1. Staff transfers
   1. The definitions and interpretation provisions of Schedule 1 to these Special Conditions, together with the further parts of Schedule 1 to these Special Conditions that are marked as applicable, shall apply.

**Schedule 1 to Special Conditions:** **Staff Transfer**

1. Definitions
   1. In this Schedule, the definitions provided for elsewhere in this Contract shall apply save to the extent an alternative definition is provided for in this Schedule, whether in the Definitions section below or in an applicable Part of this Schedule.

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| “Admission Agreement” | means the LGPS Admission Agreement as defined in the Annex to Part D of this Schedule 1; |
| “Employee Liabilities” | all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:   1. redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments; 2. unfair, wrongful or constructive dismissal compensation; 3. compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay; 4. compensation for less favourable treatment of part-time workers or fixed term employees; 5. outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions; 6. employment claims whether in tort, contract or statute or otherwise; 7. any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation; |
| “Employment Regulations” | the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced; |
| “Fair Deal Employees” | as defined in Part D; |
| “Former Contract” | Annex 1 to the Service Information Schedule to the Highways and Infrastructure Service – Contract A (Works) between the *Client* and the Existing Provider; |
| “Former Contractor” | the Existing Provider and any sub-contractor of such contractor (or any sub-contractor of any such sub-contractor); |
| “Law” | any law, statute, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, right within the meaning of the European Union (Withdrawal) Act 2018 as amended by European Union (Withdrawal Agreement) Act 2020, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the *Contractor* is bound to comply; |
| “Losses” | losses, liabilities, damages, costs and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise; |
| “New Fair Deal” | as defined in Part D; |
| “Notified Sub-contractor” | a Sub-contractor identified in the Annex to this Schedule to whom Transferring *Client* Employees and/or Transferring Former Contractor Employees will transfer on a Relevant Transfer Date; |
| “Old Fair Deal” | HM Treasury Guidance *“Staff Transfers from Central Government: A Fair Deal for Staff Pensions”* issued in June 1999 including the supplementary guidance *“Fair Deal for Staff pensions: Procurement of Bulk Transfer Agreements and Related Issues”* issued in June 2004; |
| “Operational Service Commencement Date” | the date upon which the *Contractor* or a Sub-contractor commences provision of the *Service* or of any relevant part of the *Service* pursuant to this Contract (disregarding any mobilisation services delivered before the Service Period commences), where the *Contractor* or a Sub-contractor was the Former Contractor and there is no Relevant Transfer; |
| “Partial Termination” | the partial termination of this Contract to the extent that it relates to the provision of any part of the *Service;* |
| “Replacement Sub-contractor” | a sub-contractor of the Replacement Contractor to whom Transferring Contractor Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor); |
| “Replacement Contractor” | any third party service provider of Replacement Services appointed by the *Client* from time to time (or where the *Client* is providing Replacement Services for its own account, the *Client*); |
| “Replacement Services” | any services which are the same as or substantially similar to any part of the *Service* and which the *Client* receives in substitution for any part of the *Service* following the expiry or termination or Partial Termination of this Contract, whether the replacement service is provided by the *Client* internally and/or by any third party; |
| “Relevant Transfer” | subject to paragraph 1.2 of Part B, a transfer of employment to which the Employment Regulations applies; |
| “Relevant Transfer Date” | in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place. For the purposes of Part D and its Annexes, where the *Contractor* or a Sub-contractor was the Former Contractor and there is no Relevant Transfer of the Fair Deal Employees because they remain continuously employed by the *Contractor* (or Sub-contractor), references to the Relevant Transfer Date shall become references to the Operational Service Commencement Date; |
| “Service Transfer” | any transfer of the *Service* (or any part of the *Service*), for whatever reason, from the *Contractor* or any Sub-contractor to a Replacement Contractor or a Replacement Sub-contractor; |
| “Service Transfer Date” | the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires; |
| “Staffing Information” | in relation to all persons identified on the Contractor’s Provisional Contractor Personnel List or Contractor’s Final Contractor Personnel List, as the case may be, all information required in Annex E2: Staffing Information in the format specified and with the identities of data subjects anonymised where possible. The *Client* may acting reasonably make changes to the format or information requested in Annex E2: Staffing Information from time to time. |
| “Sub-contractor” | any third party with whom:   1. the *Contractor* enters into a Sub-contract; or 2. a third party under a) above enters into a Sub-contract,   or the servants or agents of that third party; |
| “Sub-contract” | any contract or agreement (or proposed contract or agreement) between the *Contractor* (or a Sub-contractor) and any third party whereby that third party agrees to provide to the *Contractor* (or the Sub-contractor) all or any part of the *Service* or facilities or services which are material for the provision of the *Service* or any part thereof or necessary for the management, direction or control of the *Service* or any part thereof; |
| “Contractor Personnel” | all directors, officers, employees, agents, consultants and contractors of the *Contractor* and/or of any Sub-contractor engaged in the performance of the *Contractor’s* obligations under this Contract; |
| “Contractor’s Final Contractor Personnel List” | a list provided by the *Contractor* of all Contractor Personnel who will transfer under the Employment Regulations on the Service Transfer Date; |
| “Contractor’s Provisional Contractor Personnel List” | a list prepared and updated by the *Contractor* of all Contractor Personnel who are at the date of the list wholly or mainly engaged in or assigned to the provision of the *Service* or any relevant part of the *Service* which it is envisaged as at the date of such list will no longer be provided by the *Contractor*; |
| “Transferring Client Employees” | those employees of the *Client* to whom the Employment Regulations will apply on the Relevant Transfer Date; |
| “Transferring Former Contractor Employees” | in relation to a Former Contractor, those employees of the Former Contractor to whom the Employment Regulations will apply on the Relevant Transfer Date; and |
| “Transferring Contractor Employees” | those employees of the *Contractor* and/or the *Contractor*’s Sub-contractors to whom the Employment Regulations will apply on the Service Transfer Date; |
| “Working Day” | any day other than a Saturday, Sunday or public holiday in England and Wales. |

1. Interpretation
   1. Where a provision in this Schedule imposes an obligation on the *Contractor* to provide an indemnity, undertaking or warranty, the *Contractor* shall procure that each of its Sub-contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the *Client*, Former Contractor, Replacement Contractor or Replacement Sub-contractor, as the case may be.
2. Applicable Parts of this Schedule
   1. The following parts of this Schedule shall apply, or not apply, to this Contract as follows:

* + 1. Part A (Staff Transfer At Operational Commencement Date – Outsourcing From the Client) – NOT APPLICABLE
    2. Part B (Staff Transfer At Operational Commencement Date – Transfer From Former Contractor) – APPLICABLE
    3. Part C (No Staff Transfer On Operational Commencement Date) – NOT APPLICABLE
    4. Part D (Pensions), including its Annex– APPLICABLE
    5. Part E (Employment Exit Provisions), including Annex E1 (List Of Notified Sub-Contractors) and Annex E2 (Staffing Information) – APPLICABLE

## Part A: Transferring *Client* Employees at Commencement of *Service*

[DELETED AS NOT APPLICABLE]

## Part B: Transferring Former Contractor Employees at Commencement of *Service*

1. Relevant Transfers
   1. The *Client* and the *Contractor* agree that:
      1. Subject to paragraph 1.2, the commencement of the provision of the *Service* or of any relevant part of the *Service* will be a Relevant Transfer in relation to the Transferring Former Contractor Employees; and
      2. as a result of the operation of the Employment Regulations, the contracts of employment between each Former Contractor and the Transferring Former Contractor Employees (except in relation to any terms disapplied through the operation of regulation 10 of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the *Contractor* and/or Notified Sub-contractor and each such Transferring Former Contractor Employee.
   2. The *Client* and the *Contractor* agree that the provision of mobilisation services by the *Contractor* or a Sub-contractor of the *Contractor* prior to the commencement of the Service Period shall not give rise to a Relevant Transfer.
2. Procurement Obligations
   1. To the extent the *Client* is owed an obligation or indemnity pursuant to the Former Contract, the *Client* shall owe such obligation or give such indemnity to the *Contractor* in the same terms, save that the *Client* shall have a further 14 days from the date on which the *Client* is entitled to performance under the Former Contract in which to deliver performance under this paragraph 2.1 to the *Contractor*.
   2. The *Client* shall not agree to vary nor waive the rights it is owed under the Former Contract, save with the prior written consent of the *Contractor*.
   3. The *Contractor* shall be entitled to enforce the terms of the Former Contract pursuant to the Contracts (Rights of Third Parties) Act 1999 so far as this legislation applies.
3. *Contractor* Indemnities and Obligations
   1. Subject to Paragraph 3.2, the *Contractor* shall indemnify the *Client* and the Former Contractor against any Employee Liabilities arising from or as a result of:
      1. any act or omission by the *Contractor* or any Sub-contractor in respect of any Transferring Former Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Contractor Employee whether occurring before, on or after the Relevant Transfer Date;
      2. the breach or non-observance by the *Contractor* or any Sub-contractor on or after the Relevant Transfer Date of:
         1. any collective agreement applicable to the Transferring Former Contractor Employee; and/or
         2. any custom or practice in respect of any Transferring Former Contractor Employees which the *Contractor* or any Sub-contractor is contractually bound to honour;
      3. any claim by any trade union or other body or person representing any Transferring Former Contractor Employees arising from or connected with any failure by the *Contractor* or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
      4. any proposal by the *Contractor* or a Sub-contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Contractor Employees to their material detriment on or after their transfer to the *Contractor* or a Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Contractor Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
      5. any statement communicated to or action undertaken by the *Contractor* or a Sub-contractor to, or in respect of, any Transferring Former Contractor Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the *Client* and/or the Former Contractor in writing;
      6. any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
         1. in relation to any Transferring Former Contractor Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
         2. in relation to any employee who is not a Transferring Former Contractor Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Contractor to the *Contractor* or a Sub-contractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
      7. a failure of the *Contractor* or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Contractor Employees in respect of the period from (and including) the Relevant Transfer Date; and
      8. any claim made by or in respect of a Transferring Former Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Contractor Employee relating to any act or omission of the *Contractor* or any Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Contractor’s failure to comply with its obligations under regulation 13(4) of the Employment Regulations.
   2. The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Contractor’s failure to comply with its obligations under the Employment Regulations.
   3. The *Contractor* shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Former Contractor Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and any other sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the *Contractor* and the Former Contractor.
4. Information
   1. The *Contractor* shall, and shall procure that each Sub-contractor shall, promptly provide to the *Client* and/or at the Client’s direction, the Former Contractor, in writing such information as is necessary to enable the *Client* and/or the Former Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.
5. Principles of Good Employment Practice
   1. The *Contractor* shall, and shall procure that each Sub-contractor shall, comply with any requirement notified to it by the *Client* relating to pensions in respect of any Transferring Former Contractor Employee as set down in:
      1. the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised December 2013;
      2. Old Fair Deal; and/or
      3. the New Fair Deal.
6. Pensions
   1. The *Contractor* shall, and shall procure that each Sub-contractor shall, comply with:
      1. the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff; and