

- 4 The Service Provider will indemnify and keep indemnified the Authority from and against all Employment Liabilities which the Authority incurs or suffers arising out of or in connection with 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) save where such act or omission is requested by the Authority or is otherwise an act or omission of any person employed or engaged by the Authority for which the Authority is vicariously liable.

## **PART B - TRANSFER OF EMPLOYEES ON EXPIRY OR TERMINATION**

- 5 The Service Provider will promptly provide (and will procure that its Sub-Contractors provide) when requested by the Authority (but not more than twice in any 12 month period) and not more than 7 days after the date of any notice to terminate the Contract given by either Party, the following information to the Authority:

5.1 an anonymised list of current Service Provider's Personnel and employees and workers of its Sub-Contractors who are wholly or mainly engaged in the provision of the Services (each identified as such in the list) stating job title and approximate percentage of time spent working on the Services only (the "**Staff List**");

5.2 the Aggregate Staffing Information;

and further, once the Authority has notified the Service Provider that a Replacement Service Provider has been appointed or the Authority will carry out the Services itself, the Service Provider will provide:

5.3 (to the extent permitted by law) such of the information specified in Appendix 1 to this Schedule 10 as is reasonably requested by the Authority in respect of each individual included on the Staff List (such information being the "**Staffing Information**"); and

in the situation where notice to terminate a Contract has been given, a suitably anonymised list of all persons who are engaged (or have been engaged during the preceding six months) for more than 40% of their working time in the provision of the Services and whom the Service Provider considers will not transfer under TUPE for any reason whatsoever together with details of their role and a brief explanation of why the Service Provider thinks such persons will not transfer.

- 6 Without limitation to paragraph 5 above, during the Relevant Period, if so requested by the Authority, 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 material changes to any Aggregate Staffing Information or Staffing Information already provided.
- 7 The Service Provider warrants to the Authority that any Aggregate Staffing Information and any Staffing Information which it supplies (including any

copies of it) will be complete and accurate in all respects and will be updated in accordance with paragraph 6 above.

- 8 Subject to paragraph 9, 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.
- 9 If the Contract is terminated by either Party in accordance with Clause 28.1 or by the Authority in accordance with Clause 28.1, 28.2 or 28.5 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 the date of termination of the Contract.
- 10 The Service Provider warrants that as at the Further Transfer Date:
  - 10.1 the Final Staff List and the Staffing Information relating to persons on that list will be complete and accurate;
  - 10.2 the Final Staff List will identify all actual and potential Re-Transferring Personnel; and
  - 10.3 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.
- 11 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):
  - 11.1 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);
  - 11.2 deploy or assign any other person to perform the Services who is not included on the most recent Staff List;
  - 11.3 make, propose or permit any material 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 (other than in the ordinary course of business, including the annual pay review (except for any pay increase which is greater than the Consumer Price Index (CPI) rate of inflation at the relevant time plus 5%));
  - 11.4 increase to any significant degree the proportion of working time spent on the Services by any of the Service Provider's Personnel; or
  - 11.5 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.

- 12 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 Relevant Period regardless of when such notice takes effect.
- 13 The Service Provider agrees that the Authority will be permitted to disclose:
  - 13.1 the Staff List and any Aggregate Staffing Information provided to it under this Part B of Schedule 10 in anonymised form to any person who has been invited to tender 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
  - 13.2 the Staff List and Final Staff List and any Staffing Information to any Replacement Service Provider.
- 14 If TUPE applies on the expiry or termination of the Contract or the appointment of a Replacement Service Provider, the following will apply:
  - 14.1 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 Replacement Service Provider (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).
  - 14.2 The Service Provider will provide the Authority or, once appointed, any Replacement Supplier (as the case may be) with the information required under Regulation 11 of TUPE not later than 28 days prior to the Further Transfer Date.
  - 14.3 During the Relevant Period the Service Provider will (to the extent permitted by law):
    - 14.3.1 provide the Authority or Replacement Service Provider (as appropriate) with access to such employment and payroll records as the Authority or Replacement Service Provider (as appropriate) may reasonably 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 Replacement Service Provider (as appropriate);
    - 14.3.2 allow the Authority or Replacement Service Provider (as appropriate) to have copies of any of those employment and payroll records;
    - 14.3.3 provide all original employment records relating to the Re-Transferring Personnel to the Authority or Replacement Service Provider (as appropriate); and

14.3.4 co-operate with the Authority and any Replacement Service Provider 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 Replacement Service Provider (as appropriate) with the same level of access, information and cooperation.

14.4 The Service Provider agrees to notify the Authority and/ or any Replacement Service Provider (as appropriate) if as at the Further Transfer Date any Re-Transferring Personnel to the Service Provider's knowledge:

14.4.1 is under notice of termination;

14.4.2 is on long-term sick leave;

14.4.3 is on maternity, parental or adoption leave;

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

14.4.5 is entitled or subject to any additional terms and conditions of employment other than those disclosed to the Authority or Replacement Service Provider (as appropriate);

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

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

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

14.4.9 has objected, or has indicated an intention to object, in accordance with TUPE to his or her employment transferring to the Authority or Replacement Service Provider (as appropriate) under TUPE.

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

14.5.1 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;

- 14.5.2 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;
  - 14.5.3 to pay to the Authority or the Replacement Service Provider (as appropriate) within 7 days of the Further Transfer Date an apportioned sum in respect of Employment Costs as set out in paragraph 14.7; and
  - 14.5.4 to comply in all respects with its information and consultation obligations under TUPE and to provide to the Authority or Replacement Service Provider (as appropriate) such information as the Authority or Replacement Service Provider may request in order to verify such compliance.
- 14.6 The Authority will indemnify and keep indemnified the Service Provider (and its Sub-Contractors) from and against all Employment Liabilities which the Service Provider (or its Sub-Contractors) incur or suffer arising out of or in connection with:
- 14.6.1 any failure by the Authority to comply with Regulation 13 of TUPE in a timely and proper manner;
  - 14.6.2 any claim brought or other action taken by or on behalf of any of the Re-Transferring Personnel which arises from or in connection with (directly or indirectly) any act or omission or communication made to the Re-Transferring Personnel by the Authority before the Further Transfer Date;
  - 14.6.3 the employment or termination of employment by the Authority of any Re-Transferring Personnel on or after the Further Transfer Date;
  - 14.6.4 any actual or proposed changes by the Authority to the terms and conditions of employment or working conditions of any of the Re-Transferring Personnel which are or are alleged to be to the detriment of any of the Re-Transferring Personnel,
- and the Authority will procure that any Replacement Service Provider will provide an equivalent indemnity to the Service Provider (and its Sub-Contractors) wherein any reference to "the Authority" shall be replaced by a reference to "the Replacement Service Provider (or its Sub-Contractors)".
- 14.7 The Parties agree that all Employment Costs in respect of the Re-Transferring Personnel will be allocated as follows:
- 14.7.1 the Service Provider will be responsible for any Employment Costs relating to the period up to and including the Further Transfer Date; and

14.7.2 the Authority or (where appointed) any Replacement Service Provider 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.

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

14.8.1 any failure by the Service Provider to comply with its obligations under this Part B of Schedule 10;

14.8.2 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 (save where such act or omission is requested by the Authority and/ or any Replacement Service Provider or is otherwise an act or omission of any person employed or engaged by the Authority for which the Authority is vicariously liable));

14.8.3 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 Replacement Service Provider to comply with Regulation 13 of TUPE);

14.8.4 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 Agreement Commencement Date to the Further Transfer Date;

14.8.5 any claim or demand or other action taken against the Authority or any Replacement Service Provider 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 Authority or Replacement Service Provider has inherited any liability from the Service Provider (or its Sub-Contractors) in respect of them by virtue of TUPE.

15 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 other than any Employment Liabilities arising as a result of any act of discrimination against any Service provider Personnel by the Authority or any person employed by the Authority or any act of detriment by the Authority or any person employed by the Authority against any Service Provider Personnel as a result of having made a protected disclosure (as defined in the Employment Rights Act 1996) about the Authority.

- 16 The Service Provider will procure that whenever the Authority so requires on reasonable notice at any time during the continuance in force of the 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:

16.1 is still an employee or sub-contractor of the Service Provider or any of the Service Provider's associated companies; and

16.2 was at any time employed or engaged by the Service Provider in order to provide the Services to the Authority under the 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.

- 17 Clause 32.1 shall be amended so that benefits conferred on the Replacement Service Provider under this Part B of Schedule 10 shall be enforceable by them.

## **APPENDIX 1 TO SCHEDULE 10**

### **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 - Perm/Temp
- Geographical Area Of Work / Location
- Commencement of Employment Date
- Continuous Service Date
- Car Allowance
- Pension Contributions
  - 1) Employer
  - 2) 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 Current Contractor'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

**SCHEDULE 11 – ANNUAL MEDIA GUARANTEES**









