

## TRANSFER REGULATIONS

### EMPLOYEE TRANSFER ARRANGEMENTS ON EXIT

#### Definitions

In this Annex F, save where otherwise provided, words and terms defined in the Charter Party shall have the meaning ascribed to them in the Charter Party. Without prejudice to Definitions of the Charter Party unless the context otherwise requires:

"Data Protection Legislation" means: (i) Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (the "General Data Protection Regulation"); (ii) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; and (iii) all applicable Law about the processing of personal data and privacy;

"Employee Liability Information" has the same meaning as in Regulation 11(2) of TUPE;

"Employing Subcontractor" means any Subcontractor of the Charter Party providing all or any part of the Services who employs or engages any person in providing the Services;

"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 Charter Party;

"Relevant Transfer" means a transfer of the employment of Transferring Employees from the Charter Party or any Employing Subcontractor to a New Provider or the Authority under the Transfer Regulations;

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

"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 Charter Party or any Employing Subcontractor to a New Provider;

"Transfer Regulations" means the Acquired Rights Directive ( EU Directive 77/187 of 14 February 1977, (as amended and consolidated in Directive 2001/23 of 12 March 2001) ("ARD") and 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), ("TUPE") as appropriate.

### EMPLOYMENT

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

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

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 Charter Party;

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 [X] relating to the employees who are wholly or mainly employed, assigned or engaged in providing the Services or part of the Services under this Charter Party who may be subject to a Relevant Transfer;

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;

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 Charter Party;

inform the Authority of any changes to the information provided under paragraph 0 or 2.1.1(b) up to the Transfer Date as soon as reasonably practicable.

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

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

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

enable and assist the Authority and/or any New Provider or any Subcontractor of a New Provider to communicate with and meet those employees and their trade union or other employee representatives.

No later than 28 days prior to the Transfer Date the Charter Party shall provide the Authority and/or any New Provider with a final list of the Transferring Employees together with the information listed in Part B of Appendix 2 of this Annex F (Personnel Information) relating to the Transferring Employees. The Charter Party shall inform the Authority and/or New Provider of any changes to this list or information up to the Transfer Date.

Within 14 days following the relevant Transfer Date the Charter Party shall provide to the Authority and/or any New Provider the information set out in Part C of Appendix 2 of this Annex F in respect of Transferring Employees.

Paragraphs 0 and 0 of this Appendix are subject to the Charter Party's obligations in respect of the Data Protection Legislation and the Charter Party shall use its best endeavours to obtain the consent of its employees (and shall procure that its Subcontractors 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 0 and 0. Notwithstanding this paragraph 2.1.4, the Charter Party acknowledges (and shall procure that its Subcontractors acknowledge) that they are required to provide sufficient information to the Authority to enable the Authority to determine the nature of the activities being undertaken by employees engaged in providing the Services, to assess whether there is an organised grouping for the purposes of the Transfer Regulations and to assess who is assigned to such organised grouping. To the extent that anonymous data has been provided by the Charter Party pursuant to its obligations under Paragraph 2.1.1 or 2.1.2 above, the Charter Party shall provide full data to the Authority no later than 28 days prior to the Transfer Date.

On notification to the Charter Party 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 Charter Party (whether in whole or in part), whichever is earlier and in any event on receipt of a

written request by the Authority, the Charter Party shall not and shall procure that an Employing Subcontractor shall not:

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 Charter Party; or

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 Charter Party or the working time spent on the Services (or any part thereof); or

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 Charter Party; or

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 Charter Party 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 Charter Party 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 0, 0, 2.1.3, 2.1.4 or 0 of this Annex F.

The Authority may at any time prior to the period set out in paragraph 2.1.5 of this Annex F request from the Charter Party any of the information in sections 1(a) to (d) of Appendix 1 and the Charter Party shall and shall procure any Subcontractor will provide the information requested within 28 days of receipt of that request.

#### Obligations in Respect of Transferring Employees

To the extent that the Transfer Regulations apply on expiry, termination or partial termination of this Charter Party, the Charter Party shall and shall procure any Employing Subcontractor shall and the Authority shall and shall procure that a New Provider shall in such circumstances:

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

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

#### Unexpected Transferring Employees

If a claim or allegation is made by an employee or former employee of the Charter Party or any Employing Subcontractor who is not named on the list of Transferring Employees provided under paragraph 2.1.3 (an "Unexpected Transferring Employee") that he has or should have transferred to the Authority and/or New Provider by virtue of the Transfer Regulations, the Party receiving the claim or allegation shall notify the other Party (or the Charter Party shall notify the Authority on the Subcontractor's behalf and the Authority shall notify the Charter Party 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 Transferring Employee's claim or allegation, whereupon:

the Charter Party shall (or shall procure that the Employing Subcontractor shall), as soon as reasonably practicable, offer and/or confirm continued employment to the Unexpected

Transferring Employee or take such other steps so as to effect a written withdrawal of the claim or allegation; and

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

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

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

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

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

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

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

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

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

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

legal and other professional costs reasonably incurred;

the Authority shall be deemed to have waived its right to an indemnity under paragraph 0 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 0.

Indemnities on transfer under the Transfer Regulations on Partial Termination, Termination or Expiry of the Charter Party

If on the expiry, termination or partial termination of the Charter Party there is a Relevant Transfer, the Charter Party shall indemnify the Authority and any New Provider against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any claim by any employee or trade union representative or employee representative arising whether before

or after the Transfer Date out of any failure by the Charter Party or any Subcontractor to comply with their obligations under Regulation 13 of the Transfer Regulations in relation to any Transferring Employee or any other employee of the Charter Party or any Subcontractor affected by the Relevant Transfer (as defined by Regulation 13 of the Transfer Regulations), save to the extent that all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities are a result of the act or omission of the Authority or the New Provider.

If there is a Relevant Transfer, the Authority shall indemnify the Charter Party 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 a Transferring Employee at any time on or after the Transfer Date which arise as a result of an act or omission of the Authority or a New Provider or a Subcontractor of a New Provider during the period from and including the Transfer Date;

subject to paragraph 2.4.1 any claim by any employee or trade union representative or employee representative arising whether before or after the Transfer Date out of any failure by the Authority or a New Provider or a Subcontractor of a New Provider to comply with their obligations under Regulation 13 of the Transfer Regulations in relation to any Transferring Employee or any other employee engaged wholly or mainly in connection with the Services by the New Provider or any other employee of the Authority or any New Provider affected by the Relevant Transfer effected by this Charter Party (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 Charter Party or any Employing Subcontractor.

In the event of a Relevant Transfer, the Authority shall indemnify the Charter Party 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 Subcontractor of a New Provider] on or after the Transfer Date to the working conditions of any Transferring Employee to the material detriment of any such Transferring Employee. For the purposes of this paragraph 0, 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.

Charter Partys (Rights of Third Parties) Act 1999

A New Provider may enforce the terms of paragraph 0 and 0 against the Charter Party in accordance with the Charter Partys (Rights of Third Parties) Act 1999.

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

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 Charter Party.

General

The Charter Party shall not recover any Costs and/or other losses under this Schedule [X] where such Costs and/or losses are recoverable by the Charter Party elsewhere in this Charter Party and/or are recoverable under the Transfer Regulations or otherwise.

## Appendix 1

### CHARTER PARTY PERSONNEL-RELATED INFORMATION TO BE RELEASED UPON RE-TENDERING WHERE THE TRANSFER REGULATIONS APPLIES

1. Pursuant to paragraph 2.1.1(b) of this Annex F, the following information will be provided:
  - a) The total number of individual employees (including any employees of Subcontractors) that are currently engaged, assigned or employed in providing the services and who may therefore be transferred. Alternatively, the Charter Party should provide information why any of their employees or those of their Subcontractors 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 Charter Partyual 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 Transfer Date.
4. The Charter Party will provide (and will procure that the Subcontractors provide) the Authority/tenderers with access to the Charter Party's and Subcontractor's general employment terms and conditions applicable to those employees identified at paragraph 1(a) of this Appendix 1.

## Appendix 2

### PERSONNEL INFORMATION TO BE RELEASED PURSUANT TO THIS CHARTER PARTY

#### Part A

Pursuant to paragraph 0 of this Annex F, 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:

#### 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.

#### 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
- k) Percentage of pay currently contributed under any added years arrangements.

#### 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.

#### 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.

#### 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**

Information to be provided 28 days prior to the 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**

Information to be provided within 14 days following a Transfer Date:

Performance Appraisal

The current year's Performance Appraisal;

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

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

Superannuation and Pay

Cumulative pay for tax and pension purposes;

Cumulative tax paid;

National Insurance Number;

National Insurance contribution rate;

Other payments or deductions being made for statutory reasons;

Any other voluntary deductions from pay;