

SCHEDULE M
HR AND TUPE

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SCHEDULE M**HR AND TUPE****PURPOSE**

The purpose of this Schedule is to address the Authority's requirements in relation to human resources and TUPE. This Schedule covers TUPE issues both at the Staff Transfer Date and at Termination. It also covers procedures and obligations in relation to any Key Contractor Personnel providing Services at the Effective Date, during the Term and on Termination.

For the avoidance of doubt, no employment indemnities will be given by the Authority and the Contractor shall accept all risk and indemnify the Authority as set out in this Schedule in relation to any claims made by individuals in connection with this Contract.

EMPLOYEES**1. TUPE**

1.1 The Parties confirm that, where TUPE applies on the Staff Transfer Date:

1.1.1 the contract of employment of each of the Transferring Employees shall have effect on and after the Staff Transfer Date as if originally made with the Contractor instead of with the Incumbent Supplier; and

1.1.2 the Contractor agrees to comply fully with its legal obligations under TUPE, including its obligations regarding consultation and the giving of information.

1.2 The Contractor agrees that:

1.2.1 there are two (2) Transferring Employees employed in Scotland who may have an entitlement to transfer their employment, pursuant to TUPE, to a Material Subcontractor rather than the Contractor. The Contractor agrees that prior to the Staff Transfer Date, it shall offer employment in writing to each of the two Transferring Employees, such employment to take effect on the Staff Transfer Date;

1.2.2 the offer (or other arrangements) to be made by the Contractor will be such that the terms and conditions (including all benefits and pension arrangements) of the new employment will be the same as, or no less favourable than, those enjoyed by such Transferring Employees immediately before the relevant Staff Transfer Date;

1.2.3 where, before the Staff Transfer Date, either or both Transferring Employees have not accepted in writing the Contractor's offer of employment pursuant to Clauses 1.2.1 and 1.2.2 above and/or where either or both Transferring Employees assert a right to transfer pursuant to TUPE to a Material Subcontractor instead of accepting the Contractor's offer of employment pursuant to Clauses 1.2.1 and 1.2.2 above, the Contractor will procure that the relevant Material Subcontractor will make, as appropriate, an offer of employment in writing to each such Transferring Employee to whom TUPE may apply, such employment to take effect on the Staff Transfer Date and such offer to be in accordance with Clause 2.1 below. The Contractor will procure that the Material Subcontractor will comply fully with its obligations under TUPE, including its obligations regarding consultation and the giving of information. The Contractor will also procure that the relevant Material Subcontractor will comply, in relation to either or both Transferring Employees, with all relevant provisions and obligations set out in this Schedule (including, in particular, Clauses

2.2, 3, 5, 6 and 7 below), such that wherever this Schedule refers to the Contractor, the reference to Contractor shall be substituted to read Material Subcontractor; and

- 1.2.4 the Contractor agrees to indemnify the Authority and/or any Contracting Authority (as applicable) against any Losses howsoever arising out of or relating to any Claim either or both of the Transferring Employees may have arising out of a failure by the Contractor or the Material Subcontractor to comply with this Clause 1.2 and/or TUPE.

2. TERMS OF EMPLOYMENT

- 2.1 For all Transferring Employees, the Contractor agrees that following the Staff Transfer Date, it will provide the same salaries, bonus opportunities and other benefits as will be the same as, or no less favourable than, those enjoyed by the Transferring Employees immediately prior to the Staff Transfer Date and, in any event, are sufficient to avoid any claims for breach of TUPE or dismissal, whether constructive or otherwise.
- 2.2 The Contractor agrees that, following the Staff Transfer Date, it will treat Transferring Employees fairly and equitably in relation to their pension arrangements. The Contractor will be fully responsible for any pensions-related Claims before, on or after the Staff Transfer Date raised by or on behalf of any Transferring Employee or any individual claiming to be a Transferring Employee.

3. CONTRACTOR'S INDEMNITIES

- 3.1 The Contractor will indemnify and keep the Authority and/or any Contracting Authority (as applicable) indemnified against all Losses howsoever arising out of or relating to any Claim:
- 3.1.1 by or on behalf of any individual arising out of a failure by the Contractor to comply with its legal obligations under TUPE, including its obligations regarding consultation and the giving of information;
- 3.1.2 by or on behalf of any individual which arises or is alleged to arise as a result of any act or omission by the Contractor relating to their employment on or after the Staff Transfer Date;
- 3.1.3 by or on behalf of any individual for constructive dismissal arising from the resignation of such individual before the Staff Transfer Date by reason of or related to detrimental changes to his working conditions or terms and conditions of employment and which are proposed or recommended by the Contractor to take effect on or after the Staff Transfer Date; or
- 3.1.4 by or on behalf of any individual who alleges that they should have transferred to the Contractor in accordance with TUPE under the Contract and who the Contractor fails to employ after the Staff Transfer Date on the terms set out at Clause 2.1 above or Clause 1.2 above.

4. KEY CONTRACTOR PERSONNEL POSITIONS

- 4.1 This Clause sets out the terms which govern the use of the Contractor Personnel in connection with the performance of the Services and the discharge of the Contractor's other obligations under the Contract, and sets out provisions relating to the appointment and replacement of individuals filling Key Contractor Positions during the Term.

4.2 Key Contractor Positions

- 4.2.1 From time to time, the Authority may designate new or alternative Key Contractor Positions in accordance with this Schedule but shall not do so, without the Contractor's consent (such consent not to be unreasonably withheld or delayed). Such Authority designations shall not materially increase the proportion of Key Contractor Positions relative to the total number of Contractor Personnel required to supply the Services.
- 4.2.2 The Key Contractor Positions can be changed by agreement between the parties (not to be unreasonably withheld) in accordance with Schedule L (**Change Control Procedure**).

4.3 Key Contractor Personnel Approvals Procedure

- 4.3.1 Before assigning any individual member of the Contractor Personnel or another employee or prospective employee of the Contractor to a Key Contractor Position, whether as an initial assignment or a subsequent assignment, the Contractor and the Authority shall (except in the case of those Key Contractor Personnel who have been agreed with the Authority as occupying the Key Contractor Positions with effect from the Staff Transfer Date and who are listed in who are listed in "Management Methods" in Part A of Schedule Q (**Contractor's Solution**)) comply with the procedure set out in this Clause 4.3:
- 4.3.2 The Contractor shall:
- (a) notify the Authority of the proposed assignment;
 - (b) identify the member of the Contractor Personnel or another employee or prospective employee of Contractor to the appropriate Authority representatives (and, upon request, provide such representatives with the opportunity to meet with the individual); and
 - (c) provide the Authority with a curriculum vitae for the relevant member of the Contractor Personnel or another employee or prospective employee of Contractor and such other information as the Authority may request about their training, experience and skills relevant to the requirements of the Key Contractor Position.
- 4.3.3 The Authority shall approve or object to the assignment of the proposed candidate within five (5) Working Days of receiving notification under Clause 4.3.2(a) above (unless a longer period is agreed between the Parties). The Authority's failure to object to the proposed assignment within such period of time shall be regarded as the approval of the assignment of the proposed candidate by the Authority. If the Authority (acting reasonably and in good faith) objects to the proposed assignment, the Authority and the Contractor shall meet to attempt to resolve the Authority's concerns (acting reasonably and in good faith).
- 4.3.4 If the Authority and the Contractor are unable (acting reasonably and in good faith) to resolve Authority's reasonable concerns within five (5) Working Days of first meeting, the Contractor shall not assign the proposed candidate to the Key Contractor Position and shall instead propose to the Authority the assignment of another candidate with sufficient training, experience and skills suitable to the requirements of that position, and the provisions of this Clause 4.3 shall apply to that other candidate. The Authority shall not unreasonably refuse or delay the appointment of a

reasonably qualified and experienced individual to a Key Contractor Position and where the Authority does so refuse the Authority shall provide its reasons to the Contractor in writing.

- 4.3.5 If a Key Contractor Position remains unfilled for more than two (2) months for any reason (except as a result of an unreasonable delay or inaction on the part of the Authority in circumstances where, in accordance with this Schedule, the Authority is required to perform an act or notify the Contractor of a decision in connection with such Key Contractor Position), the Parties will agree (acting reasonably and in good faith) a just and equitable reduction to the Service Charges in respect of the period during which such Key Contractor Position remains unfilled.
- 4.3.6 Provided the Contractor uses its Commercially Reasonable Efforts permanently (beyond the two (2) month period described in Clause 4.3.5 above) to fill an unfilled Key Contractor Position, the Authority shall not unreasonably refuse the Contractor if it requests to temporarily assign (on a full time basis) a suitably qualified individual to a Key Contractor Position, pending a permanent appointment. If such an individual is temporarily assigned as described in this Clause 4.3.6, the Key Contractor Position shall not be treated as unfilled during such temporary assignment and there shall not be any just and equitable reduction to the Service Charges as described in Clause 4.3.5 above. If such Key Contractor Position is not filled with a permanent appointee within a reasonable period either Party may escalate this matter in accordance with the provisions of Schedule P (**Dispute Resolution Procedure**).

4.4 Retaining Key Contractor Positions

- 4.4.1 The Contractor shall use best endeavours to, ensure, subject to the procedure set out in Clause 4.3 above, that the Key Contractor Positions are filled at all times and that:
- (a) each member of the Contractor Personnel agreed by the Parties to serve in the Key Contractor Positions with effect from TOR shall, during their normal working hours for the Contractor (or Subcontractor), work substantially on supplying the Services for at least twelve (12) months from the TOR, save where such individual is unable to work owing to a maternity, paternity, parental leave entitlement, mental or physical incapacity for a period exceeding fifteen (15) Working Days, or is dismissed for good reason other than redundancy; and
 - (b) Key Contractor Personnel who are appointed to fill Key Contractor Positions after the TOR at any time during the Term shall not be reassigned or replaced for at least twelve (12) months following assignment to those positions, save where:
 - (i) the Contractor proposes replacement by another member of the Contractor Personnel or another employee or prospective employee of the Contractor (which proposal is to be approved by the Authority in accordance with the procedure set out in Clause 4.3 above) such approval shall not be unreasonably withheld;
 - (ii) the position is left vacant by agreement with the Authority;
 - (iii) the position is no longer required by agreement with the Authority; or
 - (iv) the Contractor proposes to replace or dismiss any Key Contractor Personnel after twelve (12) months following TOR, or at any time

thereafter during the Term and the Contractor has first consulted with the Authority in accordance with Clause 4.3 above,

unless a member of the Contractor Personnel filling a Key Contractor Position resigns from his employment, or terminates his contract with the Contractor, or is unavailable to work for a substantial period of time owing to maternity, paternity, parental leave, mental or physical incapacity, or is dismissed for good reason other than redundancy.

4.4.2 The Contractor shall not reassign or replace a member of the Contractor Personnel filling a Key Contractor Position without first complying in full with Clause 4.3 above and by:

- (a) where possible, giving the Authority three (3) months' written notice that it proposes to replace a member of the Contractor Personnel filling a Key Contractor Position except where compliance with such a requirement is not possible because of a reasonable decision taken by the Contractor or because it is out of the Contractor's control (for example, where a member of the Contractor Personnel filling a Key Contractor Position resigns or leaves employment on shorter notice); and
- (b) ensuring that the proposed replacement obtains sufficient training, including where reasonably possible any necessary handover period with the previous incumbent of that Key Contractor Position.

4.5 Use and Compliance of Contractor Personnel

The Contractor shall:

- 4.5.1 use an adequate number of the Contractor Personnel to provide the Services in accordance with its obligations under the Contract, including Schedule F (**Service Level Requirements**);
- 4.5.2 ensure that all of the Contractor Personnel who perform the Services have appropriate experience in the tasks required of them, are properly trained and capable of meeting the requirements of the tasks assigned to them in a professional and timely manner and to the standards required by the Contract, including Schedule F (**Service Levels Requirements**); and
- 4.5.3 ensure that all of the Contractor Personnel comply with:
 - (a) any applicable policies, rules or procedures identified by the Authority to the Contractor from time to time (including those set out in Schedule K (**Security**) and, if applicable, Schedule Q (**Contractor's Solution**)) which shall include any health or safety requirements, building access and security procedures, and policies relating to the conduct of personnel admitted to any premises of the Authority (or any premises or facilities belonging to or controlled by a third party); and
 - (b) the Contractor's confidentiality, security and other obligations under the Contract.

4.6 Turnover of Contractor Personnel

4.6.1 The Authority and the Contractor agree that an excessive Turnover Rate may affect delivery of the Services. At the Authority's reasonable request, the Contractor shall provide the Authority with a report on the Turnover Rate of the Key Contractor Positions and the Contractor Personnel. If the Authority notifies the Contractor that it considers that the Turnover Rate is excessive, the Contractor shall as soon as practicable:

- (a) provide the Authority with sufficient data to establish the actual extent of the Turnover Rate including, in particular, the Turnover Rate among Key Contractor Positions;
- (b) meet with the Authority to discuss the impact of the level of the Turnover Rate; and
- (c) provide to the Authority written details of the measures which the Contractor proposes to instigate for reducing the Turnover Rate.

4.6.2 The Contractor shall keep the Authority informed of all actions taken to reduce the Turnover Rate and details of such actions shall be included in the reports to be provided by the Contractor pursuant to Schedule O (**Documentation**).

4.7 Replacement of the Contractor Personnel at the Authority's Request

4.7.1 If the Authority, acting reasonably, believes that a member of the Contractor Personnel is:

- (a) a threat to the health, safety or security of any of the Authority's or a third party's personnel, data or property;
- (b) materially in breach of any applicable Authority or third party policy or procedure, which was previously notified to the Contractor (including the Polices);
- (c) acting (or has acted) in an inappropriate or unacceptable manner which could seriously jeopardise the Services; or
- (d) acting (or has acted) in an unacceptable manner that may result in a claim against the Authority by a member of Authority's personnel in an Employment Tribunal or Court; or
- (e) acting (or has acted) in an inappropriate or unacceptable manner which could seriously damage the Authority's reputation in the marketplace,

then the Contractor shall be required by the Authority immediately to remove that individual member of the Contractor Personnel from all involvement in the provision of the Services or the discharge of any of the Contractor's other obligations under the Contract, upon receipt of written notice from the Authority setting out the Authority's concerns (with a reasonable amount of detail in support of such concerns) and requiring such immediate removal.

4.7.2 Nothing in this Schedule shall grant to the Authority the right to require the Contractor to terminate the employment or contract of a member of the Contractor's Personnel with the Contractor.

4.8 Regular Reports

During the Term, the Contractor shall provide the Authority with reports in relation to the Key Contractor Positions and other issues described in this Clause 4. For the avoidance of doubt such reports shall be included in the reports to be provided by the Contractor pursuant to Schedule O (**Documentation**).

5. END OF CONTRACT/TERMINATION PROCEDURE

5.1 The Contractor will not (and will ensure that any of its Contractor Affiliates, agents or Subcontractors will not) without the prior written consent of the Authority:

5.1.1 vary, purport or promise to vary the terms or conditions of employment or engagement or service of any Contractor Personnel (including promises to make any additional payment or provide any additional benefit, except in accordance with such normal variations as are made in respect of other employees of the Contractor in equivalent positions pursuant to Contractor's normal business practices);

5.1.2 reduce or vary the involvement of any Contractor Personnel from the provision of the Services;

5.1.3 terminate (or give notice to terminate) the employment or engagement of any of the Contractor Personnel other than lawfully for misconduct or lack of capability;

5.1.4 recruit any employee, contractor, Subcontractor or consultant to provide the Services or assign any additional individuals to the provision of the Services (other than as reasonably required to ensure the Contractor's ability to comply with its obligations under the Contract);

5.1.5 transfer any Contractor Personnel away from the provision of the Services; or

5.1.6 prevent or restrict or hinder any Contractor Personnel from working for the Authority or a Successor Contractor (after transfer of responsibility to the Successor Contractor except to the extent that such Contractor Personnel are reasonably required to fulfil the Contractor's obligations under the Contract),

where such variation, reduction, termination, recruitment or transfer as described in this Clause 5.1 above:

- (a) is instituted at any time after a notice of termination of the Contract in accordance with the terms of the Contract has been issued by either Party; or
- (b) is instituted at any time within six (6) months of the expiry of the Term; or
- (c) is designed first to take effect in whole or in part after the Contract has terminated or expired; or
- (d) is instituted after the Contractor has been notified that a Procurement Process has been commenced.

6. SUPPLY OF CONTRACTOR PERSONNEL INFORMATION

6.1 Following the service of notice of Termination of the Contract, notice of the commencement of a Procurement Process, or on the date six (6) months prior to expiry of the Contract, as applicable, and, in particular, in relation to any proposed termination of the Contract, the

Contractor will, subject to the appropriate confidentiality undertakings being given by the Authority and any potential Successor Contractor, and subject to any applicable legislation governing the use or processing or retention of personal data including the Data Protection Act 1998, within fourteen (14) days of the Authority's request for the same, provide the Authority for itself or any potential Successor Contractor notified to the Contractor, with such information and copies of appropriate records concerning Contractor Personnel as the Authority shall reasonably stipulate ("**Contractor Personnel Information**"). Such Contractor Personnel Information may include (without limitation) the number and breakdown of Contractor Personnel by function, remuneration and benefits packages (including full details of pension scheme membership), ages and dates of commencement of employment, contractual periods of notice and any outstanding or potential liabilities in respect of such Contractor Personnel (including accrued pension rights and full details of pension scheme provisions).

6.2 Where Contractor Personnel Information has been provided, the Contractor will as soon as practicable:

- 6.2.1 inform the Authority of any material change to the same;
- 6.2.2 use its reasonable endeavours to clarify any matter on which clarification is reasonably requested by the Authority; and
- 6.2.3 use its reasonable endeavours to co-operate with any other reasonable requests made by the Authority concerning Contractor Personnel Information,

and will use its reasonable endeavours to do so within fourteen (14) days of any such change, discovery of new information, or receipt of such request and in any event such changes will be notified not later than thirty (30) days of any such change.

6.3 The Authority shall hold all Personal Data, relating to the Contractor Personnel, supplied by the Contractor in accordance with the Data Protection Act 1998 and the Authority shall, where requested by the Contractor giving reasonable written notice, provide reasonable evidence of compliance with this Clause 6.3.

6.4 The Authority shall destroy the relevant Personal Data supplied by the Contractor under Clause 6.3 above when such Personal Data is no longer required for the stated purpose in Clause 6.1 above.

7. CHANGE TO A SUCCESSOR CONTRACTOR AND RE-TRANSFER PROVISIONS

7.1 The Authority and the Contractor acknowledge and accept that where the Authority or a Successor Contractor provides services in replacement of the Services on or after the Termination Date and any Contractor Personnel transfer to the Authority or to the Successor Contractor (the "Re-Transfer Employees"), such transfer (so far as it relates to Contractor Personnel employed in a member state of the European Union) may (depending on the precise facts in the case), constitute a relevant transfer for the purposes of TUPE or other applicable legislation (a "Re-Transfer"). Each Party undertakes in such circumstances to comply fully, and to provide all reasonable assistance to the other Party and any potential Successor Contractor to comply fully, with all its/their respective obligations under TUPE or other applicable legislation including (without limitation) its/their obligations regarding consultation and the giving of information.

7.2 Prior to the Termination Date, the Contract will compile a list of: (a) all Contractor Personnel (such list to be agreed with the Authority) who are engaged wholly or predominantly in providing the Services on the date that notice to terminate this Contract is given by either

Party, or during the six (6) months prior to expiry of the Contract; and (b) any additional Contractor Personnel who, the Parties mutually agree (such agreement not to be unreasonably withheld), deliver a key element of the Services (the “**Core Personnel**”).

- 7.3 Irrespective of whether TUPE applies to any Core Personnel, the Contractor will:
- 7.3.1 co-operate with and not hinder the Authority or any Successor Contractor in offering employment to, or entering into a contract with, any Core Personnel;
 - 7.3.2 as directed by the Authority, give the Authority or any Successor Contractor all reasonable assistance to employ, or contract with, such Core Personnel, including by providing to the Authority or any Successor Contractor, reasonable access to such Core Personnel for interviews and recruitment; and
 - 7.3.3 waive, and ensure that each of its Subcontractors, waives any post-termination or expiry restrictions of any nature applicable to such Core Personnel where the Contractor or such Subcontractor enjoys the benefit of such restriction.
- 7.4 Subject to applicable legislation and existing contracts of employment, the Contractor agrees to comply with the Authority’s reasonable directives and requests to negotiate and agree fair, reasonable and equitable transferring pension arrangements with the Successor Contractor for all Re-Transfer Employees and Core Personnel (including, if applicable, agreeing an onward bulk transfer arrangement with the Successor Contractor to ensure that the pension entitlements of such Re-Transfer Employees and Core Personnel are no less favourable following the Termination Date than they were prior to the Termination Date).
- 7.5 The Contractor agrees that at the Termination Date:
- 7.5.1 data disclosed under Clause 7.2 above will, in so far as it is possible to do so, be, at the date of Re-Transfer, complete and accurate in all respects and will have disclosed all material terms and conditions of employment of the Re-Transfer Employees and/or Core Personnel (save in the latter case where prevented by mandatory local law) who transfer to the Authority or a Successor Contractor in accordance with this Clause 7; and
 - 7.5.2 it will have satisfied or will satisfy within a reasonable period of time after the Termination Date all of its obligations by the date of Re-Transfer with respect to all outgoing and accrued liabilities in respect of the Re-Transfer Employees in accordance with this Clause 7, including wages, contractual bonuses, commission, holiday remuneration, payments of PAYE, tax, social security and national insurance contributions.
- 7.6 No later than twenty-eight (28) days following the Termination Date, where there is a Re-Transfer, the Contractor will provide to the Authority or the Successor Contractor updated payroll information following the final payroll run and relevant tax and statutory details in relation to any Re-Transfer Employees or Core Personnel.
- 7.7 The Contractor agrees that, in the period of six (6) months after the Termination, it will not employ any Re-Transfer Employee from the Authority or a Successor Contractor to which the relevant Re-Transfer Employee’s employment has transferred on or following such Termination without the Authority’s or the Successor Contractor’s prior written consent.

8. INDEMNITIES ON RE-TRANSFER

The Contractor agrees with the Authority to comply with the indemnities set out in Clause 40.2.2 of Schedule B (**Conditions of Contract**).