sub-Contractor of their obligations under Regulation 13 of the Transfer Regulations;

(b) any act or proposal by the Contractor or any Employing Sub-Contractor prior to or following the Relevant Transfer Date which amounts to a repudiatory breach of contract as referred to in Regulation 4(11) of the Transfer Regulations and/or to make a substantial change in working conditions of any Previous Contractor Employee to the material detriment of that employee. For the purposes of this sub-clause the expressions “repudiatory breach”, “substantial change” and “material detriment” shall have the same meanings as for the purposes of Regulation 4(9) and 4(11) of the Transfer Regulations; and

(c) any collective agreement or any arrangement with any trade union or staff association after the Relevant Transfer Date.

(d) Any variations or proposed variations to any Previous Contractor Employee’s terms and conditions of employment pursuant to regulations 4(5) and 4(5B).

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 Sub-Contractor 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 Sub-Contractor shall provide) the Authority with the following information

in respect of the employees who are wholly or mainly employed, assigned, or engaged in providing the Services:

(a) any proposed, agreed or imposed changes to terms and conditions of service;

(b) disputes relating to compliance with the Transfer Regulations which are regarded as unresolved by a recognised Trade Union;

(c) any court action or tribunal proceedings relating to compliance with the Transfer Regulations;

(d) completed court action or tribunal proceedings relating to compliance with the Transfer Regulations; and

(e) out of court settlements relating to compliance with the Transfer Regulations if possible having regard to the wording of the settlement.

Part 1 Appendix 1

PERSONNEL INFORMATION TO BE RELEASED PURSUANT TO THIS AGREEMENT

PART A

1. Pursuant to paragraph 2.1.1 of this Annex W Part 1, the written statement of employment particulars as required by section 1 of the Employment Rights Act 1996 together with the following information (save where that information is included within that statement) will be provided to the extent it is not included within the written statement of employment particulars:

1.1 Personal, Employment and Career

a) Age;

b) Security Vetting Clearance;

c) Job title;

d) Work location;

e) Conditioned hours of work;

f) Employment Status;

g) Details of training and operating licensing required for Statutory and Health and Safety reasons;

h) Details of training or sponsorship commitments;

i) Standard Annual leave entitlement and current leave year entitlement and record;

j) Annual leave reckonable service date;

k) Details of disciplinary or grievance proceedings taken by or against transferring employees in the last two years;

l) Information of any legal proceedings between employees and their employer within the previous two years or any such proceedings that the transferor has reasonable grounds to believe that an employee may bring against the transferee arising out of their employment with the transferor;

m) Issue of Uniform/Protective Clothing;

n) Working Time Directive opt-out forms; and

o) Date from which the latest period of continuous employment began.

1.2 **Performance Appraisal**

a) The current year's Performance Appraisal;

b) Current year’s training plan (if it exists); and

c) Performance Pay Recommendations (PPR) forms completed in the current reporting year, or where relevant, any bonus entitlements;

1.3 **Superannuation and Pay**

a) Maternity leave or other long-term leave of absence (meaning more than 4 weeks) planned or taken within the last two years;

b) Annual salary and rates of pay band/grade;

c) Shifts, unsociable hours or other premium rates of pay;

d) Overtime history for the preceding twelve-month period;

e) Allowances and bonuses for the preceding twelve-month period;

f) Details of outstanding loan, advances on salary or debts;

g) Cumulative pay for tax and pension purposes;

h) Cumulative tax paid;

i) National Insurance Number;

j) National Insurance contribution rate;

k) Other payments or deductions being made for statutory reasons;

l) Any other voluntary deductions from pay;

m) Pension Scheme Membership;

n) For pension purposes, the notional reckonable service date;

o) Pensionable pay history for three years to date of transfer;

p) Percentage of any pay currently contributed under additional voluntary contribution arrangements; and

q) Percentage of pay currently contributed under any added years arrangements.

1.4 **Medical**

a) Sickness and absence records for the immediately preceding four-year period; and

b) Details of any active restoring efficiency case for health purposes.

1.5 **Disciplinary**

a) Details of any active restoring efficiency case for reasons of performance; and

b) Details of any active disciplinary cases where corrective action is ongoing.

1.6 **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 may have been granted special leave 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 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 2 – STAFF TRANSFER ARRANGEMENTS ON EXIT

1. **DEFINITIONS**

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

1.2 Without prejudice to Annex L (Definitions and Interpretations) of the Contract or Annex W Part 1, in this Annex W 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**" means any sub-contractor of the Contractor providing all or any part of the Services who employs or engages any person in providing the Services;

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

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

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

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

2. **EMPLOYMENT**

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

2.1.1 No earlier than two years preceding the termination, partial termination or Expiry of this Contract or a potential Subsequent Transfer Date or at any time after the service of a notice to terminate this Contract or the provision of any of the Services (whether in whole or part) or on receipt of a written request by the Authority, the Contractor shall (and shall procure that any Employing Sub-Contractor shall):

(a) supply to the Authority such information as the Authority may reasonably require in order to consider the application of the Transfer Regulations on the termination, partial termination or expiry of this Contract;

(b) supply to the Authority such full and accurate and up-to-date information as may be requested by the Authority including the information listed in Appendix 1 to this Annex W 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;

(c) provide the information promptly and in any event not later than three months from the date when a request for such information is made and at no cost to the Authority;

(d) acknowledge that the Authority will use the information for informing any prospective New Provider for any services which are substantially the same as the Services or part of the Services provided pursuant to this Contract;

(e) inform the Authority of any changes to the information provided under paragraph 2.1.1(a) or 2.1.1(b) up to the Subsequent Transfer Date as soon as reasonably practicable.

2.1.2 Three months preceding the termination, partial termination or expiry of this Contract or on receipt of a written request from the Authority the Contractor shall:

(a) ensure that Employee Liability Information and such information listed in Part A of Appendix 2 of Part 2 of this Annex W (Personnel Information) relating to the Subsequent Transferring Employees is provided to the Authority and/or any New Provider;

(b) inform the Authority and/or any New Provider of any changes to the information provided under this Paragraph 2.1.2 up to any Subsequent Transfer Date as soon as reasonably practicable;

(c) enable and assist the Authority and/or any New Provider or any sub-contractor of a New Provider to communicate with and meet those employees and their trade union or other employee representatives.

2.1.3 No later than 28 days prior to the Subsequent Transfer Date the Contractor shall provide the Authority and/or any New Provider with a final list of the Subsequent Transferring Employees together with the information listed in Part B of Appendix 2 of Part 2 of this Annex W (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.

2.1.4 Within 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 Annex W in respect of Subsequent Transferring Employees.

2.1.5 Paragraphs 2.1.1 and 2.1.2 of this Appendix are subject to the Contractor's obligations in respect of the Data Protection Legislation and the Contractor shall use its best endeavours to obtain the consent of its employees (and shall procure that its Sub-Contractors use their best endeavours to obtain the consent of their employees) to the extent necessary under the Data Protection Legislation or provide the data in an anonymous form in order to enable disclosure of the information required under paragraphs 2.1.1 and 2.1.2. Notwithstanding this paragraph 2.1.4, the Contractor acknowledges (and shall procure that its Sub-Contractors acknowledge) that they are required to provide sufficient information to the Authority to enable the

Authority to determine the nature of the activities being undertaken by employees engaged in providing the Services, to assess whether there is an organised grouping for the purposes of the Transfer Regulations and to assess who is assigned to such organised grouping. To the extent that anonymous data has been provided by the Contractor pursuant to its obligations under Paragraph 2.1.1 or 2.1.2 above, the Contractor shall provide full data to the Authority no later than 28 days prior to the Subsequent Transfer Date.

2.1.6 On notification to the Contractor by the Authority of a New Provider or within the period of six months prior to the Termination Date or after service of a notice to terminate this Contract (whether in whole or in part), whichever is earlier and in any event on receipt of a written request by the Authority, the Contractor shall not and shall procure that an Employing Sub-Contractor shall not:

(a) materially amend or promise to amend the rates of remuneration or other terms and conditions of employment of any person wholly or mainly employed or engaged in providing the Services under this Contract; or

(b) replace or re-deploy from the Services any person wholly or mainly employed or engaged in providing the Services, or materially increase or decrease the number of persons performing the Services under this Contract or the working time spent on the Services (or any part thereof); or

(c) reorganise any working methods or assign to any person wholly or mainly employed or engaged in providing the Services (or any part thereof) any duties unconnected with the Services (or any part thereof) under this Contract; or

(d) terminate or give notice to terminate the employment of any person wholly or mainly employed or engaged in providing the Services (or any part thereof) under this Contract other than in the case of serious misconduct or for poor performance,

save in the ordinary course of business and with the prior written consent of the Authority (not to be unreasonably withheld or delayed) and the Contractor shall indemnify and keep indemnified the Authority in respect of any reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any breach of paragraphs 2.1.1, 2.1.2, 2.1.3, 2.1.4 or 2.1.6 of this Annex W Part 2.

2.1.7 The Authority may at any time prior to the period set out in paragraph 2.1.5 of this Annex W Part 2 request from the Contractor any of the information in sections 1(a) to (d) of Appendix 1 and the Contractor shall and shall procure any Sub-Contractor will provide the information requested within 28 days of receipt of that request.

2.2 **Obligations in Respect of Subsequent Transferring Employees**

2.2.1 To the extent that the Transfer Regulations apply on expiry, termination or partial termination of this contract, the Contractor shall and shall procure any Employing Sub-Contractor shall and the Authority shall and shall procure that a New Provider shall in such circumstances:

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

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

2.3 **Unexpected Subsequent Transferring Employees**

2.3.1 If a claim or allegation is made by an employee or former employee of the Contractor or any Employing Sub-Contractor who is not named on the list of Subsequent Transferring Employees provided under paragraph 2.1.3 (an "**Unexpected Subsequent Transferring Employee**") that he has or should have transferred to the Authority and/or New Provider by virtue of the Transfer Regulations, the Party receiving the claim or allegation shall notify the other Party (or the Contractor shall notify the Authority on the Sub-Contractor's behalf and the Authority shall notify the Contractor on the New Provider's behalf) in writing as soon as reasonably practicable and no later than ten Business Days after receiving notification of the Unexpected Subsequent Transferring Employee's claim or allegation, whereupon:

(a) the Contractor shall (or shall procure that the Employing Sub-Contractor shall), as soon as reasonably practicable, offer and/or confirm continued employment to the Unexpected Subsequent Transferring Employee or take such other steps so as to effect a written withdrawal of the claim or allegation; and

(b) if the Unexpected Subsequent Transferring Employee's claim or allegation is not withdrawn or resolved the Contractor shall notify the Authority (who will notify any New Provider who is a party to such claim or allegation), and the Authority (insofar as it is permitted) and/or New Provider (as appropriate) shall employ the Unexpected Subsequent Transferring Employee or as soon as reasonably practicable, (subject to compliance with its obligations at paragraph 2.3.1(c)(iii)), serve notice to terminate the Unexpected Subsequent Transferring Employee's employment in accordance with his contract of employment; and

(c) the Contractor shall indemnify the Authority against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any of the following liabilities incurred by the Authority or New Provider in dealing with or disposing of the Unexpected Subsequent Transferring Employee's claim or allegation:

(i) any additional costs of employing the Unexpected Subsequent Transferring Employee up to the date of dismissal where the Unexpected Subsequent Transferring Employee has been dismissed in accordance with paragraph 2.3.1(b);

(ii) any liabilities acquired by virtue of the Transfer Regulations in relation to the Unexpected Subsequent Transferring Employee;

(iii) any liabilities relating to the termination of the Unexpected Subsequent Transferring Employee's employment but excluding such proportion or amount of any liability for unfair dismissal, breach of contract or discrimination attributable:

(A) to a failure by the Authority or a New Provider to act reasonably to mitigate the costs of dismissing such person);

(B) directly or indirectly to the procedure followed by the Authority or a New Provider in dismissing the Unexpected Transferee; or

(C) to the acts/omissions of the Authority or a New Provider not wholly connected to the dismissal of that person;

(iv) any liabilities incurred under a settlement of the Unexpected Subsequent Transferring Employee's claim which was reached with the express permission of the Contractor (not to be unreasonably withheld or delayed);

(v) reasonable administrative costs incurred by the Authority or New Provider in dealing with the Unexpected Subsequent Transferring Employee's claim or allegation, subject to a cap per Unexpected Subsequent Transferring Employee of £5,000; and

(vi) legal and other professional costs reasonably incurred;

2.3.2 the Authority 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, 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**

2.4.1 If on the expiry, termination or partial termination of the Contract there is a Subsequent Relevant Transfer, the Contractor shall indemnify the Authority and any New Provider against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any claim by any employee or trade union representative or employee representative arising whether before or after the Subsequent Transfer Date out of any failure by the Contractor or any Sub-Contractor to comply with their obligations under

Regulation 13 of the Transfer Regulations in relation to any Subsequent Transferring Employee or any other employee of the Contractor or any Sub-Contractor affected by the Subsequent Relevant Transfer (as defined by Regulation 13 of the Transfer Regulations), save to the extent that all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities are a result of the act or omission of the Authority or the New Provider.

2.4.2 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:

(a) any claim or claims by a Subsequent Transferring Employee at any time on or after the Subsequent Transfer Date which arise as a result of an act or omission of the Authority or a New Provider or a sub-contractor of a New Provider during the period from and including the Subsequent Transfer Date;

(b) subject to paragraph 2.4.1 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 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.

2.4.3 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 [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 2.4.3, the expressions "substantial change" and "material detriment" shall have the meanings as are ascribed to them for the purposes of Regulation 4(9) of the Transfer Regulations.

2.5 **Contracts (Rights of Third Parties) Act 1999**

2.5.1 Pursuant to the terms of DEFCON 537, 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.

2.5.2 The consent of a New Provider (save where the New Provider is the Authority) is not required to rescind, vary or terminate this Contract.

2.5.3 Nothing in this paragraph 2.5 shall affect the accrued rights of the New Provider prior to the rescission, variation, expiry or termination of this Contract.

2.6 **General**

2.6.1 The Contractor shall not recover any Costs and/or other losses under this Annex W 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.

Part 2 Appendix 1

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

1. Pursuant to paragraph 2.1.1(b) of Part 2 of this Annex W, the following information will be provided:

   a) The total number of individual employees (including any employees of Sub-Contractors) that are currently engaged, assigned or employed in providing the Services and who may therefore be transferred. Alternatively, the Contractor should provide information why any of their employees or those of their Sub-Contractors will not transfer;

   b) The total number of posts or proportion of posts expressed as a full-time equivalent value that currently undertakes the work that is to transfer;

   c) The preceding 12 months total pay costs – (Pay, benefits employee/employer ERNIC and Overtime);

   d) Total redundancy liability including any enhanced contractual payments;

2. In respect of those employees included in the total at 1(a), the following information:

   a) Age (not date of Birth);

   b) Employment Status (i.e., Fixed Term, Casual, Permanent);

   c) Length of current period of continuous employment (in years, months) and notice entitlement;

   d) Weekly conditioned hours of attendance (gross);

   e) Standard Annual Holiday Entitlement (not "in year" holiday entitlement that may contain carry over or deficit from previous leave years);

   f) Pension Scheme Membership:

   g) Pension and redundancy liability information;

   h) Annual Salary;

   i) Details of any regular overtime commitments (these may be weekly, monthly or annual commitments for which staff may receive an overtime payment);

   j) Details of attendance patterns that attract enhanced rates of pay or allowances;

   k) Regular/recurring allowances;

   l) Outstanding financial claims arising from employment (i.e., season ticket loans, transfer grants);

3. The information to be provided under this Appendix 1 should not identify an individual employee by name or other unique personal identifier unless such information is being provided 28 days prior to the Subsequent Transfer Date.

4. The Contractor will provide (and will procure that the Sub-Contractors provide) the Authority/tenderers with access to the Contractor's and Sub-Contractor's general employment terms and conditions applicable to those employees identified at paragraph 1(a) of this Appendix 1.

Part 2 Appendix 2

PERSONNEL INFORMATION TO BE RELEASED PURSUANT TO THIS CONTRACT

Part A

1. Pursuant to paragraph 2.1.2 of this Annex W, 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 4 weeks) planned or taken during the last two years;

b) Annual salary and rates of pay band/grade;

c) Shifts, unsociable hours or other premium rates of pay;

d) Overtime history for the preceding twelve-month period;

e) Allowances and bonuses for the preceding twelve-month period;

f) Details of outstanding loan, advances on salary or debts;

g) 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

ki Percentage of pay currently contributed under any added years arrangements.

1.3 **Medical**

a) Details of any period of sickness absence of 3 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 ongoing.

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 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 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 14 days following a Subsequent Transfer Date:

1.7.1 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;

1.7.2 Superannuation and Pay

a) Cumulative pay for tax and pension purposes;

b) Cumulative tax paid;

c) National Insurance Number;

d) National Insurance contribution rate;

e) Other payments or deductions being made for statutory reasons;

f) Any other voluntary deductions from pay;