



Ministry of
JUSTICE

Hosting

Schedule 9.1: Staff Transfers

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1. DEFINITIONS

- 1.1. In paragraph 2, the following words and expressions shall have the meanings respectively assigned to them:
- 1.1.1. **“Contractor Personnel”** means the personnel of the Hosting Supplier and those of any Sub-Contractor who are employed, assigned or engaged in providing the Services (or part thereof) under this Agreement;
 - 1.1.2. **“Sub-Contractor”** means any sub-contractor (and their sub-contractors) or suppliers of the Hosting Supplier;
 - 1.1.3. **“Subsequent Relevant Transfer”** means a relevant transfer for the purposes of TUPE of employees assigned, engaged or employed in the provision of the Services from the Hosting Supplier or a Sub-Contractor to a Replacement FITS Supplier or any other third party whom the Authority appoints to carry out Replacement Services;
 - 1.1.4. **“Subsequent Transfer Date”** means the date on which the transfer of a Subsequent Transferring Employee takes place under this Agreement pursuant to TUPE;
 - 1.1.5. **“Subsequent Transferring Employee”** means an employee assigned, engaged or employed in the provision of the Services who is transferred pursuant to TUPE to a Replacement FITS Supplier or to the Authority (where the Authority chooses to provide any part of the Services itself) on expiry or termination of this Agreement or part of this Agreement or the expiry or termination of the Services (whether in whole or in part);
 - 1.1.6. **“TUPE”** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (246/2006) as amended from time to time and/or any other regulations enacted for the purpose of implementing the Acquired Rights Directive (Council Directive 77/187/EEC as amended by Council Directive 98/50/EEC and consolidated in Council Directive 2001/23/EEC) into English law.

2. TUPE AND EMPLOYEES

- 2.1. The Authority and the Hosting Supplier:
- 2.1.1. do not believe that the commencement of this Agreement or the commencement of the provision of Services (in whole or part) will give rise to a Staff Transfer pursuant to TUPE to the Hosting Supplier and/or any Sub-Contractor from the Authority or a Previous Contractor or any other third party; and
 - 2.1.2. do not intend the employment (or related rights and liability) of any individual will transfer from the Authority to the Hosting Supplier and/or any Sub-Contractor as a result of the commencement of this Agreement or the provision of Services (in whole or part).

Information on Re-tender, Expiry or Termination

- 2.2. During the period of this Agreement (but no more than once in any period of twelve weeks) or after the Authority has given notice to terminate this Agreement or the provision of the Hosting Services (in whole or in part) under this Agreement, the Hosting Supplier shall upon receipt of written notice from the Authority:
- 2.2.1. fully and accurately disclose to the Authority such information listed in Appendix 1 to this schedule 9.1 (Staff Transfers) relating to the Contractor Personnel (or the Contract Personnel assigned to such part of the Services as may be specified in the request), separately identifying former employees of the Authority who transferred to the Hosting Supplier or a Sub-Contractor and indicating which of the individuals are members of the pension scheme provided by the Hosting Supplier (or if applicable) any Sub-Contractor, as the Authority may request;
 - 2.2.2. provide the information promptly and in any event not later than 21 days from the date when a request for such information is made and at no cost to the Authority;
 - 2.2.3. permit the Authority to use the information in an anonymised form for informing any tenderer for or any replacement provider of any services which are substantially the same as any part of the Services provided pursuant to this Agreement provided that any such use by the Authority shall be on the basis that the information is supplied in confidence and subject to a condition that if the recipient of the information does not subsequently become the employer of the employees to which the information relates, it will be erased irretrievably by that recipient ; and
 - 2.2.4. enable and assist the Authority and such other persons as the Authority may determine (including, but not limited to, any prospective Replacement FITS Supplier) to communicate with and meet the Contractor Personnel (as required) and their trade union or other employee representatives.
- 2.3. The Hosting Supplier shall indemnify and keep the Authority indemnified fully in respect of any claims, losses, costs, expenses, demands and liabilities arising from the provision of information, inaccuracies in the information provided or its failure to provide information under paragraphs 2.2.1 and 2.2.2.
- 2.4. During the last 12 months of the Initial Term of the Agreement unless otherwise extended in accordance with this Agreement in which case during the last 12 months of the Term, and once the information referred to in paragraph 2.2.1 has been passed to the Authority the Hosting Supplier shall not (in relation to such of the Contractor Personnel as are specified in the request for information) and shall procure that any third party (including, without limitation, any Sub-Contractor) shall not:
- 2.4.1. materially amend the rates of remuneration, terms of employment or hours to be worked by Contractor Personnel, including holidays other than in the course of ordinary business;

- 2.4.2. replace (except to cover absence of Contractor Personnel), dismiss (other than by reason of gross misconduct) or redeploy any of the Contractor Personnel, or increase the number of Contractor Personnel assigned to the provision of the Hosting Services or relevant part of the Hosting Services; or
- 2.4.3. reorganise any working methods or assign to any person wholly or mainly employed or engaged in providing the Hosting Services any duties unconnected with the Hosting Services under this Agreement,

without the prior written agreement of the Authority, such agreement not to be unreasonably withheld.

Indemnities on Expiry, Termination or Cessation of this Agreement

- 2.5. Where the Hosting Supplier or a Sub-Contractor shall cease (for whatever reason and whether directly or indirectly) to provide the Hosting Services (or part thereof) the Hosting Supplier shall indemnify and keep indemnified the Authority and any Replacement FITS Supplier against any costs, losses, expenses, liabilities, awards or damages in respect of any claims or proceedings (and all costs and expenses thereof):
 - 2.5.1. where there is a Subsequent Relevant Transfer, by any Subsequent Transferring Employee or by their appropriate representative (as defined in TUPE or any successor legislation) made against the Authority or a Replacement FITS Supplier at any time arising out of or in connection with any acts or omissions of the Hosting Supplier or a Sub-Contractor which occurred on or prior to the Subsequent Transfer Date including but not limited to claims for breach of contract, loss of office, unfair dismissal, redundancy, sex, race or other discrimination, loss of earnings or otherwise (and all costs and expenses thereof) provided that such claims, losses, costs, expenses and liabilities are not payable as a result of any act or omission of the Authority or a Replacement FITS Supplier;
 - 2.5.2. by any person or persons (or by their appropriate representative (as defined in TUPE or any successor legislation)) who are not Subsequent Transferring Employees or who are not disclosed as such to the Authority in accordance with paragraph 2.2.2 who claims that his or her or their contracts of employment or any liabilities in connection with his or her or their employment or its termination or cessation are or have been transferred to the Authority or a Replacement FITS Supplier in accordance with TUPE or any successor legislation including, for the avoidance of doubt,
 - 2.5.2.1. the reasonable cost to the Authority or the Replacement FITS Supplier of employing such person or persons prior to the termination of their employment; and
 - 2.5.2.2. the cost to the Authority or the Replacement FITS Supplier arising out of the dismissal of such person or persons,
- provided always that;

- (a) such person or persons are given notice by the Authority or the Replacement FITS Supplier to terminate their employment within one month of the Authority or the Replacement FITS Supplier becoming aware of such claim; and
 - (b) the Authority and Replacement FITS Supplier using reasonable endeavours to ensure that any such dismissals are carried out fairly within the meaning of section 98 of the Employment Rights Act 1996 and in accordance with the ACAS Code of Practice on Disciplinary and Grievance Procedures and the individual's contract of employment; and
 - (c) such costs are not payable to the extent that they relate to any unlawful discrimination by the Authority or a Replacement FITS Supplier; or
- 2.5.3. by any Subsequent Transferring Employee or by their appropriate representative (as defined in TUPE or any successor legislation) made against the Authority at any time as a result of the Hosting Supplier's or Sub-Contractor's failure or alleged failure to comply with its obligations to inform or consult with any trade union or employee representatives pursuant to TUPE or any successor legislation.
- 2.6. The Authority shall indemnify and keep indemnified the Hosting Supplier against any costs, losses, expenses, liabilities, awards or damages in respect of any claims or proceedings (and all costs and expenses thereof):
 - 2.6.1. where there is a Subsequent Relevant Transfer, by any Subsequent Transferring Employee or by their appropriate representative (as defined in TUPE or any successor legislation) made against the Hosting Supplier or any Sub-Contractor at any time arising out of or in connection with any acts or omissions of the Replacement FITS Supplier which occurred on or after the Subsequent Transfer Date including claims for breach of contract, loss of office, unfair dismissal, redundancy, sex, race or other discrimination, loss of earnings or otherwise (and all costs and expenses thereof) provided that such claims, losses, costs, expenses and liabilities are not payable as a result of any act or omission of the Hosting Supplier or any Sub-Contractor;
 - 2.6.2. by any Subsequent Transferring Employee or by their appropriate representative (as defined in TUPE or any successor legislation) made against the Hosting Supplier or any Sub-Contractor at any time as a result of the Replacement FITS Supplier's failure or alleged failure to comply with its obligations to inform or consult or both with any trade union or employee representatives pursuant to TUPE or any successor legislation;
 - 2.6.3. by virtue of any substantial change made or proposed to be made by the Replacement FITS Supplier in the terms of employment or working

conditions of any of the Subsequent Transferring Employees which is detrimental to any of the Subsequent Transferring Employees;

- 2.6.4. by virtue of any substantial change to the material detriment made or proposed to be made by the Replacement FITS Supplier in the terms of the employment or working conditions of any person or persons who would have transferred pursuant to the Subsequent Relevant Transfer, but who terminated their contract of employment by reason of such change; or
- 2.6.5. by virtue of a change in the identity of the employer of all or any of the Subsequent Transferring Employees where that change is a significant change and to the detriment of all or any of the Subsequent Transferring Employees.

Terminal Redundancy Liability

- 2.7. On expiry or termination of this Agreement, payments of any appropriate redundancy and relocation compensation to any employee of the Hosting Supplier who is not a Subsequent Transferring Employee are the responsibility of the Hosting Supplier.

Termination of Agreement

- 2.8. The Hosting Supplier shall procure that:
 - 2.8.1. after notice (for whatever reason) is given, in accordance with the other provisions of this Agreement, to terminate this Agreement or any part of the Services; or
 - 2.8.2. after the date which is twelve (12) months prior to the expiry of the Initial Term of the Agreement unless otherwise extended in accordance with this Agreement in which case during the last 12 months of the Term,
- no change is made to pension, retirement and death benefits provided for or in respect of any person who will become a Subsequent Transferring Employee and no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of the Authority (such approval not to be unreasonably withheld).

APPENDIX**1: PEOPLE****Information to be provided to the Authority**

1. Total number of individual members of staff that currently undertake the work and who may therefore be transferred. Alternatively the Hosting Supplier should provide information why any of their staff or those of their sub-contractors who currently undertake the work will not transfer.
2. The total number of posts or proportion of posts expressed as full-time equivalent value that currently undertakes the work that is to transfer.
3. The preceding 12 months total pay costs – pay, employee/employer ERNIC and overtime
4. Total redundancy liability
5. Details about the Hosting Supplier's terms and conditions applicable to those members of staff identified at 1.

In respect of those members of staff included in the total at 1. above:

1. Age (not date of birth)
2. Employment status (i.e. Fixed term, casual, permanent)
3. Length of current period of continuous employment
4. Weekly conditioned hours of attendance (gross)
5. Standard annual holiday entitlement (not "in year" holiday entitlement that may contain carry over or deficit from previous leave years)
6. Pension scheme membership
7. Pension and redundancy liability information
8. Annual salary
9. Details of any regular overtime payments (these may be weekly, monthly or annual commitments for which staff may receive an overtime payment)

10. Details of attendance patterns that attract enhanced rates of pay or allowances
11. Regular/recurring allowances
12. Outstanding financial claims arising from employment (i.e. season ticket loans, transfer grants)
13. Whether any disciplinary procedure taken against an employee within the previous two years
14. Whether any grievance procedure taken by an employee within the previous two years
15. Whether any court or tribunal case, claim or action brought by an employee against the transferor within the previous two years
16. Information of any court or tribunal case, claim or action that the transferor has reasonable grounds to believe that an employee may bring against the transferee, arising out of the employee's employment with the transferor
17. If applicable, whether any collective agreement which will have effect after the transfer, in its application in relation to the employee

End of schedule 9.1