

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;

37.10.3.5 is entitled or subject to any additional terms and conditions of employment other than those disclosed to the Authority or Successor Operator (as appropriate);

37.10.3.6 is or has been within the previous two years the subject of formal disciplinary proceedings;

37.10.3.7 has received a written warning (other than a warning that has lapsed);

37.10.3.8 has taken or been the subject of a grievance procedure within the previous two years; or

37.10.3.9 has objected, or has indicated an intention to object, in accordance with TUPE to his or her employment transferring to the Authority or Successor Operator (as appropriate) under TUPE.

37.10.4 The Service Provider undertakes to each of the Authority and any Successor Operator that it will (and will procure that its Sub-Contractors will):

37.10.4.1 continue to perform and observe all of its obligations under or in connection with the contracts of employment of the Re-Transferring

Personnel and any collective agreements relating to the Re-Transferring Personnel up to the Further Transfer Date;

37.10.4.2 pay to the Re-Transferring Personnel all Employment Costs to which they are entitled from the Service Provider or any Sub-Contractor which fall due in the period up to the Further Transfer Date;

37.10.4.3 to pay to the Authority or the Successor Operator (as appropriate) within 7 days of the Further Transfer Date an apportioned sum in respect of Employment Costs as set out in Clause 37.10.5; and

37.10.4.4 to comply in all respects with its information and consultation obligations under TUPE and to provide to the Authority or Successor Operator (as appropriate) such information as the Authority or Successor Operator may request in order to verify such compliance.

37.10.5 The Parties agree that all Employment Costs in respect of the Re-Transferring Personnel will be allocated as follows:

37.10.5.1 the Service Provider will be responsible for any Employment Costs relating to the period up to and including the Further Transfer Date;

37.10.5.2 the Authority or (where appointed) any Successor Operator will be responsible for the Employment Costs relating to the period after the Further Transfer Date

and will if necessary be apportioned on a time basis (regardless of when such sums fall to be paid) except that there will be no apportionment in respect of the Re-Transferring Personnel's holiday entitlements.

37.10.6 The Service Provider will indemnify and keep indemnified each of the Authority and any Successor Operator from and against all Employment Liabilities which the Authority and/or the Successor Operator incurs or suffers arising directly or indirectly out of or in connection with:

37.10.6.1 any failure by the Service Provider to comply with its obligations under this Clause 37.10;

37.10.6.2 any act or omission by or on behalf of the Service Provider (or its Sub-Contractors) in respect of the Re-Transferring Personnel whether occurring before on or after the Further Transfer Date;

37.10.6.3 any failure by the Service Provider (or its Sub-Contractors) to comply with Regulation 13 of TUPE (except to the extent that such failure arises from a failure by the Authority or the Successor Operator to comply with Regulation 13 of TUPE);

37.10.6.4 any claim or demand by HMRC or any other statutory authority in respect of any financial obligation including but not limited to PAYE and national insurance contributions in relation to any Re-Transferring Personnel to the extent that such claim or demand relates to the period from the Contract Commencement Date to the Further Transfer Date;

37.10.6.5 any claim or demand or other action taken against the Authority or any Successor Operator by any person employed or engaged by the Service Provider (or its Sub-Contractors) (other than Re-Transferring Personnel included on the Final Staff List) who claims (whether correctly or not) that the