

Authority or Successor Operator has inherited any liability from the Service Provider (or its Sub-Contractors) in respect of them by virtue of TUPE.

37.11 If TUPE does not apply on the expiry or termination of the Contract, the Service Provider will remain responsible for the Service Provider Personnel and will indemnify and keep indemnified the Authority against all Employment Liabilities which the Authority incurs or suffers arising directly or indirectly out of or in connection with the employment or termination of employment of any of the Service Provider Personnel or former Service Provider Personnel.

37.12 The Service Provider will procure that whenever the Authority so requires on reasonable notice at any time during the continuance in force of this Contract and for 2 years following the date of expiry or earlier termination of the Contract the Authority will be given reasonable access to and be allowed to consult with any person, consultant or employee who, at that time:

37.12.1 is still an employee or Sub-Contractor of the Service Provider or any of the Service Provider's associated companies; and

37.12.2 was at any time employed or engaged by the Service Provider in order to provide the Services to the Authority under this Contract,

and such access and consultation will be provided on the first occasion free of charge and thereafter be charged at reasonable rates for the time spent by the Service Provider and/or its employees or Sub-Contractors on such consultation. The Service Provider will use all reasonable endeavours to procure that such persons co-operate with the Authority's requests.

37.13 Clause 40.1 shall be amended so that benefits conferred on the Successor Operator under this Clause 37 shall be enforceable by them.

Appendix 1 to Clause 37

Information to be provided in respect of those on the Staff List

- Amount of time spent on the Services (or any part of the Services specified by the Authority)
- Date of birth
- Role title/designation and role profile
- Annual salary £
- Bonus and commission amount and frequency
- Pay frequency and date
- Overtime - contractual or non-contractual and rates
- Contractual working hours
- Contract type - permanent/temporary
- Geographical area of work / location
- Commencement of employment date
- Continuous service date
- Car allowance
- Pension contributions
 - Employer
 - Employee
 - Including additional info on:
 - who were originally employees of the Authority,
 - who were members of (or eligible to become members of) the TfL Pension Fund / The Local Government Pension Scheme for England and Wales/The Principal Civil Service Pension Scheme,
 - whose employment transferred from the Authority to the Service Provider under TUPE; and
 - who were entitled to broadly comparable benefits under the Existing Service Provider's Scheme
- Details of any contracting out certificate
- Details of the relevant employee representative body or bodies and relevant collective agreements
- Date of annual pay award
- Annual leave entitlement
- Contractual notice period
- Public holiday /concessionary days entitlement
- Sickness entitlement (in 12 month rolling period)
- Salary/wage increases pending
- Eligibility for enhanced redundancy pay and any other contractual or non-contractual termination of severance arrangements (including methods of calculation)
- Details of any other benefits provided, whether contractual or non-contractual
- Copy of employment contract or applicable standard terms and employee handbook
- Any loans or educational grants
- For those employees who are foreign nationals the country of citizenship, immigrant status and all documentation required by law to demonstrate a right to work in the United Kingdom

- Information on any disciplinary or grievance procedure taken against or by an employee in the two years immediately preceding the information being provided
- Information about any tribunal claims in the immediately preceding two years or whether there are reasonable grounds to believe a claim may be brought
- Department and place on organisation chart
- Average absence due to sickness
- Training and competency records

38 DECLARATION OF INEFFECTIVENESS AND PUBLIC PROCUREMENT TERMINATION EVENT

- 38.1 In the event that a court makes a Declaration of Ineffectiveness, the Authority shall promptly notify the Service Provider. The Parties agree that the provisions of Clause 35 and Clauses 38.1, 38.2, 38.4 to 38.6 and clause 38.12 shall apply as from the time when the Declaration of Ineffectiveness is made.
- 38.2 The Declaration of Ineffectiveness shall not prejudice or affect any right, liability or remedy which has accrued or shall accrue to either Party prior to or after such Declaration of Ineffectiveness in respect of the period prior to the Declaration of Ineffectiveness.
- 38.3 During any court proceedings seeking a Declaration of Ineffectiveness, the Authority may require the Service Provider to prepare a Cessation Plan in accordance with this clause 38.3 by issuing a notice in writing. As from the date of receipt by the Service Provider of such notification from the Authority , the Parties (acting reasonably and in good faith) shall agree or, in the absence of such agreement, the Authority shall reasonably determine an appropriate Cessation Plan with the object of achieving:
- 38.3.1 an orderly and efficient cessation of the Services or (at the Authority's request) a transition of the Services to the Authority or such other entity as the Authority may specify; and
- 38.3.2 minimal disruption or inconvenience to the Authority or to public passenger transport services or facilities,
- in accordance with the provisions of Clauses 38.2 to 38.6 and which the parties agree would have effect in the event that a Declaration of Ineffectiveness is made.
- 38.4 Where there is any conflict or discrepancy between the provisions of clauses 35 and clauses 38.2 to 38.6 or the Cessation Plan, the provisions of these clauses 38.2 to 38.6 and the Cessation Plan will prevail.
- 38.5 The parties shall comply with their respective obligations under the Cessation Plan (as agreed by the parties or, where agreement cannot be reached, as reasonably determined by the Authority) in the event that a Declaration of Ineffectiveness is made.
- 38.6 The Authority shall pay the Services Provider's reasonable costs in assisting the Authority in preparing, agreeing and complying with the Cessation Plan. Such costs shall be based on any comparable costs or Charges agreed as part of this Call off Contract or as otherwise reasonably determined by the Authority. Provided that the Authority shall not be liable to the Service Provider for any

loss of profit, revenue, goodwill or loss of opportunity (whether direct, indirect or consequential loss) as a result of the early termination of this Contract pursuant to any Declaration of Ineffectiveness.

- 38.7 Consistent with the Authority's rights of termination implied into this Contract by the Procurement Regulations, in the event of a Public Procurement Termination Event, the Authority shall promptly notify the Service Provider that the provisions of Clause[s] 35 to 37 (inclusive) and these Clauses 38.7 to 38.12 (inclusive) shall apply as from the date of receipt by the Service Provider of the notification of the Public Procurement Termination Event. If there is any conflict or discrepancy between the provisions of Clause[s] 35 to 37 (inclusive) and these Clauses 38.7 to 38.12 (inclusive) or the Cessation Plan, the provisions of these Clauses 38.7 to 38.12 (inclusive) and the Cessation Plan shall prevail.
- 38.8 The Public Procurement Termination Event shall not prejudice or affect any right, liability or remedy which has accrued or shall accrue to either Party prior to or after such Public Procurement Termination Event in respect of the period prior to the Public Procurement Termination Event.
- 38.9 As from the date of receipt by the Service Provider of the notification of the Public Procurement Termination Event, the Parties (acting reasonably and in good faith) shall agree or, in the absence of such agreement, the Authority shall reasonably determine an appropriate Cessation Plan with the object of achieving:
- 38.9.1 an orderly and efficient cessation or (at the Authority's election) a transition to the Authority or such other entity as the Authority may specify of: (i) the Services; or (at Authority's election), (ii) the part of the Services which are affected by the Public Procurement Termination Event; and
- 38.9.2 minimal disruption or inconvenience to the Authority or to public passenger transport services or facilities
- in accordance with the provisions of these Clauses 38.7 to 38.12 (inclusive) and to give effect to the terms of the Public Procurement Termination Event.
- 38.10 Upon agreement, or determination by the Authority, of the Cessation Plan the Parties will comply with their respective obligations under the Cessation Plan.
- 38.11 The Authority shall pay the Service Provider's reasonable costs in assisting the Authority in preparing, agreeing and complying with the Cessation Plan. Such costs shall be based on any comparable costs or Charges agreed as part of this Contract or as otherwise reasonably determined by the Authority, provided that the Authority shall not be liable to the Service Provider for any loss of profit, revenue, goodwill or loss of opportunity (whether direct, indirect or consequential loss) as a result of the early termination of this Contract as a result of a Public Procurement Termination Event.
- 38.12 For the avoidance of doubt, the provisions of this clause 38 (and applicable definitions) shall survive any termination of the Contract following a Declaration of Ineffectiveness or a Public Procurement Termination Event.

39 SURVIVAL

39.1 The provisions of Clauses 1, 4.1.3, 10, 11, 12.1.4, 17.2.2, 17.2.3, 19.1.1, 19.1.2, 19.1.5, 19.1.6, 19.2, 22, 24-28 (inclusive), 29.2, 29.3, 30-41 (inclusive), 43-49 (inclusive), 50, and any other Clauses or Schedules that are necessary to give effect to those Clauses shall survive termination or expiry of the Contract. In addition, any other provision of the Contract which by its nature or implication is required to survive the termination or expiry of the Contract shall do so.

40 RIGHTS OF THIRD PARTIES

40.1 Save that any member of the Authority Group has the right to enforce the terms of the Contract in accordance with the Contracts (Rights of Third Parties) Act 1999 (“**Third Party Act**”), the Parties do not intend that any of the terms of the Contract will be enforceable by virtue of the Third Party Act by any person not a party to it except an Existing Service Provider and its sub-contractors to the extent provided in Clause 14.10.

40.2 Notwithstanding Clause 40.1, the Parties are entitled to vary or rescind the Contract without the consent of any other person including any member of the Authority Group.

41 CONTRACT VARIATION

41.1 Save where the Authority may require an amendment to the Services (in which case the Variation procedure set out in Schedule 9 (Form of Variation) shall apply), the Contract may only be varied or amended with the written agreement of both Parties. The details of any Variations or amendments shall be set out in such form as the Authority may dictate and which may be substantially in the form set out in Schedule 9 (Form of Variation) and shall not be binding upon the Parties unless completed in accordance with such form of variation.

42 NOVATION

42.1 The Authority may novate or otherwise transfer the Contract (in whole or in part).

42.2 Within 10 Business Days of a written request from the Authority, the Service Provider shall at its expense execute such agreement as the Authority may reasonably require to give effect to any such transfer of all or part of its rights and obligations under the Contract to one or more persons nominated by the Authority.

42.3 Subject to Clause 17, the Contract is personal to the Service Provider who shall not assign the benefit or delegate the burden of the Contract or otherwise transfer any right or obligation under the Contract without the prior written consent of the Authority.

43 NON-WAIVER OF RIGHTS