Ministry of Defence

Contract Number: DGM/1880

Schedule 26: Transfer of Undertakings (Protection of Employment) (TUPE) Regulations – Employee Transfer Arrangements on Exit

For:

Next Generation Munitions Solution (NGMS) Programme

November 2020

1 EMPLOYMENT

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

(a) No earlier than 3 (three) years preceding the termination, partial termination or expiry of this Contract or a potential Transfer Date or at any time after the service of a notice to terminate this Contract or the provision of any of the Services (whether in whole or part) or on receipt of a written request by the Authority, the Contractor shall (and shall procure that any Employing Sub-Contractor shall):

(i) 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;

(ii) 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 Annex A to this Schedule 26 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 Relevant Transfer;

(iii) 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;

(iv) acknowledge that the Authority will, subject to any applicable confidentiality obligations contained in the Contract, 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;

(v) inform the Authority of any changes to the information provided under Paragraph **{** REF _Ref216103120 \w \h * MERGEFORMAT **}** or **{** REF _Ref27489873 \w \h * MERGEFORMAT **}** up to the Transfer Date as soon as reasonably practicable in accordance with the following principles:

1. should the Authority request information in the third year prior to the Termination Date or Expiry Date (as applicable), the Contractor shall provide a report upon the initial request for information and one further update at the end of the relevant year should any changes arise, following which, the conditions of Paragraph **{** REF _Ref50034817 \w \h * MERGEFORMAT **}** shall apply;

2. should the Authority request information in the second year prior to the Termination Date or Expiry Date (as applicable), the Contractor shall provide a report upon the initial request for information and shall then proceed to provide updates quarterly should any changes arise in

those quarters, following which, the conditions of Paragraph **{** REF _Ref50034835 \w \h * MERGEFORMAT **}** shall apply;

3. should the Authority request information in the year prior to the Termination Date or Expiry Date (as applicable), the Contractor shall provide a report upon the initial request and shall then proceed to providing any updates monthly should any changes arise in those months;

(b) 3 (three) months preceding the termination, partial termination or expiry of this Contract or on receipt of a written request from the Authority the Contractor shall:

(i) ensure that Employee Liability Information and such information listed in Part A of Annex B of this Schedule 26 relating to the Transferring Employees is provided to the Authority and/or any New Provider;

(ii) inform the Authority and/or any New Provider of any changes to the information provided under this Paragraph **{** REF _Ref27489891 \w \h **}** up to any Transfer Date as soon as reasonably practicable;

(iii) 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.

(c) No later than 28 (twenty eight) days prior to the Transfer Date the Contractor 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 Annex B of this Schedule 26 relating to the Transferring Employees. The Contractor shall inform the Authority and/or New Provider of any changes to this list or information up to the Transfer Date.

(d) Within 14 (fourteen) days following the relevant Transfer Date the Contractor shall provide to the Authority and/or any New Provider the information set out in Part C of Annex B of this Schedule 26 in respect of Transferring Employees.

(e) Paragraphs **{** REF _Ref221415605 \w \h **}** and **{** REF _Ref27489891 \w \h **}** of this Schedule 26 are subject to the Contractor's obligations in respect of the Data Protection Legislation and the Contractor shall use its reasonable endeavours to obtain the consent of its employees (and shall procure that its Sub-Contractors use their best endeavours to obtain the consent of their employees) to the extent necessary under the Data Protection Legislation or provide the data in an anonymous form in order to enable disclosure of the information required under Paragraphs **{** REF _Ref221415605 \w \h **}** and **{** REF _Ref27489891 \w \h **}**. Notwithstanding this Paragraph **{** REF _Ref27489982 \w \h **}**, the Contractor acknowledges (and shall procure that its Sub-Contractors use their best endeavours to obtain the consent of their employees) that they are required to provide sufficient information to the Authority to enable the Authority to determine the

nature of the activities being undertaken by employees engaged in providing the Services, to assess whether there is an organised grouping for the purposes of the Transfer Regulations and to assess who is assigned to such organised grouping. To the extent that anonymous data has been provided by the Contractor pursuant to its obligations under Paragraphs **{** REF _Ref221415605 \w \h **}** and **{** REF _Ref27489891 \w \h **}**above, the Contractor shall provide full data to the Authority no later than 28 (twenty eight) days prior to the Transfer Date.

(f) On notification to the Contractor by the Authority of a New Provider or within the period of 6 (six) months prior to the Termination Date or after service of a notice to terminate this Contract (whether in whole or in part), whichever is earlier and in any event on receipt of a written request by the Authority, the Contractor shall not and shall procure that an Employing Sub-Contractor shall not:

(i) 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

(ii) 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

(iii) 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

(iv) 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 provided that the Contractor has issued prior written notification to the Authority, and the Contractor shall indemnify and keep indemnified the Authority in respect of any reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any breach of Paragraphs 1.1**{** REF _Ref221415605 \r \h * MERGEFORMAT **}**, **{** REF _Ref220664585 \r \h * MERGEFORMAT **}**, **{** REF _Ref216104844 \n \h **}**, **{** REF _Ref27490057 \n \h **}** or **{** REF _Ref157923798 \r \h * MERGEFORMAT **}** of this Schedule 26. Any notification issued by the Contractor pursuant to this Paragraph **{** REF _Ref157923798 \w \h **}** shall be discussed between the Parties in accordance with the relevant Exit Plan and the Authority shall have the right to seek any further information or clarification.

(g) The Authority may at any time prior to the period set out in Paragraph **{** REF _Ref157923798 \w \h **}** of this Schedule 26 request from the Contractor any of the information in Paragraph 1 of Annex A and the Contractor shall and shall procure any Sub-Contractor will provide the information requested within 28 (twenty eight) days of receipt of that request.

1.2 Obligations in Respect of Transferring Employees

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

(a) before and in relation to the 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

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

1.3 Unexpected Transferring Employees

(a) If a claim or allegation is made by an employee or former employee of the Contractor or any Employing Sub-Contractor who is not named on the list of Transferring Employees provided under Paragraph **{** REF _Ref216104844 \w \h **}** (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 Contractor shall notify the Authority on the Sub-Contractor's behalf and the Authority shall notify the Contractor on the New Provider's behalf) in writing as soon as reasonably practicable and no later than ten Business Days after receiving notification of the Unexpected Transferring Employee's claim or allegation, whereupon:

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

(ii) if the Unexpected Transferring Employee's claim or allegation is not withdrawn or resolved the Contractor shall notify the Authority (who will notify any New Provider who is a party to such claim or allegation), and the Authority (insofar as it is permitted) and/or New Provider (as appropriate) shall employ the Unexpected Transferring Employee or as soon as reasonably practicable, (subject to compliance with its obligations at Paragraph **{** REF _Ref27490243 \w \h **}**), serve notice to terminate the Unexpected Transferring Employee's employment in accordance with his contract of employment; and

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

1. 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 **{** REF _Ref215822873 \w \h **}**;

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

3. 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 contract or discrimination attributable:

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

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

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

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

5. 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 (five thousand pounds sterling); and

6. legal and other professional costs reasonably incurred;

(b) the Authority shall be deemed to have waived its right to an indemnity under Paragraph **{** REF _Ref216104631 \w \h **}** 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 **{** REF _Ref216104552 \r \h * MERGEFORMAT **}**.

1.4 Indemnities on transfer under the Transfer Regulations on Partial Termination, Termination or Expiry of the Contract

(a) If on the expiry, termination or partial termination of the Contract there is a Relevant Transfer, the Contractor shall indemnify the Authority and any New Provider against all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any claim by any employee or trade union representative or employee representative arising whether before or after the Transfer Date out of any failure by the Contractor or any Sub-Contractor to comply with their obligations under Regulation 13 of the Transfer Regulations in relation to any Transferring Employee or any other employee of the Contractor or any Sub-Contractor 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.

(b) If there is a Relevant Transfer, the Authority shall indemnify the Contractor against all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities arising out of, or in connection with:

(i) 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 sub-contractor of a New Provider during the period from and including the Transfer Date;

(ii) subject to Paragraph **{** REF _Ref27490314 \w \h **}** 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 sub-contractor 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 Contract (as defined by Regulation 13 of the Transfer Regulations),

save to the extent that all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities are a result of the act or omission of the Contractor or any Employing Sub-Contractor.

(c) In the event of a Relevant Transfer, the Authority shall indemnify the Contractor in respect of all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and other liabilities arising out of or in connection with or as a result of a substantial change by the Authority or a New Provider or any

sub-contractor of a New Provider on or after the 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 **{** REF _Ref220669661 \w \h **}**, 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.

1.5 Contracts (Rights of Third Parties) Act 1999

(a) Pursuant to Clause 97 (Rights of Third Parties), a New Provider may enforce the terms of Paragraph **{** REF _Ref227474645 \r \h * MERGEFORMAT **}** and **{** REF _Ref221020658 \r \h * MERGEFORMAT **}** against the Contractor in accordance with the Contracts (Rights of Third Parties) Act 1999.

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

(c) Nothing in this Paragraph 2.5 shall affect the accrued rights of the New Provider prior to the rescission, variation, expiry or termination of this Contract.

1.6 General

Neither Party shall be entitled to recover any Costs and/or other losses under this Schedule 26 where such Costs and/or losses are recoverable by that Party elsewhere in this Contract and/or are recoverable under the Transfer Regulations or otherwise.

Annex A

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

1 Pursuant to Paragraph **{** REF _Ref27489873 \w \h **}** of this Schedule 26, the following information will be provided:

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

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

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

(d) Total redundancy liability including any enhanced contractual payments;

2 In respect of those employees included in the total at Paragraph 1(a) of this Annex 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 Annex A should not identify an individual employee by name or other unique personal identifier unless such information is being provided 28 (twenty eight) days prior to the Transfer Date.

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

Annex B

PERSONNEL INFORMATION TO BE RELEASED PURSUANT TO THIS CONTRACT

Part A

Pursuant to Paragraph **{** REF _Ref220664585 \r \h * MERGEFORMAT **}** of this Schedule 26, 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 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 2 (two) years;

(l) Information of any legal proceedings between employees and their employer within the previous 2 (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.

2 Superannuation and Pay

(a) Maternity leave or other long-term leave of absence (meaning more than 4 (four) weeks) planned or taken during the last 2 (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 12 (twelve) month period;

(e) Allowances and bonuses for the preceding 12 (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 3 (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.

3 Medical

(a) Details of any period of sickness absence of 3 (three) months or more in the preceding period of 12 (twelve) months; and

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

4 Disciplinary

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

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

5 Further information

(a) Information about specific adjustments that have been made for an individual under the Equality Act 2010;

(b) Short term variations to attendance hours to accommodate a domestic situation;

(c) Individuals that are members of the Reserves, or staff that may have been granted special leave as a School Governor; and

(d) Information about any current or expected maternity or other statutory leave or other absence from work.

Part B

Information to be provided 28 (twenty eight) 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 (fourteen) days following a Transfer Date:

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;

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;