

Employment (Pension Protection) Regulations 2005 and TUPE with effect from the Applicable Transfer Date.

- 14.5 The Parties agree that all Employment Costs in respect of the Transferring Staff will be allocated as follows:
- 14.5.1 the Existing Service Provider(s) will be responsible for any Employment Costs relating to the period up to the Applicable Transfer Date for the relevant Transferring Staff; and
- 14.5.2 the Service Provider will be responsible for any Employment Costs relation to the period on and after the Applicable Transfer Date,
and Employment Costs will if necessary be apportioned on a time basis between the Existing Service Provider(s) and the Service Provider.
- 14.6 The Authority warrants to the Service Provider that none of the Authority's employees will transfer to the Service Provider under TUPE as a result of the Transfer of Service.
- 14.7 Subject to Clause 14.18, the Service Provider will indemnify and keep indemnified the Authority and the Existing Service Provider(s) (and its sub-contractors) from and against all Employment Liabilities which the Authority or the Existing Service Provider(s) (or its sub-contractors) incur or suffer arising out of or in connection with:
- 14.7.1 any act or omission by or on behalf of the Service Provider (or its sub-contractors) in respect of any person employed or engaged by it (or its sub-contractors) (including the Transferring Staff) on or after the Applicable Transfer Date;
- 14.7.2 any failure by the Service Provider (or its sub-contractors) to comply with Regulation 13 of TUPE;
- 14.7.3 any claim brought or other action taken by or on behalf of any of the Transferring Staff which arises from or in connection with (directly or indirectly) any act or omission or communication made to the Transferring Staff by the Service Provider (or its sub-contractors) before the Applicable Transfer Date;
- 14.7.4 the employment or termination of employment by the Service Provider (or its sub-contractors) of any Transferring Staff on or after the Applicable Transfer Date;
- 14.7.5 any actual or proposed changes by the Service Provider (or its sub-contractors) to the terms and conditions of employment or working conditions of any of the Transferring Staff which are or are alleged to be to the detriment of any of the Transferring Staff.
- 14.8 The Service Provider will provide the Existing Service Provider(s) (or its sub-contractors), as soon as practicable, but in any event in good time before the Applicable Transfer Date, with all information which the Existing Service Provider (or its sub-contractors) may reasonably require to enable it to comply with its information and consultation obligations under TUPE and, if requested, will confirm to the Authority when it has done so and provide a copy to the Authority.

- 14.9 The Service Provider warrants and undertakes to the Authority that all information given to the Existing Service Provider(s) (or its sub-contractors) regarding the Transferring Staff and any measures it proposes to take in relation to them is and will be full and accurate in all respects.
- 14.10 Clause 40.1 shall be amended so that benefits conferred on the Existing Service Provider or its sub-contractors under this Clause 14 shall be enforceable by them.
- 14.11 Nothing in this Contract will render the Service Provider Personnel, an employee, agent or partner of the Authority or Authority Group by virtue of the provision of the Services by the Service Provider under the Contract, and the Service Provider shall be responsible for making appropriate deductions for tax and national insurance contributions from the remuneration paid to the Service Provider Personnel.
- 14.12 The Service Provider shall provide the Service Provider Personnel as necessary for the proper and timely performance and management of the Services in accordance with the Contract. All personnel deployed on work relating to the Contract shall have the appropriate qualifications and competence, be properly managed and supervised and in these and any other respects be acceptable to the Authority.
- 14.13 Without prejudice to any of the Authority's other rights, powers or remedies, the Authority may (without liability to the Service Provider) deny access to any Service Provider Personnel to any Authority Premises and/or require that any Service Provider's Personnel be immediately removed from performing the Services if such Service Provider Personnel in the Authority's view have not been properly trained in any way required by this Contract, are otherwise incompetent, negligent, guilty of misconduct or could be a danger to any person. The Authority shall notify the Service Provider of such denial and/or requirement in writing and the Service Provider shall comply with such notice and provide a suitable replacement (with the Contract Manager's prior consent in the case of Key Personnel).
- 14.14 The Service Provider shall give the Authority, if so requested, full particulars of all persons who are or may be at any time employed on the Contract and shall take all reasonable steps to avoid changes to any of its staff designated in the Contract as Key Personnel. The Service Provider shall give the Authority reasonable notice of any proposals to change Key Personnel and Clause 14.12 shall apply to the proposed replacement personnel.
- 14.15 NOT USED
- 14.16 The Service Provider shall pay to the Service Provider Personnel not less than the amounts declared to the Authority (if any) as part of the tender process for the Contract and not less than the amounts to which the Service Provider Personnel are contractually entitled.
- 14.17 The Service Provider shall provide or procure the provision of appropriate training for Authority Personnel and Service Provider's Personnel in respect of all aspects of its performance of the Contract in accordance with Schedule 0 (Training).

14.18 Upon receipt of notification in writing by the Service Provider, given within 90 days of the Applicable Transfer Date, of the exact costs reasonably incurred by the Service Provider, the Authority will indemnify the Service Provider for the Actual Statutory Redundancy Costs and Actual Statutory Notice Period Costs for any of the Transferring Staff whose employment is terminated solely and fairly on grounds of redundancy (within the meaning of section 139 of the Employment Rights Act 1996) as a direct result of the Transfer of Service and after the Service Provider has used reasonable endeavours to redeploy the Transferring Staff. Where the Transferring Staff so terminated include the Specific Staff, the Authority will further indemnify the Service Provider for the Contractual Redundancy Costs.

14.19 The indemnity provided under Clause 14.18 above excludes any payments made pursuant to a settlement agreement and any payments ordered to be paid by a court or tribunal of competent jurisdiction in respect of any breach of the Transferring Staff's rights, including any payments or awards made in respect of unfair dismissal, unlawful discrimination and/or failure to inform and consult.

15 KEY PERSONNEL

15.1 The Service Provider shall provide the Key Personnel and shall procure that Key Personnel shall:

15.1.1 diligently supervise the performance of the Services;

15.1.2 attend all relevant Contract meetings with the Authority (including the Service Review Meetings) the location of which shall be at the Authority's offices, except as otherwise agreed by the Authority from time to time; and

15.1.3 be available to the Authority to resolve any issues arising in connection with this Contract.

15.2 The Service Provider may only make any changes to Key Personnel with the prior written consent of the Authority (which shall not be unreasonably withheld, delayed or conditioned). Clause 14.12 shall apply to the proposed replacement Key Personnel.

16 CORRECTIVE ACTION NOTICES

16.1 Where the Service Provider fails to comply with any part of this Contract the Authority Contract Manager may issue to the Service Provider a Corrective Action Notice and the provisions of Schedule 14 (Assurance) shall apply.

16.2 The Parties acknowledge and agree that:

16.2.1 a Corrective Action Notice does not constitute a notice given by the Authority pursuant to Clause 34.1 (Authority's right to termination) but that a Corrective Action Notice shall not restrict or prevent the Authority from terminating this Contract in accordance with that Clause; and

16.2.2 a Corrective Action Notice shall not restrict or prevent the Authority from issuing a subsequent or other Corrective Action Notice (whether by reference to a default or remedial action specified or referred to in any other Corrective Action Notice).

17 SUB-CONTRACTING AND CHANGE OF OWNERSHIP

- 17.1 The Service Provider shall not assign or sub-contract all or any part of the Services without the prior written consent of the Authority which may be refused or granted consent subject to such conditions as the Authority sees fit.
- 17.2 Where the Service Provider sub-contracts all or any part of the Services to any person, the Service Provider shall:
- 17.2.1 ensure that such person is obliged to comply with all of the obligations and duties of the Service Provider under the Contract insofar as they relate to the Services or part of them (as the case may be) which that sub-contractor is required to provide;
 - 17.2.2 be responsible for payments to that person;
 - 17.2.3 remain solely responsible and liable to the Authority for any breach of the Contract or any performance, non-performance, part-performance or delay in performance of any of the Services by any sub-contractor to the same extent as if such breach, performance, non-performance, part-performance or delay in performance had been carried out by the Service Provider;
 - 17.2.4 on or before the Contract Commencement Date or the Service Commencement Date (whichever is the earlier), notify the Authority in writing of the name, contact details of the legal representatives of any such sub-contractor (of any tier), to the extent that such information has not already been provided by the Service Provider to the Authority under the Contract;
 - 17.2.5 promptly notify the Authority in writing of any change to the information notified under Clause 17.2.4 and provide in writing the name, contact details and details of the legal representatives of each such sub-contractor (of any tier) who is engaged after the Contract Commencement Date or the Service Commencement Date (whichever is the earlier); and
 - 17.2.6 without prejudice to the provisions of Clause 20, ensure compliance with the Bribery Act 2010 and any guidance issued by the Secretary of State under it when appointing any such sub-contractor.
- 17.3 Except in the case of a consolidation, amalgamation, merger or solvent reconstruction within the Service Provider's Group, the Service Provider shall give notice to the Authority within 10 Business Days where :
- 17.3.1 there is any change in the ownership of the Service Provider where such change relates to 50% or more of the issued share capital of the Service Provider; and
 - 17.3.2 there is any change in the ownership of a Holding Company where such change relates to 50% or more of the issued share capital of a Holding Company, and
 - 17.3.3 (in the case of an unincorporated Service Provider) give notice to the Authority if there is any change in the management personnel of the Service Provider, which alone or taken with any other change in management personnel not previously notified to the Authority, equates to a change in the identity of 50% or more of the management personnel of the Service Provider.
- Upon the occurrence of any of the events referred to at Clauses 17.3.1–17.3.3 above, the Authority shall have the right to terminate the Contract.

18 CONFLICT OF INTEREST

- 18.1 The Service Provider warrants that it does not and will not have at the Contract Commencement Date or Service Commencement Date any interest in any matter where there is or is reasonably likely to be a conflict of interest with the Services or any member of the Authority Group, save to the extent fully disclosed to and approved by the Authority.
- 18.2 The Service Provider shall check for any conflict of interest at regular intervals throughout the Term and in any event not less than once in every six months and shall notify the Authority in writing immediately upon becoming aware of any actual or potential conflict of interest with the Services or any member of the Authority Group and shall work with the Authority to do whatever is necessary (including the separation of staff working on, and data relating to, the Services from the matter in question) to manage such conflict to the Authority's satisfaction (the Authority acting reasonably), provided that, where the Authority is not so satisfied, it may terminate the Contract in accordance with Clause 34.1.4.

19 ACCESS TO PREMISES AND ASSETS

- 19.1 Subject to Clause 14.13 any access to either of both of any Authority Premises or Authority Assets made available to the Service Provider in connection with the proper performance of the Contract shall be free of charge and shall be used by the Service Provider solely for the purpose of performing the Services during the Term in accordance with the Contract provided, for the avoidance of doubt, that the Service Provider shall be responsible for its own costs or travel including either or both of any congestion charging or low emission zone charging. The Service Provider shall:
- 19.1.1 have the use of such Authority Premises as licensee and shall not have or purport to claim any sole or exclusive right to possession or to possession of any particular part of such Authority Premises;
- 19.1.2 vacate such Authority Premises upon the termination or expiry of the Contract or at such earlier date as the Authority may determine;
- 19.1.3 not exercise or purport to exercise any rights in respect of any Authority Premises in excess of those granted under this Clause 19.1.3;
- 19.1.4 ensure that the Service Provider Personnel carry any identity passes issued to them by the Authority at all relevant times and comply with the Authority's security procedures as may be notified by the Authority from time to time;
- 19.1.5 not damage the Authority Premises or any assets on Authority Premises; and
- 19.1.6 return immediately to the Authority in good working order and satisfactory condition (in the reasonable opinion of the Authority) all Authority Assets used by the Service Provider or the Service Provider Personnel in the performance of the Services.
- 19.2 Nothing in this Clause 19 shall create or be deemed to create the relationship of landlord and tenant in respect of any Authority Premises between the Service Provider and any member of the Authority Group.