

Schedule 24

TUPE and Pensions

TRANSFER REGULATIONS

PART 1 - EMPLOYEE TRANSFER ARRANGEMENTS ON ENTRY

1 DEFINITIONS

1.1 In this Schedule 24, 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 24, 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 Service Provider providing any part of the Services who is or is to be the employer of a Previous Service Provider Employee;

"Former Authority Employee" means 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 Service Provider 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;

"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 Service Provider" means [insert details of any outgoing contractor. Ensure that any sub-contractors from whom employees may transfer are included];

"Previous Service Provider Employee" means an employee of a Previous Service Provider (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 Service Provider 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 Service Provider or an Employing Sub-Contractor of a Previous Service Provider Employee pursuant to this Contract and the Transfer Regulations;

" **Relevant Transfer Date**" means the date on which a Relevant Transfer is effected for Previous Service Provider Employees;

"**Relevant Statutory Scheme**" has the same meaning as in Regulation 8 of the Transfer Regulations;

"**Services**" shall have the meaning specified in Schedule 1 (Definitions);

"**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 Service Provider the information listed in Appendix 1 of this Schedule 24, Part 1 in respect of Previous Service Provider Employees to the extent that such information has been provided to the Authority by the Previous Service Provider.

2.1.2 The Authority shall provide the Service Provider 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 Service Provider.

2.1.3 The Service Provider 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 Service Provider 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 Service Provider'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 Service Provider Employees

2.2.1 The Service Provider and the Authority acknowledge (and the Service Provider 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 Service Provider agrees (and will procure that the Employing Sub-Contractor agrees) that from the Relevant Transfer Date the contracts of employment of any Previous Service Provider 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 Service Provider or an Employing Sub-Contractor and the Previous Service Provider 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 Save for any liabilities in respect of Previous Service Provider Employees under a Relevant Statutory Scheme or Schemes, the Service Provider 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 Service Provider Employees with effect from and including the Relevant Transfer Date and shall indemnify the Authority and the Previous Service Provider in respect of the same.

2.3 Indemnities

2.3.1 The Service Provider shall indemnify and hold harmless the Authority and any Previous Service Provider 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 VAT and similar taxes or liability for deduction of PAYE tax properly incurred by the Authority or any Previous Service Provider arising out of or in connection with:

- (a) any breach by the Service Provider and/or any Employing Sub-Contractor of their obligations under Regulation 13 of the Transfer Regulations;
- (b) any act or proposal by the Service Provider 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 Service Provider 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 Previous Service Provider Relevant Transfer Date.
- (d) any variations or proposed variations to any Previous Service Provider Employee's terms and conditions of employment pursuant to regulations 4(5) and 4(5B) of the Transfer Regulations.

3 GENERAL PROVISIONS APPLICABLE TO PREVIOUS CONTRACTOR EMPLOYEES AND CONTRACTOR PERSONNEL

3.1 Contractor Indemnity

3.1.1 The Service Provider 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 Service Provider or any Employing Sub-Contractor of any person (including the Previous Service Provider 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 Service Provider 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.

Appendix 1

PERSONNEL INFORMATION TO BE RELEASED PURSUANT TO THIS AGREEMENT

PART A

1. Pursuant to paragraph 2.1.1 of this Schedule 24, 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 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) Civil Service Pension Scheme Membership (Opt-out of Civil Service Pension Scheme, Classic, Classic Plus, Premium, Defined Contribution) or, where relevant Service Provider Scheme or other Service Provider/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) 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 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 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 14 days following a Relevant 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;

PART 2 – STAFF TRANSFER ARRANGEMENTS ON EXIT

1. DEFINITIONS

1.1 In this Schedule 24, Part 2, save where otherwise provided, words and terms defined in Schedule 1 (Definitions) or Schedule 24, Part 1 of the Contract shall have the meaning ascribed to them in Schedule 1 (Definitions) or Schedule 24, Part 1 of the Contract.

1.2 Without prejudice to Schedule 1 (Definitions) of the Contract or Schedule 24, Part 1, in this Schedule 24, 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 Service Provider providing all or any part of the Services who employs or engages any person in providing the Services;

"Former Authority Employee" means 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 Service Provider 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" means a transfer of the employment of Subsequent Transferring Employees from the Service Provider 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 Service Provider 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 Service Provider 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 Schedule 24, 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 Service Provider 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);

(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 Service Provider shall:

(a) ensure that Employee Liability Information and such information listed in Part A of Appendix 2 of Part 2 of this Schedule 24, (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 Service Provider 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 24, (Personnel Information) relating to the Subsequent Transferring Employees. The Service Provider 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 Service Provider shall provide to the Authority and/or any New Provider the information set out in Part C of Appendix 2 of this Schedule 24, in respect of Subsequent Transferring Employees.

2.1.5 Paragraphs 2.1.1 and 2.1.2 of this Schedule are subject to the Service Provider's obligations in respect of the Data Protection Legislation and the Service Provider 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 2.1.1 and 2.1.2. To the extent anonymous data has been provided by the Service Provider pursuant to its obligations under Paragraph 2.1.1 or 2.1.2 above, the Service Provider 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 Service Provider 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 Service Provider 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 Service Provider 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 Schedule 24 Part 2.

2.1.7 The Authority may at any time prior to the period set out in paragraph 2.1.5 of this Schedule 24, Part 2 request from the Service Provider any of the information in sections 1(a) to (d) of Appendix 1 and the Service Provider 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 Service Provider 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 Service Provider 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 Service Provider shall notify the Authority on the Sub-Contractor's behalf and the Authority shall notify the Service Provider 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 Service Provider 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 Service Provider 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 Service Provider 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 provided that the termination is carried out in accordance with paragraph 2.3.1(b) 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 Subsequent Transferring Employee; 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 Service Provider (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.

2.4 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 Service Provider 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:

(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 Service Provider 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 Service Provider 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) any claim or claims by a Subsequent Transferring Employee in respect of the period prior to the Subsequent Transfer Date;

(c) all emoluments and outgoings relating to the employment of the Subsequent Transferring Employees including but not limited to PAYE, National Insurance Contributions, remuneration and benefits in respect of the period prior to the Subsequent Transfer Date. 2.4.2 If there is a Subsequent Relevant Transfer, the Authority shall indemnify the Service 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:

(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 Service Provider or any Employing Sub-Contractor.

2.4.3 In the event of a Subsequent Relevant Transfer, the Authority shall indemnify the Service Provider 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 Redundancy Liability on Partial Termination, Termination or Expiry

2.5.1 On expiry, partial termination or termination of this Contract, any redundancy costs shall be the responsibility of the Service Provider.

2.6 Contracts (Rights of Third Parties) Act 1999,

2.6.1 Pursuant to the terms of DEFCON 537, a New Provider may enforce the terms of paragraph 2.3 and 2.4 against the Service Provider in accordance with the Contracts (Rights of Third Parties) Act 1999.

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

2.6.3 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

2.7.1 The Service Provider shall not recover any Costs and/or other losses under this Schedule 24, where such Costs and/or losses are recoverable by the Service Provider 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 2.1.1(b) of Part 2 of this Schedule 24, 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 Service Provider 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 national insurance contributions 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 (including for Former Authority Employees or other former Civil Servants who are current members of the Civil Service Pension Schemes (PCSPS/alpha));
- 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 Service Provider will provide (and will procure that the Sub-Contractors provide) the Authority/tenderers with access to the Service Provider's and Sub-Contractor'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 CONTRACT

Part A

1. Pursuant to paragraph 2.1.2 of this Schedule 24, 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 any other terms and conditions of employment;
- h) Details of training and operating licensing required for Statutory and Health and Safety reasons;
- i) Details of training or sponsorship commitments;
- j) Standard Annual leave entitlement and current leave year entitlement and record;
- k) Annual leave reckonable service date;
- l) Details of disciplinary or grievance proceedings taken by or against transferring employees in the last two years;
- m) 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;
- n) Issue of Uniform/Protective Clothing;
- o) Working Time Directive opt-out forms; and
- p) 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) Civil Service Pension Scheme Membership (Opt-out of Civil Service Pension Scheme, Classic, Classic Plus, Premium, Defined Contribution) or, where relevant Service Provider Scheme or other Service Provider/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 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 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 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 Relevant 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;

PART 3 – PENSION MATTERS

1.1 In this Schedule 24, Part 3, save where otherwise provided, words and terms defined in Schedule 1 (Definitions), Schedule 24, Part 1 or Schedule 24, Part 2 of the Contract shall have the meaning ascribed to them in Schedule 1 (Definitions), Schedule 24, Part 1 or Schedule 24, Part 2 of the Contract.

1.2 Without prejudice to Schedule 1 (Definitions) of the Contract, Schedule 24, Part 1, or Schedule 24, Part 2, in this Schedule 24, Part 3 unless the context otherwise requires:

“Active Member” means an individual who has been admitted to and remains in active membership of any of the Schemes.

“Admission Agreement” means in relation to the Service Provider or a Sub-contractor an agreement made (or to be made) between (1) The Minister for the Cabinet Office (2) the Service Provider or the Sub-contractor, as the case may be, and (3) the Authority relating to the participation of the Service Provider 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 Service Provider or the Sub-contractor, as applicable, and which is substantively in the form set out in Annex A to this Schedule.

“alpha” means 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” means 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 Service Provider, 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 2.1.4.

“Former Authority Employee” means 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 Service Provider 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;

“New Fair Deal” means 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.

“PCSPS” means the Principal Civil Service Pension Scheme established under The Superannuation Act 1972.

“Pension Schemes” means 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).

“Relevant Benefits” means 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).

“Relevant Transfer Date” means the date on which a transfer to the Service Provider or a Sub-contractor is effected pursuant to this Contract and the Transfer Regulations.

"Schemes" means 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.

"Transfer Regulations" means 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 Service Provider shall:

2.1.1 comply with the Admission Agreement to which it is a party and shall not terminate the Admission Agreement while the Service Provider is providing any of the Services;

2.1.2 ensure that on each occasion (including, but without limitation, on the termination of a contract between the Service Provider and a Sub-contractor) any Former Authority Employee becomes an employee of the Service Provider 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

2.1.3 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 Service Provider 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:

2.1.3.1 it is an express term of the contract of employment of the Former Authority Employee with the Service Provider that the Service Provider 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

2.1.3.2 each such Former Authority Employee is able to be and remain such an Active Member;

2.1.4 The contractor agrees that the Employer Contributions shall be priced on a pass-through basis in accordance with Clause 16 and Schedule 5 (Pricing).

2.1.5 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 Service Provider hereby irrevocably gives) that the Authority may deduct an amount equal to that which is overdue from any monies due to the Service Provider and pay that amount to the relevant Scheme.

2.2 The Service Provider 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:

2.2.1 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;

2.2.2 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;

2.2.3 a breach of the Admission Agreement which is not capable of remedy or which if it is capable of remedy is not remedied within 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 Service Provider to terminate the Sub-contract (which the Service Provider 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;

2.2.4 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;

2.2.5 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);

2.2.6 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 Clause 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

2.2.7 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 Service Provider 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 Service Provider, the Sub-contractor or Sub-sub-contractor as the case may be, to comply with the Schemes or the Admission Agreement to which the Service Provider, 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 Service Provider) 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 Service Provider and pay that amount to the Schemes.

2.5 Save with the approval of the Authority the Service Provider shall not and shall procure any Sub-contractor and/or Sub-sub-contractor as applicable shall not on or after the earliest of:

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

2.5.2 the Authority giving the Service Provider a Termination Notice terminating the whole of this Agreement or any part of the Services;

2.5.3 the Service Provider giving notice under Clause 32 (termination for Force Majeure) and such notice is accepted by the Authority;

2.5.4 on notification to the Service Provider by the Authority of a replacement contractor; and

2.5.5 on receipt by the Service Provider 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 Service Provider to be made, announced or proposed.

2.6 The Service Provider 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 Service Provider (such consent not to be unreasonably withheld or delayed).

2.7 The Service Provider 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: **[insert details]**.

2.8 The Service Provider 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 Service Provider elsewhere in this Contract or otherwise. If the Service Provider 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 Service Provider.

2.9, The Service Provider 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 Service Provider 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 Service Provider, Sub-contractor or Sub-sub-contractor as in connection with a re-tendering or proposed re-tendering of all or any of the Services.

Annex A to Schedule 24

Insert form of Admission Agreement