

## ANNEX 2 – STAFF TRANSFER ON EXIT

### 1. DEFINITIONS

- 1.1 In this Annex, save where otherwise provided, words and terms defined in Schedule 1 of the Agreement shall have the meaning ascribed to them in Schedule 1 of the Agreement.

### 2. EMPLOYMENT

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

- 2.1.1 No earlier than two years preceding the Termination Date or a potential Subsequent Transfer Date or at any time after the service of a notice to terminate this Agreement or the provision of any of the Services (whether in whole or part) and on receipt of a written request by the Authority, the Contractor shall (and shall procure that any Sub-Contractor shall):

- (a) 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 Annex relating to the employees who are wholly or mainly employed, assigned or engaged in providing the Services or part of the Services under this Agreement which may be subject to the Subsequent Relevant Transfer, separately identifying Authority Employees and/or Ex-Authority Employees who transferred to the Contractor and/or Employing Sub-Contractor on the Relevant Transfer Date and indicating which of these are members of the Contractor's Scheme and/or Employing Sub-Contractor's Scheme;
- (b) 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;
- (c) 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 Agreement;
- (d) enable and assist the Authority and a New Provider to communicate with and meet those employees and their trade union or other employee representatives;
- (e) inform the Authority of any changes to the information provided under paragraph (a) of this Annex up to the Subsequent Transfer Date as soon as reasonably practicable.

- 2.1.2 No later than three months prior to a Subsequent Transfer Date, the Contractor shall ensure that such information listed in Annex B (Personnel Information) of this Annex including any Employee Liability Information relating to all Subsequent Transferring Employees of the Contractor and any Sub-Contractor is provided to the Authority and New Provider.

- 2.1.3 No later than 14 days prior to the Subsequent Transfer Date the Contractor shall provide the Authority and New Provider with a final list of the

Subsequent Transferring Employees, together with Employee Liability Information in respect of Subsequent Transferring Employees to the extent not already provided. The Contractor shall inform the Authority and New Provider of any changes to this list up to the Subsequent Transfer Date.

- 2.1.4 Paragraphs 2.1.1, 2.1.2 and 2.1.3 of this Annex are subject to the Contractor's obligations in respect of the Data Protection Act 1998 (the "DPA") and the Contractor 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 DPA or provide the data in an anonymous form in order to enable disclosure of the information required under paragraphs 2.1.1, 2.1.2 and 2.1.3.
- 2.1.5 In the event of a Subsequent Relevant Transfer, the Authority shall procure that no later than three months after the Subsequent Transfer Date the New Provider shall pay to the Contractor or any Employing Sub-Contractor a sum equal to the outstanding balance on the Subsequent Transfer Date of any loan, salary, advance or other indebtedness of any Subsequent Transferring Employee due to the Contractor or any Employing Sub-Contractor immediately prior to the Subsequent Relevant Transfer.
- 2.1.6 On notification to the Contractor by the Authority of a New Provider or within six months of the Termination Date or after service of a notice to terminate this Agreement (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:
- (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 Agreement; 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 Agreement or the working time spent on the Services; or
  - (c) reorganise any working methods or assign to any person wholly or mainly employed or engaged in providing the Services any duties unconnected with the Services under this Agreement; or
  - (d) terminate or give notice to terminate the employment of any person wholly or mainly employed or engaged in providing the Services under this Agreement,

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 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 2.1.1, 2.1.2, 2.1.3 or 2.1.6 of this Annex .

- 2.1.7 The Authority may at any time prior to the period set out in paragraph 2.1.6 of this Annex request from the Contractor any of the information in sections 1(a) to (d) of Annex A of this Annex and the Contractor shall and shall procure any Sub-Contractor will provide the information requested within three months of receipt of that request.

## 2.2 Obligations in Respect of Subsequent Transferring Employees

- 2.2.1 The Authority and the Contractor acknowledge that the provision by the Authority or by any New Provider of the Services or any services which are substantially the same as the Services or part of the Services on partial termination, termination or expiry of this Agreement will constitute Subsequent Relevant Transfers for the purposes of the Transfer Regulations.
- 2.2.2 The Authority agrees that in such circumstances (as set out in paragraph 2.2.1) the contracts of employment of any Subsequent Transferring 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 Authority and the Subsequent Transferring Employees (or the relevant trade union, as the case may be).
- 2.2.3 The Contractor shall and shall procure any Employing Sub-Contractor shall and the Authority shall in such circumstances (as set out in paragraph 2.2.1):
- (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 any New Provider; and
  - (b) comply with their respective obligations under the Transfer Regulations including their obligations to inform and consult under Regulation 13.

## 2.3 Unexpected Subsequent Transferring Employees

- 2.3.1 In the event that a claim or allegation is made by an employee or former employee of the Contractor or any Sub-Contractor who is not named on the list of Subsequent Transferring Employees provided under paragraph 2.1.3 above (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 (or any similar legislation enacting the Acquired Rights Directive outside the UK), 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 within ten Business Days of receiving written notification of the Unexpected Subsequent Transferring Employee's claim or allegation, whereupon:
- (a) the Contractor shall (or shall procure that the 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) in the event that the Unexpected Subsequent 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 and/or New Provider (as appropriate) shall either employ the Unexpected Subsequent Transferring Employee or as soon as reasonably practicable, serve notice to terminate the Unexpected Subsequent Transferring Employee's employment in accordance with his contract of employment; and
- (c) the Contractor shall indemnify the Authority and the 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 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 (b) above;
  - (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 the Authority or New Provider has used reasonable endeavours to carry out the termination fairly and in accordance with all statutory obligations imposed on an employer;
  - (iv) any liabilities incurred under a settlement of the Unexpected Subsequent Transferring Employee's claim which was reached with the express permission of the Contractor;
  - (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 [REDACTED]; and
  - (vi) legal and other professional costs reasonably incurred;

- 2.3.2 the Authority shall be deemed to have waived its right to an indemnity under this paragraph 2.3.1(c) above 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 2.3 of this Annex.

## 2.4 Indemnities on Subsequent transfer under the Transfer Regulations on Partial Termination, Termination or Expiry of the Agreement

2.4.1 In the event that on the expiry, termination or partial termination of the Agreement there is a Subsequent Relevant Transfer, the Contractor shall indemnify the Authority for itself and for 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 or claims by Subsequent Transferring Employees or by the New Provider or any sub-contractor of the New Provider at any time on or after the Subsequent Transfer Date which arise as a result of an act or omission of the Contractor or any Sub-Contractor during the period prior to the Subsequent Transfer Date;
- (b) 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 Contractor 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 engaged wholly or mainly in connection with the Services by the Contractor or any Sub-Contractor or any other employee of the Contractor or any Sub-Contractor affected by the Subsequent Relevant Transfer effected by this Agreement (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, the New Provider or any sub-contractor of a New Provider.

2.4.2 In the event that there is a Subsequent 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:

- (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 New Provider or a sub-contractor of a New Provider during the period from and including the Subsequent Transfer Date;
- (b) 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 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 Agreement (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 Sub-Contractor.

- 2.4.3 In the event of a Subsequent 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 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 **Contract Changes during the Services Agreement**

- 2.5.1 In the event there is a Contract Change or request for Additional Services which gives rise to a Subsequent Relevant Transfer the provisions which shall apply to any transfer of employees pursuant to the Transfer Regulations from the Contractor or any Sub-Contractor to a New Provider shall be dealt with at the time of the Contract Change or request for Additional Services, although the parties agree that the principles set out in the provisions of paragraphs 2.1 to 2.4.3

## 2.6 **Contracts (Rights of Third Parties) Act 1999**

- 2.6.1 A New Provider may enforce the terms of paragraph 2.3 and 2.4 against the Contractor or an Employing Sub-Contractor 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 Agreement.
- 2.6.3 Nothing in paragraph 2.6 of this Annex shall affect the accrued rights of the New Provider prior to the rescission, variation, expiry or termination of this Agreement.

## 2.7 **General**

- 2.7.1 The Contractor shall not recover any Costs and/or other losses under this Annex where such Costs and/or losses are recoverable by the Contractor elsewhere in this Agreement and/or have been recovered under the Transfer Regulations or otherwise.

**Annex A****CONTRACTOR PERSONNEL-RELATED INFORMATION TO BE RELEASED UPON RE-TENDERING WHERE THE TRANSFER REGULATIONS APPLIES**

1. Pursuant to paragraph 2.1.1, 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 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 1(a) above, 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 ex-Authority Employees or other former Civil Servants who are current members of the Contractor's Scheme or other Contractor pension scheme certified by GAD which was set up following a transfer to the Contractor or Sub-Contractor of former Civil Servants);
  - 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.
  
4. The Contractor will provide (and will procure that the Sub-Contractors provide) the Authority/tenderers with access to the Contractor's and Sub-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**

Pursuant to paragraph 2.1.2 of this Annex, 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. Personal, Employment and Career
  - a) Employee's full name;
  - b) Date of birth and age;
  - c) Home address;
  - d) Security Vetting Clearance;
  - e) Job title;
  - f) Work location;
  - g) Conditioned hours of work;
  - h) Employment Status;
  - i) Details of training and operating licensing required for Statutory and Health and Safety reasons;
  - j) Details of training or sponsorship commitments;
  - k) Standard Annual leave entitlement and current leave year entitlement and record;
  - l) Annual leave reckonable service date;
  - m) Details of disciplinary or grievance proceedings taken by transferring employees in the last two years;
  - n) Information of any legal proceedings between employees and their employer within the previous two years that the transferor has reasonable grounds to believe that an employee may bring against the transferee arising out of their employment with the transferor;
  - o) Issue of Uniform/Protective Clothing;
  - p) Working Time Directive opt-out forms; and
  - q) Date from which the latest period of continuous employment began.
2. 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.
3. Superannuation and Pay
  - a) Maternity leave or other long-term leave of absence;
  - 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) Bank/building society account details for payroll purposes Tax Code;
  - h) Cumulative pay for tax and pension purposes;
  - i) Cumulative tax paid;
  - j) National Insurance Number;
  - k) National Insurance contribution rate;
  - l) Other payments or deductions being made for statutory reasons;
  - m) Any other voluntary deductions from pay;
  - n) Civil Service Pension Scheme Membership (Opt-out of Civil Service Pension Scheme, Classic, Classic Plus, Premium, Defined Contribution) or, where relevant Contractor Scheme or other Contractor/Sub-Contractor pension scheme membership;
  - o) For pension purposes, the notional reckonable service date;
  - p) Pensionable pay history for three years to date of transfer;
  - q) Percentage of any pay currently contributed under additional voluntary contribution arrangements; and
  - r) Percentage of pay currently contributed under any added years arrangements.
4. Medical
- a) Sickness and absence records for the immediately preceding four-year period; and
  - b) Details of any active restoring efficiency case for health purposes.
5. 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.
6. Further information
- a) Information about specific adjustments that have been made for an individual under the Disability Discrimination Act 1995;
  - b) Short term variations to attendance hours to accommodate a domestic situation;
  - c) Individuals that are TA members, or staff that may have been granted special leave as a School Governor; and
  - d) Information about any maternity or other statutory leave or other absence from work.

**Annex C – Actuary's Letter**