

Schedule 8: TUPE

1. DEFINITIONS

The definitions in this paragraph 1 apply in this Schedule 8:

Effective Date: the date(s) on which the Services (or any part of the Services) transfer from the Authority [or any Third Party Employer] to the Service Provider [or Sub-Contractor], and a reference to Effective Date shall be deemed to be the date on which the employees in question transferred or will transfer to the Service Provider [or Sub-Contractor].

Employee Liability Information: the information that a transferor is obliged to notify to a transferee under Regulation 11(2) of TUPE:

- (a) the identity and age of the employee; and
- (b) the employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996); and
- (c) information about any disciplinary action taken against the employee and any grievances raised by the employee, where the Employment Act 2002 (Dispute Resolution) Regulations 2004 (SI 2004/752) and/or a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes applied, within the previous two (2) years; and
- (d) information about any court or tribunal case, claim or action either brought by the employee against the transferor within the previous two (2) years or where the transferor has reasonable grounds to believe that such action may be brought against the Service Provider arising out of the employee's employment with the transferor; and
- (e) information about any collective agreement that will have effect after the Effective Date or the Service Transfer Date, as the case may be, in relation to the employee under regulation 5(a) of TUPE.

Employment Liabilities: all claims, including claims for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy or maternity, or sexual orientation discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, contract, statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation 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, and any legal costs and expenses.

Redundancy Costs: statutory redundancy payments, contractual redundancy payments and contractual notice pay payable by the Service Provider to the Redundant Transferring Employees, but excluding any payments or liabilities arising from any claim as to the fairness of the dismissal and/or unlawful discrimination.

Redundant Transferring Employees: Transferring Employees whom the Service Provider has dismissed following a lawful redundancy within twelve (12) months of the Effective Date.

Relevant Employees: those employees whose contracts of employment transfer with effect from the Service Transfer Date to the Authority or a Replacement Service Provider by virtue of the application of TUPE.

Service Provider's Final Staff List: the list of all the Service Provider's [and Sub-Contractor's] personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the Service Transfer Date.

Service Provider's Provisional Staff List: the list prepared and updated by the Service Provider of all the Service Provider's [and Sub-Contractor's] personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of the preparation of the list.

Service Transfer Date: the date on which the Services (or any part of the Services), transfer from the Service Provider [or Sub-Contractor] to the Authority or any Replacement Service Provider.

Staffing Information: in relation to all persons detailed on the Service Provider's Provisional Staff List, in an anonymised format, such information as the Authority may reasonably request including the Employee Liability Information and details of whether the personnel are employees, workers, self-employed, contractors or consultants, agency workers or otherwise, and the amount of time spent on the provision of the Services.

[Third Party Employee: employees of Third Party Employers whose contract of employment transfer with effect from the Effective Date to the Service Provider [or Sub-Contractor] by virtue of the application of TUPE.]

[Third Party Employer: a service provider engaged by the Authority to provide [some of the] Services to the Authority and whose employees will transfer to the Service Provider on the Effective Date.]

Transferring Employees: employees of the Authority whose contracts of employment transfer with effect from the Effective Date to the Service Provider by virtue of the application of TUPE.

2. TRANSFER OF EMPLOYEES TO THE SERVICE PROVIDER

2.1 The Authority and the Service Provider agree that where the identity of the provider of any of the Services changes, this shall constitute a Relevant Transfer and the contracts of employment of any Transferring Employees [and Third Party Employees] shall transfer to the Service Provider [or Sub-Contractor]. The Service Provider shall comply and shall procure that each Sub-Contractor shall comply with their obligations under TUPE.] The Relevant Transfer shall occur on the Effective Date.

2.2 The Authority shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Transferring Employees, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise, up to the Effective Date. The Authority shall provide and, where necessary, update the Employee Liability Information for the Transferring Employees to the Service Provider, as required by TUPE. The Authority shall warrant that such information is complete and accurate as it is aware or should reasonably have been aware as at the date it is disclosed.

2.3 Subject to paragraph 2.4, the Authority shall indemnify [and keep indemnified] the Service Provider against any losses, except indirect losses incurred by the Service Provider [or any relevant Sub-Contractor] in connection with any claim or demand by any Transferring Employee arising out of the employment of any Transferring Employee. This indemnity shall apply provided that it arises from any act, fault or omission of the Authority in relation to any Transferring Employee prior to the Effective Date (except where such act, fault or omission arises as a result of the Service Provider's [or any relevant Sub-Contractor's] failure to comply with regulation 13 of TUPE) and any such claim is not in connection with the transfer of the Services by virtue of TUPE on the Effective Date.

2.4 The Service Provider shall be liable for and indemnify and keep indemnified the Authority [and any Third Party Employer] against Employment Liabilities arising from or as a consequence of:

- (a) any proposed changes to terms and conditions of employment the Service Provider [or Sub-Contractor] may consider taking on or after the Effective Date;
- (b) any of the employees informing the Authority [and any Third Party Employer] they object to being employed by the Service Provider [or Sub-Contractor]; and
- (c) any change in identity of the Transferring Employees' [and Third Party Employees'] employer as a result of the operation of TUPE or as a result of any proposed measures the Service Provider [or Sub-Contractor] may consider taking on or after the Commencement Date.

2.5 The Service Provider shall be liable for and indemnify and keep indemnified the Authority [and any Third Party Employer] against any failure to meet all remuneration, benefits, entitlements and outgoings for the Transferring Employees[, the Third Party Employees,] and any other person who is or will be

employed or engaged by the Service Provider [or any Sub-Contractor] in connection with the provision of the Services, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise from and including the Effective Date.

2.6 The Service Provider shall immediately on request by the Authority [and/or the Third Party Employer] provide details of any measures that the Service Provider [or any Sub-Contractor] of the Service Provider envisages it will take in relation to any Transferring Employees [and the employees of any Third Party Employer] including any proposed changes to terms and conditions of employment. If there are no measures, the Service Provider shall give confirmation of that fact, and shall indemnify the Authority [and any Third Party Employer] against all Employment Liabilities resulting from any failure by it to comply with this obligation.

3.1 EMPLOYMENT EXIT PROVISIONS

3.1 This Contract envisages that subsequent to its commencement, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination of this agreement, or part or otherwise) resulting in a transfer of the Services in whole or in part (**Subsequent Transfer**). If a Subsequent Transfer is a Relevant Transfer then the Authority or Replacement Service Provider will inherit liabilities in respect of the Relevant Employees with effect from the relevant Service Transfer Date.

3.2 The Service Provider shall [and shall procure that any Sub-Contractor shall] on receiving notice of termination of this Contract or otherwise on request from the Authority and at such times as required by TUPE, provide in respect of any person engaged or employed by the Service Provider [or any Sub-Contractor] in the provision of the Services, the Service Provider's Provisional Staff List and the Staffing Information together with any additional information required by the Authority, including information as to the application of TUPE to the employees. The Service Provider shall notify the Authority of any material changes to this information as and when they occur.

3.3 At least fourteen (14) Working Days prior to the Service Transfer Date, the Service Provider shall [and shall procure that any Sub-Contractor shall] prepare and provide to the Authority and/or, at the direction of the Authority, to the Replacement Service Provider, the Service Provider's Final Staff List, which shall be complete and accurate in all material respects. The Service Provider's Final Staff List

shall identify which of the Service Provider's [and Sub-Contractor's] personnel named are Relevant Employees.

3.4 The Authority shall be permitted to use and disclose the Service Provider's Provisional Staff List, the Service Provider's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Service Provider for any services that are substantially the same type of services as (or any part of) the Services.

3.5 The Service Provider warrants that the Service Provider's Provisional Staff List, the Service Provider's Final Staff List and the Staffing Information (**TUPE Information**) will be true and accurate in all material respects and that no persons are employed or engaged in the provision of the Services other than those included on the Service Provider's Final Staff List.

3.6 The Service Provider shall [and shall procure that any Sub-Contractor shall] ensure at all times that it has the right to provide the TUPE Information under Data Protection Legislation.

3.7 Any change to the TUPE Information which would increase the total employment costs of the staff in the [six (6)] months prior to termination of this Contract shall not (so far as reasonably practicable) take place without the Authority's prior written consent, unless such changes are required by law. The Service Provider shall [and shall procure that any Sub-Contractor shall] supply to the Authority full particulars of such proposed changes and the Authority shall be afforded reasonable time to consider them.

3.8 The Service Provider shall indemnify and keep indemnified in full the Authority and at the Authority's request each and every Replacement Service Provider against all Employment Liabilities relating to:

(a) any person who is or has been employed or engaged by the Service Provider [or any Sub-Contractor] in connection with the provision of any of the Services; or

(b) any trade union or staff association or employee representative (where such claim arises as a result of any act, fault or omission of the Service Provider [and/or any Sub-Contractor]),

arising from or connected with any failure by the Service Provider [and/or any Sub-Contractor] to comply with any legal obligation, whether under regulation 13 or 14 of TUPE or any award of

compensation under regulation 15 of TUPE, under the Acquired Rights Directive or otherwise and, whether any such claim arises or has its origin before or after the Service Transfer Date.

3.9 The parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer as a consequence of a Subsequent Transfer will be fulfilled.

3.10 The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to paragraphs 3.1 to 3.8 to the extent necessary to ensure that any Replacement Service Provider shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Service Provider by the Service Provider or the Authority in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

3.11 Despite paragraph 3.10, it is expressly agreed that the parties may by agreement rescind or vary any terms of this agreement without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.

[Transferring and third party employees]

Transferring Employees	Third Party Employees