

mutually agreed date, including the purging of all disk-based information and the reformatting of all disks.

35.4.2 the Authority shall (subject to Clauses 25, 35.1 and 35.5 and the provisions of any security for due performance supplied by the Service Provider) pay the Service Provider any Charges remaining due in relation to any Services properly performed in accordance with the Contract up to the date of termination or expiry calculated so far as is possible in accordance with Schedule 7 (Pricing Schedule) or otherwise reasonably determined by the Authority.

35.5 On termination of all or any part of the Contract, the Authority may enter into any agreement with any Third Party or parties as the Authority thinks fit to provide any or all of the Services and (save where terminated by the Authority under Clauses 34.3, 34.7, 34.8) the Service Provider shall be liable for all additional expenditure reasonably incurred by the Authority in having such services carried out and all other costs and damages reasonably incurred by the Authority in consequence of such termination. The Authority may deduct such costs from the Charges or otherwise recover such costs from the Service Provider as a debt.

## **36 HANDBACK OF SERVICES.**

36.1 The Service Provider will comply with the Service Provider's obligations under Schedule 11 (Handback of Services) in order to ensure, amongst other things, Service continuity and minimisation of disruption to customers at the end of the Contract and during the Handback Period.

### **36.2 Cooperation in Relation to Handback of Services**

Without limiting the Service Provider's TUPE obligations and Clauses 24 (Records, Audit and Inspection) and 37 (Transfer of Employees on Expiry or Termination), the Service Provider shall pro-actively co-operate and work with the Authority Group and/or any Successor Operator(s):

36.2.1 from the earliest of:

36.2.1.1 12 months prior to the expiry of the Initial Term; or

36.2.1.2 the date on which any notice to terminate this Contract is issued by the Authority or the Service Provider,

until the Expiry Date ;

36.2.2 by providing such services, advice, assistance, support, information, documentation, data, access and taking such steps as are reasonably requested by the Authority including;

36.2.2.1 as described in the Handback Plan;

36.2.2.2 in respect of the provision of the Services (or services which are substantially similar to the Services);

36.2.2.3 in respect of the Service Levels;

36.2.2.4 in relation to any Intellectual Property Rights within the scope of Clause 29 and subject always to Clause 31;

36.2.2.5 to enable the Authority (and/or another member of the Authority Group and/or any Successor Operator(s)) to understand how to replace Proprietary Tools and how to transfer Data from Proprietary Tools to replacement tools and;

36.2.2.6 in respect of the Authority otherwise drafting any notice, invitation, request or other tender or negotiation process and/or providing any due diligence or other information for recipients of such a notice, invitation, request or other process,

whether or not the Service Provider or a member of the Service Provider Group is a recipient of or invited by the Authority Group to be involved in such process; and

36.2.3 in order to:

36.2.3.1 facilitate (i) the invitation of bids from, (ii) the selection of, and (iii) the appointment of, any Successor Operator(s)

36.2.3.2 prepare for an orderly and smooth transfer to any member of the Authority Group and/or any Successor Operator(s) of the provision of the Services (or services substantially similar to the Services) or any relevant part thereof;

36.2.3.3 minimise disruption, inconvenience or any risk to the Services (or services substantially similar to the Services) and any interfacing systems and Services.,

### 36.3 Handback Plan and Service End Dates

36.3.1 The Authority anticipates that the transfer of the Services to a Successor Operator may take place on the basis of a transition on a single “End Date” (which in those circumstances would also be the Expiry Date) or alternatively, on a phased step down of Services with completion of each phase or service being an “End Date” (and the last of such dates being the Expiry Date).

36.3.2 The Authority may, in its absolute discretion and by giving written notice in the form of a Variation to the Service Provider:

36.3.2.1 specify an End Date in relation to the termination of any particular Service having regard for the proper management and transitioning of the relevant Service and any phasing of various individual End Dates; and/or

36.3.2.2 revise or delay the relevant End Date for any reason including where the Authority Group and/or any Successor Operator is not ready to take over responsibility for the Service (or any replacing service) or any part thereof,

provided that the Authority shall not specify or require as an End Date any date which is a) prior to the effective date of any notice to terminate this Contract or any part thereof taking effect in relation to any termination of that Service pursuant to Clause 34 or b) otherwise (where no such notice to terminate has been given) prior to the end of the Initial Term (or, where extended in accordance with Clause 2.2, the end of the relevant Extension Year). The Service Provider shall continue to provide the relevant Service and any other required activities pursuant to this Contract until the relevant End Date.

## 36.4 Handback Procedure

36.4.1 The Authority shall provide to the Service Provider as much information as is reasonably practicable regarding the Authority's proposed arrangements for the performance of the Services (or services similar to the Services) by the Successor Operator(s) and/or any member of the Authority Group (as the case may be) (the "**Successor Plan**"). If there are changes to the Successor Plan, the Authority shall update such information and shall provide such updated information to the Service Provider.

36.4.2 The Service Provider shall prepare and provide the following in accordance with Schedule 11 (Handback of Services):

36.4.2.1 the Handback Plan and any updates thereto.

36.4.2.2 NOT USED

36.4.2.3 NOT USED.

36.5 No additional charges will be payable to the Service Provider for the services provided pursuant to this Clause 36. However:-

36.5.1.1 if the Service Provider is required to produce more than 2 iterations of each of the Handback Plan (other than as result of any failure by the Service Provider to comply with its obligations and not counting revisions to those documents to take into account the reasonable comments of the Authority in accordance with the provisions of Schedule 11 (Handback of Services); and

36.5.1.2 carrying out the Handback Plan

the requirements shall be chargeable activity which is not included in the Charges and shall be determined pursuant to the Variation procedure.

## 37 TRANSFER OF EMPLOYEES ON EXPIRY OR TERMINATION.

37.1 The Service Provider will promptly provide (and procure that its Sub-Contractors provide) when requested by the Authority from time to time but no more than twice in any twelve month period and in any event not more than 10 Business Days after the date of any notice to terminate this Contract given by either Party, the following information to the Authority:

37.1.1 an anonymised list of current Service Provider Personnel and employees and workers of its Sub-Contractors engaged in the provision of the Services (each identified as such in the list) (the "**Staff List**");

37.1.2 such of the information specified in Appendix 1 to this Clause 37 as is requested by the Authority in respect of each individual included on the Staff List;

37.1.3 a list of all persons who are engaged or have been engaged during the preceding six months in the provision of the Services, whom the Service Provider considers will not transfer under TUPE for any reason whatsoever together with details of their role and a full explanation of why the Service Provider thinks such persons will not transfer,

such information together being the "**Staffing Information**".

- 37.2 The Service Provider will notify the Authority as soon as practicable and in any event within 5 days of the Service Provider becoming aware of any additional or new Staffing Information and/or any changes to any Staffing Information already provided.
- 37.3 The Service Provider warrants to the Authority that any Staffing Information which it supplies (including any copies of it) is complete and accurate in all respects and will be kept complete and accurate.
- 37.4 Subject to Clause 37.5, the Service Provider will provide the Authority with a final Staff List (the “**Final Staff List**”) and Staffing Information relating to persons on that list not less than 28 days before the Further Transfer Date.
- 37.5 If the Contract is terminated by the Authority in accordance with Clause 34.1, 34.7, 34.8, or 34.9 then the Final Staff List will be provided by the Service Provider to the Authority as soon as practicable and no later than 14 days after a) the date of the notice or b) the date of termination of the Contract (whichever is the earlier).
- 37.6 The Service Provider warrants that as at the Further Transfer Date:
- 37.6.1 the Final Staff List and the Staffing Information relating to persons on that list will be complete and accurate;
- 37.6.2 the Final Staff List will identify all actual and potential Re-Transferring Personnel; and
- 37.6.3 it will have disclosed all terms and conditions of employment or engagement and other Staffing Information relating to the Re-Transferring Personnel to the Authority.
- 37.7 During the Relevant Period the Service Provider will not and will procure that its sub-contractors do not without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed):
- 37.7.1 terminate or give notice to terminate the employment or engagement or replace the persons listed on the most recent Staff List or any Re-Transferring Personnel (save for any termination for gross misconduct, provided that the Authority is informed promptly of such termination);
- 37.7.2 deploy or assign any other person to perform the Services who is not included on the most recent Staff List;
- 37.7.3 make, propose or permit any changes to the terms and conditions of employment or engagement of any persons listed on the most recent Staff List or any Re-Transferring Personnel;
- 37.7.4 increase to any significant degree the proportion of working time spent on the Services by any of the Service Provider Personnel; or
- 37.7.5 introduce any new contractual or customary practice (including for the avoidance of doubt any payments on termination of employment) applicable to any person listed on the most recent Staff List or any Re-Transferring Personnel.
- 37.8 The Service Provider will promptly notify the Authority of any notice of resignation received from any person listed on the most recent Staff List or the

Final Staff List (if any) during the period referred to in Clause 37.7 regardless of when such notice takes effect.

37.9 The Service Provider agrees that the Authority will be permitted to disclose any information provided to it under this Clause 37 in anonymised form for the provision of the Services (or similar services) and to any Third Party engaged by the Authority to review the delivery of the Services and to any Successor Operator.

37.10 If TUPE applies on the expiry or termination of the Contract or the appointment of a Successor Operator, the following will apply:

37.10.1 The contracts of employment of each member of the Re-Transferring Personnel will have effect from the Further Transfer Date as if originally made between the Re-Transferring Personnel and the Authority or Successor Operator (as appropriate) (except in relation to occupational pension scheme benefits excluded under Regulation 10 of TUPE which will be treated in accordance with the provisions of the Pensions Act 2004 and the Transfer of Employment (Pensions Protection) Regulations 2005).

37.10.2 During the Relevant Period the Service Provider will:

37.10.2.1 provide the Authority or Successor Operator (as appropriate) with access to such employment and payroll records as the Authority or Successor Operator (as appropriate) may require to put in place the administrative arrangements for the transfer of the contracts of employment of the Re-Transferring Personnel to the Authority or Successor Operator (as appropriate);

37.10.2.2 allow the Authority or Successor Operator (as appropriate) to have copies of any of those employment and payroll records;

37.10.2.3 provide all original employment records relating to the Re-Transferring Personnel to the Authority or Successor Operator (as appropriate); and

37.10.2.4 co-operate with the Authority and any Successor Operator in the orderly management of the transfer of employment of the Re-Transferring Personnel.

If the Re-Transferring Personnel are employed or engaged by Sub-Contractors, the Service Provider will procure such Sub-Contractors provide the Authority or Successor Operator (as appropriate) with the same level of access, information and cooperation.

37.10.3 The Service Provider warrants to each of the Authority and the Successor Operator that as at the Further Transfer Date no Re-Transferring Personnel (except where the Service Provider has notified the Authority and the Successor Operator (if appointed) in writing to the contrary) to the Service Provider's knowledge:

37.10.3.1 is under notice of termination;

37.10.3.2 is on long-term sick leave;

37.10.3.3 is on maternity, parental or adoption leave;

37.10.3.4 has committed any serious security breach or engaged in any serious fraudulent activity or misconduct amounting to a breach of any regulations;