**APPENDIX A**

**NORTH STAR PRO-FORMA TUPE WORDING**

* 1. In the event that the commencement of the Services (or any part thereof) constitutes one or more Relevant Transfers the Supplier shall and shall procure that any Provider shall comply with its obligations under TUPE in respect of each Relevant Transfer and the Supplier shall indemnify North Star, any First Principal Contractor and/or any Replacement Principal Contractor against any Liabilities sustained as a result of any breach of this clause [1.1].
  2. In the event that there is, or is alleged to be, a Relevant Transfer in connection with the provision of the Services or any part thereof, the Supplier will indemnify North Star, any Replacement Principal Contractor and/or any First Principal Contractor (and will procure that any Provider will do the same) against all Liabilities arising directly or indirectly from:
     1. any claim or allegation by, on behalf of or in relation to any current or former employee in connection with such actual or alleged Relevant Transfer where such claim or allegation is brought pursuant to or in circumstances envisaged by Regulation 4(9) and/or 4(11) of TUPE, including but not limited to any claim of unfair dismissal, constructive dismissal (including but not limited to constructive unfair dismissal) and/or wrongful dismissal in such circumstances; and/or
     2. any claim or allegation by, on behalf of or in relation to any current or former employee or employee representative in connection with such actual or alleged Relevant Transfer where such claim or allegation is brought pursuant to Regulation 13 and/or 14 of TUPE, to the extent that such claim or allegation arises out of any actual or alleged failure by the Supplier to comply with its obligations (or to procure that any Provider complies with its obligations) under Regulation 13(4) of TUPE.
  3. The Supplier shall be responsible for (or shall procure that the Provider shall be responsible for) all remuneration, benefits, entitlements and outgoings in respect of the Support Personnel in relation to the period (or any part of the period) when the Services or part thereof are provided by the Supplier (and/or any Provider), including without limitation all wages, holiday pay, bonuses, commission, payment of PAYE, national insurance contributions, pension costs and liabilities and contributions, and otherwise.
  4. The Supplier shall indemnify and keep indemnified in full North Star, and at North Star’s request any First Principal Contractor and/or Replacement Principal Contractor against:
     1. all Liabilities suffered or incurred by North Star and/or any First Principal Contractor and/or any Replacement Principal Contractor in connection with or as a result of a breach by the Supplier of any of its obligations under clause [1.3];
     2. all Liabilities suffered or incurred at any time by North Star and/or any First Principal Contractor and/or any Replacement Principal Contractor arising out of or in connection with the actual or alleged employment or engagement of any Support Personnel by the Supplier and/or any Provider (and/or the termination of such employment or engagement) on or before the Termination Date, including but not limited to any Liabilities arising out of or in connection with any claim for unfair dismissal, wrongful dismissal, redundancy pay, breach of contract, equal pay and/or discrimination; and/or
     3. all Liabilities suffered or incurred by North Star and/or any First Principal Contractor and/or any Replacement Principal Contractor in connection with or as a result of any claim or allegation by any Support Personnel, or their trade union or staff association or employee representatives arising from or connected with any failure and/or alleged failure by the Supplier and/or any Provider to comply with any legal obligation to such trade union, staff association or other employee representative whether under regulation 13 of TUPE or otherwise.
  5. The Supplier shall (and shall procure that any Provider employing any Support Personnel shall) within the period of twelve (12) months immediately preceding the termination of this Agreement or any Termination Date, or following the service of a notice of termination under this Agreement, or otherwise on North Star’s request:
     1. on receiving a request from North Star (and if no such request is received, in any event one month before the Termination Date) provide:
        1. in respect of any Support Personnel employed or engaged by the Supplier or any Provider at the time of that request (the “Assigned Employees”) full and accurate details regarding the number, job title, job description, and proportion of working time engaged in the Services;
        2. in respect of any Assigned Employees who it is reasonably expected, if they remain in employment until immediately before the Termination Date would be entitled to transfer to North Star or a Replacement Principal Contractor under TUPE (the “Assigned TUPE Employees”) additionally provide full and accurate details regarding the identity, age, length of service, rate of pay or salary entitlement, grade and terms and conditions of employment and other information reasonably and lawfully requested by North Star in relation to one or more of those Assigned TUPE Employees;

and to the extent that it is unlawful to provide the information referred to in clause [1.5.1(a) or (b)] for data protection or other reasons, the Supplier shall or shall procure that the Provider shall provide such information as may be lawfully provided (for example in anonymised format making reference to employees’ unique reference numbers).

The information required to be provided pursuant to this clause [1.5.1] shall be defined as the “Retendering Information”;

* + 1. provide the Retendering Information promptly and at no cost to North Star;
    2. notify North Star forthwith in writing of any material changes to the Retendering Information as and when such changes arise, including details of any new Support Personnel recruited or any Assigned Employees whose employment terminates;
    3. be precluded from making any increase or decrease in the numbers of Assigned Employees other than in the ordinary course of business and with North Star’s prior written consent (such consent not to be unreasonably withheld or delayed);
    4. be precluded from (other than for a reason falling within section 98 of the Employment Rights Act 1996 and with North Star’s prior written consent (such consent not to be unreasonably withheld or delayed)) terminating or giving notice to terminate the employment of any of the Assigned Employees;
    5. be precluded from making any change in the remuneration or other material change in the terms and conditions of any of the Assigned TUPE Employees (including the duties of any of the Assigned Employees, whether or not they are Assigned TUPE Employees) other than with North Star’s prior written consent (such consent not to be unreasonably withheld or delayed);
    6. be precluded from transferring any of the Assigned Employees to another part of its business save with North Star’s prior written consent (such consent not to be unreasonably withheld or delayed); and
    7. be precluded from moving any other employee from elsewhere in its business to provide the Services (or any part thereof) where such employee has not previously been materially employed or engaged in providing the Services or any part thereof, save with North Star’s prior written consent (such consent not to be unreasonably withheld or delayed);
  1. The Supplier shall indemnify and shall keep indemnified in full North Star and at North Star’s request any Replacement Principal Contractor against all Liabilities arising from any breach by the Supplier and/or any Provider of any requirement of clause [1.5] above, and/or as a result of the Supplier or any Provider failing to provide or promptly to provide North Star and/or any Replacement Principal Contractor with full and accurate Retendering Information and/or Employee Liability Information as required by this Agreement and/or by law.
  2. In the event that the employment of any individual or individuals whose details were not provided by the Supplier to North Star as one of the Assigned TUPE Employees in accordance with clause [1.5.1(b)] transfers or is alleged to transfer to North Star or any Replacement Principal Contractor pursuant to TUPE, North Star or that Replacement Principal Contractor may terminate the employment of such individual or individuals within 21 days of becoming aware of the transfer or alleged transfer of the employment of such individuals or individuals having taken place, and the Supplier shall indemnify North Star and/or the Replacement Principal Contractor and shall keep North Star and/or the Replacement Principal Contractor indemnified against all Liabilities suffered or incurred by North Star and/or the Replacement Principal Contractor at any time directly or indirectly in connection with such termination and/or the employment of such individual up to and including the date of termination of employment, including but not limited to any claim pursuant to Regulation 15 of TUPE. For the avoidance of doubt reference to a termination of employment in this clause [1.7] includes purported termination of employment, and reference to employment includes alleged employment.
  3. The Supplier shall remain (and shall procure that any Provider shall remain) (as relevant) responsible for all the Supplier's and/or Provider's employees (other than the Returning Employees) on or after the Termination Date and shall indemnify North Star and/or any Replacement Principal Contractor against all Liabilities suffered or incurred by North Star and/or any Replacement Principal Contractor resulting from any claim or allegation whatsoever whether arising before on or after the Termination Date by or on behalf of or in relation to any of the Supplier's or the Provider's employees (including but not limited to any former employees) who do not constitute the Returning Employees, including but not limited to any claim or allegation by any employee representatives of such person.
  4. In respect of those employees who constitute Returning Employees the Supplier shall indemnify North Star and/or any Replacement Principal Contractor against all Liabilities suffered or incurred by North Star and/or any Replacement Principal Contractor resulting from any claim or allegation whatsoever by or on behalf of or in relation to any of the Returning Employees (and/or any employee representatives of any of the Returning Employees) in respect of the period on or before the Termination Date (whether any such claim or allegation, attributable to the period up to and on the Termination Date, arises before, on or after the Termination Date) including but not limited to any failure by the Supplier and/or any Provider to comply with one or more of its or their obligations under Regulations 13 and/or 14 of TUPE and/or any award of compensation under Regulation 15 of TUPE, save to the extent that any such failure to comply arises as a result of North Star’s or any Replacement Principal Contractor’s failure to comply with Regulation 13(4) of TUPE.
  5. It is recognised that there may be more than one Start Date and more than one Termination Date. Each reference to a Start Date or Termination Date in this clause [1] (and in any defined term referred to in this clause [1], for these purposes only) in relation to an employee or group of employees shall be deemed for those purposes to refer to the particular Start Date or Termination Date applicable to the transfer or alleged transfer of the employee or group of employees in question (or of Liabilities connected with their employment).
  6. Any provision of this clause [1] expressed to be in favour of North Star (including but not limited to any indemnity) shall also be deemed to be in favour of each of Teesdale Housing Association and Endeavour Housing Association (each a “Group Company”) (including in respect of any Liabilities suffered or incurred by either Group Company), so that each Group Company has the same protection in respect of its employees and Liabilities as North Star has in respect of North Star’s employees and Liabilities, and this clause [1] shall be construed accordingly (as shall any defined terms referred to in this clause [1], for these purposes only).
  7. For the avoidance of doubt in this clause [1] where the Supplier agrees to indemnify North Star or otherwise make payment to North Star in respect of Liabilities suffered or incurred by North Star, this shall include, but shall not be limited to, Liabilities suffered or incurred by North Star pursuant to a legal obligation to indemnify or otherwise make payment to a First Principal Contractor, a Replacement Principal Contractor and/or a Group Company, to the extent that such indemnity or requirement to make payment mirrors or goes no further than an indemnity or requirement to make payment set out in this clause [1].
  8. Any Replacement Principal Contractor, any First Principal Contractor and/or any Group Company may enjoy the benefit of and enforce the terms of clause [1] of this Agreement and the Contracts (Rights of Third Parties) Act 1999 shall apply accordingly. However, North Star and the Supplier do not require the consent of any Replacement Principal Contractor, First Principal Contractor or Group Company to rescind or vary this Agreement at any time, even if that variation or rescission affects the benefits conferred on such Replacement Principal Contractor, First Principal Contractor or Group Company.
  9. The provisions of this clause [1] shall continue to have effect after termination or expiry of this Agreement however arising.
  10. In this Agreement:
      1. any reference to a statutory provision includes a reference to any modification, consolidation or re-enactment of the provision from time to time in force and all subordinate instruments, orders or regulations made under it;
      2. the singular includes the plural and vice versa;
      3. references to persons include individuals, bodies corporate, unincorporated associations, governments, states, partnerships and trusts (in each case, whether or not having separate legal personality); and
      4. the various provisions of this Agreement are severable and if any such provision shall, to any extent, be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby and each of the provisions of this Agreement shall be valid, legal and enforceable to the fullest extent permitted by law.