

47. SCHEDULE 47:
TUPE AND PENSIONS

Part 1: Definitions

Part 2: Employment Matters

Part 3: First Employee List

Part 4: Workforce Information

Schedule 47 (Transfer Regulations and Pensions)

This Schedule is divided into 4 Parts as follows:

Part 1: Definitions

Part 2: Employment and Pensions Matters

Part 3: First Employee List

Part 4: Workforce Information

PART 1 (Definitions)

ARD	means the Acquired Rights Directive (Council Directive 77/187/EEC as amended by Council Directive 98/50 EEC and consolidated in Council Directive 2001/23/EEC)
Assigned Employees	shall have the meaning given to it in paragraph 1.14(a) (Retendering - Employment Obligations);
Current Employer	means the employer of any Transferring Employees prior to the transfer;
Equal Pay Claim	<p>means any claim under the Equal Pay Act 1970 including where any Transferring Employee:</p> <ul style="list-style-type: none">(a) successfully brings a claim in any court or tribunal against the Contractor its Sub Contractor or any Secondary Contractor;(b) reaches a settlement of any claim with the Contractor its Sub Contractor or any Secondary Contractor with the agreement of the Authority (such agreement not to be unreasonably withheld or delayed);(c) has not brought a claim for equal pay under the Equal Pay Act 1970 in an Employment Tribunal against the Contractor, its Sub Contractor or any Secondary Contractor, but who has raised a grievance claiming that they are unequally paid and who would, as a result of any case law or change in statutory law, be likely to be successful if such a claim were brought, such that it is conducive to good industrial relations for the Contractor, its Sub Contractor or any Secondary Contractor to make a payment of backdated pay and/or increase any pay and the Authority agrees that such payment should be made (such agreement not to be unreasonably withheld or delayed);.
Final Employee List	shall have the meaning given to it in paragraph 1.5 (Final Employee List);

First Employee List	has the meaning given to it in paragraph 1.4 (First Employee List) and is set out in Part 3 of this Schedule 47 (First Employee List);
Future Contractor	means any third party engaged by the Authority to perform the Service(s) (whether in the same or a different manner) immediately after expiry or earlier termination of this Contract;
Proposed Workforce	shall have the meaning given to it in paragraph 1.6(a) (Workforce Information);
Relevant Employees	means the employees who are the subject of a Relevant Transfer;
Relevant Transfer	means a relevant transfer for the purposes of the Transfer Regulations;
Remuneration Costs	shall have the meaning given to it in paragraphs 1.6(b) and 1.7(b) (Workforce Information);
Reorganisation Costs	shall have the meaning given to it in paragraphs 1.6(c) and 1.7(c) (Workforce Information);
Retendering Information	shall have the meaning given to it in paragraph 1.14(a) (Retendering - Employment Obligations);
Return Date	shall have the meaning given in paragraph 1.17 (Termination of Contract);
Returning Employees	shall have the meaning given to it in paragraph 1.17 (Termination of Contract);
Secondary Contractor	means: a) any subcontractor of the Contractor (excluding the Sub-Contractor); and

b) any sub-contractor of the Sub-Contractor,

involved in carrying out the Service or any part thereof;

Transfer Regulations means the Transfer of Undertakings (Protection of Employment) Regulations 2006;

Transferring Employees means an employee of the Authority or any Current Employer whose contract of employment becomes, by virtue of the application of the Transfer Regulations an employee of the Contractor or any Sub Contractor or Secondary Contractor.

Where terms are defined in the Contract but not in this Schedule they shall, for the purposes of this Schedule have the meanings given to them in the Contract.

PART 2 (Employment Matters)

1.1 Relevant Transfers

The Authority and the Contractor agree that the following events:

- (a) the occurrence of a Service Commencement Date; and
- (b) where the identity of a provider (including the Authority) of any service which constitutes or which will constitute part of the Service is changed whether in anticipation of changes pursuant to this Contract or not,

shall constitute a Relevant Transfer and that the contracts of employment (together with any collective agreements) of any Relevant Employees shall have effect (subject to Regulation 4(7) and 4 (9) of the Transfer Regulations) thereafter as if originally made between those employees and the new provider except insofar as such contracts relate to those parts of an occupational pension scheme relating to old age, invalidity and survivors' benefits. On the occasion of a Relevant Transfer (and on expiry or termination of this Contract or part of it) the Authority and Contractor as appropriate shall procure that the former and any new contractor or sub-contractor shall comply with their obligations under the Transfer Regulations.

1.2 Compliance by Authority

The Authority shall comply and shall procure that the Current Employer complies with its obligations under the Transfer Regulations in respect of each Relevant Transfer pursuant to this Contract and the Contractor shall comply and shall procure that each Sub-Contractor and/or Secondary Contractor shall comply with its/their obligations in respect of each Relevant Transfer pursuant to this Contract and each of the Authority and the Contractor shall indemnify the other against any Direct Losses sustained as a result of any breach of this paragraph 1.2 by the party in default and such indemnity shall include, for the avoidance of doubt, an indemnity, on the part of the Authority, for any Sub Contractor or Secondary Contractor for any liability sustained as a result of a breach of this paragraph 1.2 and on the part of the Contractor, an indemnity for the Authority for any failure by the Contractor's Sub Contractor or Secondary Contractor.

1.3 Emoluments and Outgoings

The parties agree that:

- (a) the Authority shall be responsible for or shall procure that any Current Employer is responsible for all remuneration, benefits, entitlements and outgoings in respect of the Transferring Employees, including without limitation all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise, up to the Relevant Service Commencement Date; and
- (b) the Contractor shall be responsible or shall procure that any relevant Sub-Contractor or Secondary Contractor is responsible, for all remuneration, benefits, entitlements and outgoings in respect of the Transferring Employees and any other person who is or will be employed or engaged by the Contractor or any Sub-Contractor or Secondary Contractor in connection with

the provision of any part of the Service, including without limitation all wages, holiday pay, bonuses, commission, payment of PAYE, national insurance contributions, pension contributions and otherwise, from and including the Relevant Service Commencement Date and until the Return Date.

1.4 First Employee List

- 1.4.1 Part 3 of this Schedule 47 (First Employee List) sets out information regarding the identity, number, age, sex, length of service, job title, grade and terms and conditions of employment of, and other matters affecting, each of those employees of the Current Employer engaged in the provision of the Haulage Services who it is expected, if they remain in the employment of the relevant Current Employer until immediately before the Service Commencement Date in respect of the Haulage Services, would be Transferring Employees but the Authority gives no warranty as to the accuracy or completeness of this information.
- 1.4.2 In respect of all other Services the Authority will, at least 6 months prior to the relevant Service Commencement Date in respect of that Service, provide the Contractor with a schedule setting out the identity, number, age, sex, length of service, job title, grade and terms and conditions of employment of, and other matters affecting, each of those employees of the Current Employer who it is expected, if they remain in the employment of the Current Employer until immediately before the relevant Service Commencement Date, would be Transferring Employees but the Authority gives no warranty as to the accuracy or completeness of this information.
- 1.4.3 The information provided under clauses 1.4.1 and 1.4.2 shall be known as the "First Employee List" in respect of each Service at each Service Commencement Date.

1.5 Final Employee List

The Authority shall provide:

- (a) to the Contractor an update to the First Employee List six months, three months and ten (10) Business Days prior to the Planned Service Commencement Date. For the avoidance of doubt, for the purposes of clause 1.8. such updates shall not form part of the First Employee List:
 - (i) at all in respect of the Haulage Services; and
 - (ii) in respect of all other Services, unless such updates are received at least three months prior to the relevant Service Commencement Date.
- (b) no later than within five (5) Business Days after the relevant Service Commencement Date information, which was correct as at the relevant Service Commencement Date, in respect of the Transferring Employees on all the same matters as should be provided in the First Employee List (the Final Employee List) and where there is more than one Service Commencement Date the "Final Employee List" means such list so proposed in respect of each Service and at each Service Commencement Date and the Authority gives, and shall give, no warranty as to the accuracy or

completeness of any information contained in the update of the First Employee List or in the Final Employee List.

1.6 Workforce Information

The parties acknowledge that Part 4 of this Schedule 47 (Workforce Information) sets out in respect of the Haulage Services, the following agreed information:

- (a) the workforce which the Contractor (or any Sub Contractor or Secondary Contractor) proposes to establish to provide the Haulage Services (the Proposed Workforce) classified by reference to grade, job description, hours worked, shift patterns, pay scales, rates of pay, terms and conditions and pension arrangements;
- (b) the monthly costs of employing the Transferring Employees who are expected to be engaged in the provision of the Haulage Services (the Remuneration Costs) which have been calculated on the basis of (amongst other things) the information contained in the First Employee List; and
- (c) the costs (which have been calculated by the Contractor and the Sub-Contractors on the basis of (amongst other things) the information contained in the First Employee List) which have been agreed between the parties for the purposes of any reorganisation which may be required to establish the Proposed Workforce or a workforce which is as close as reasonably practicable to the Proposed Workforce (including but not limited to costs associated with dismissal by reason of redundancy or capability and costs of recruitment). For the purposes of this paragraph the costs associated with dismissal by reason of redundancy in relation to any Transferring Employee made redundant by the Contractor or any Sub-Contractor or any Secondary Contractor as the case may be following the Service Commencement Date shall include payments by way of salary and all entitlements to benefits from the date of the Service Commencement Date in respect of the Haulage Services to the date of dismissal, payments of salary and benefits over relevant notice periods or in lieu of notice, payments by way of redundancy payments in line with employee entitlements and any costs arising from the dismissals which shall for the avoidance of doubt include any costs arising from or connected with any claims of unfair dismissal (together the Reorganisation Costs) but shall not include any costs which are included within the Remuneration Costs. However, it is recognised that the costs of the payments by way of salary and benefits due from the date of the relevant Service Commencement Date to the dismissal and any costs arising from the dismissal, can only be provided as estimates.

1.7 The Contractor shall provide in respect of each Service (other than Haulage Services) where it is proposed there will be Transferring Employees a schedule setting out the following, not later than one month prior to the relevant Service Commencement Date:

- (a) the workforce which the Contractor proposes to establish to provide the relevant Services (the Proposed Workforce) classified by reference to grade,

job description, hours worked, shift patterns, pay scales, rates of pay, terms and conditions and pension arrangements;

- (b) the monthly costs of employing the Transferring Employees who are expected to be engaged in the provision of the relevant Services (the Remuneration Costs) which have been calculated on the basis of (amongst other things) the information contained in the First Employee List; and
- (c) the costs (which have been calculated by the Contractor and the Sub-Contractors on the basis of (amongst other things) the information contained in the First Employee List) which have been agreed between the parties for the purposes of any reorganisation which may be required to establish the Proposed Workforce or a workforce which is as close as reasonably practicable to the Proposed Workforce (including but not limited to costs associated with dismissal by reason of redundancy or capability and costs of recruitment). For the purposes of this paragraph the costs associated with dismissal by reason of redundancy in relation to any Transferring Employee made redundant by the Contractor or any Sub-Contractor or any Secondary Contractor as the case may be following the Service Commencement Date shall include payments by way of salary and all entitlements to benefits from the date of the relevant Service Commencement Date to the date of dismissal, payments of salary and benefits over relevant notice periods or in lieu of notice, payments by way of redundancy payments in line with employee entitlements and any costs arising from the dismissals which shall for the avoidance of doubt include any costs arising from or connected with any claims of unfair dismissal (together the Reorganisation Costs) but shall not include any costs which are included within the Remuneration Costs. However, it is recognised that the costs of the payments by way of salary and benefits due from the date of the relevant Service Commencement Date to the dismissal and any costs arising from the dismissal, can only be provided as estimates.

1.8 Adjustment of Reorganisation and Remuneration Costs

If at any time (including, for the avoidance of doubt, after the submission of the Final Employee List) the Remuneration Costs and/or the Reorganisation Costs require to be adjusted on account of any differences between the information contained in the First Employee List and that contained in the Final Employee List, or on account of any inaccuracies in or omissions from the information contained in the First Employee List or the Final Employee List then (subject to the remainder of this paragraph 1.8), there shall be a corresponding adjustment to the Unitary Charge to compensate for any such difference and the following provisions shall apply:

- (a) where there are more Transferring Employees than shown on the Final Employee List then the parties shall discuss the implications for the provision of the Service;
- (b) the Contractor and the relevant Sub-Contractor and/or Secondary Contractor shall take all reasonable steps to mitigate any additional costs and any adjustment to the Unitary Charge shall be calculated as if they had done so;

- (c) in calculating any adjustment to be made to the Unitary Charge pursuant to this paragraph 1.8:
- (i) no account shall be taken of a decrease in the Remuneration Costs or Reorganisation Costs to the extent that it arises from a reduction in the number of Relevant Employees or their whole time equivalent such that there are, immediately after the Service Commencement Date, fewer suitably qualified persons available than are required in order to establish the Proposed Workforce;
 - (ii) to avoid double counting, no account shall be taken of any change to the Remuneration Costs or the Reorganisation Costs to the extent that the Contractor has been or will be compensated as a result of any indexation of the Unitary Charge under this Contract;
 - (iii) to avoid doubt, any changes in costs which fall to be dealt with under this paragraph 1.8 and which arise from a Change in Law shall be dealt with in accordance with the provisions of this paragraph 1.8 and shall not be taken into account for the purposes of Clause 105 (Change in Law);
 - (iv) no adjustments under this paragraph 1.8 shall be made in respect of overpayments made by the Contractor (or a Sub-Contractor or Secondary Contractor) to any Relevant Employees which arise from reliance on the Final Employee List to the extent that the Contractor (or the Sub-Contractor or Secondary Contractor) is unable to correct overpayments in respect of continuing employment having taken reasonable steps to do so;
 - (v) if there are underpayments by the Contractor or a Sub-Contractor or a Secondary Contractor to Relevant Employees, whether claimed or established as unlawful deductions from wages or as a breach of contract, which arise from reliance on the Final Employee List, there shall be an immediate increase to the Unitary Charge in respect of all such liabilities of the Contractor or the Sub-Contractor or Secondary Contractor for all such underpayments which are retrospective (save that any such liabilities which relate to the period prior to the Service Commencement Date shall be dealt with in accordance with paragraph 1.3(a) or 1.11) and an appropriate increase in respect of such liabilities of the Contractor which represent ongoing costs; and
 - (vi) in order to prevent duplication, no adjustment shall be made under this paragraph 1.8(c) if any indemnity given by the Authority under any other provision of this Agreement would apply;
- (d) either party may propose an adjustment to Unitary Charge pursuant to paragraph 1.8(c) by giving not less than ten (10) Business Days notice to the other. Each party will provide or procure the provision to the other, on an open book basis, access to any information or data which the other party reasonably requires for the purpose of calculating or confirming the calculation of any adjustment pursuant to this paragraph 1.8;

- (e) in relation to all matters described in paragraphs 1.8(a), 1.8(b) and 1.8(c) the Contactor and the Authority shall (and the Contractor shall procure than any relevant Sub Contractor or Secondary Contractor shall), co-operate with the other or others and take all reasonable steps to mitigate any costs and expenses and any adverse effects on industrial or employee relations;
- (f) the Authority shall and shall procure that any Current Employer shall and the Contractor shall, and shall procure that each Sub-Contractor and Secondary Contractor shall, take all reasonable steps, including co-operation with reasonable requests for information, to ensure that each and every Relevant Transfer pursuant to this Contract takes place smoothly with the least possible disruption to the services of the Authority including the Service and to the employees who transfer.

1.9 Union Recognition

The Authority shall, and shall procure if it has the contractual or legal powers to do so and shall otherwise use all reasonable endeavours to procure that every Current Employer shall, supply to the Contractor no later than five (5) Business Days prior to the Planned Service Commencement Date true copies of its trade union recognition agreement(s) and the Contractor shall and shall procure that each and every Sub-Contractor and Secondary Contractor shall, in accordance with the Transfer Regulations, recognise the trade unions representing Transferring Employees (as relevant to each Sub-Contractor or Secondary Contractor) after the transfer to the same extent as they were recognised or the Current Employer before the Service Commencement Date.

1.10 Replacement Sub-Contractor

The Contractor shall procure that, on each occasion on which the identity of a Sub-Contractor or Secondary Contractor changes pursuant to this Contract, in the event that there is a Relevant Transfer, the new Sub-Contractor or Secondary Contractor shall, in accordance with the Transfer Regulations, recognise the trade unions representing the employees whose contracts of employment transfer to the new Sub-Contractor or Secondary Contractor to the same extent as they were recognised before the change of identity of the Sub-Contractor or Secondary Contractor in respect of the provision of the Service.

1.11 Indemnities by the Authority

- 1.11.1 The Authority shall indemnify and keep indemnified in full the Contractor (for itself and for the benefit of each relevant Sub-Contractor and Secondary Contractor) against all Direct Losses incurred by the Contractor (or any relevant Sub-Contractor or Secondary Contractor) in connection with or as a result of:
 - (a) a breach by the Authority and/or any Current Employer of its obligations under paragraph 1.3(a);
 - (b) any claim or demand by any Transferring Employees arising out of the employment of any Transferring Employees provided that this arises from any act, fault or omission of the Authority or any Current Employer in relation to

any Transferring Employees prior to the date of the Relevant Transfer, including for the avoidance of doubt Direct Losses arising from an Equal Pay Claim pursued following the Relevant Transfer, including claims for back pay and benefits and increases in pay. The Council agrees that the cost of any such increase in pay shall be payable by way of an adjustment to the Unitary Charge.

- (c) any liability in relation to any Transferring Employees, in respect of his or her employment or its termination by the Authority or any Current Employer or its termination which transfers in whole or part in accordance with the Transfer Regulations and/or the ARD which arises partly as a result of any act or omission occurring on or before the Service Commencement Date and partly as a result of any act or omission occurring after the Service Commencement Date provided that the Authority shall only indemnify against only such part of the Direct Losses sustained by the Contractor (or any Sub-Contractor or Secondary Contractor) in consequence of the liability as is reasonably attributable to the act or omission occurring before the relevant Service Commencement Date,
- (d) any claim by any trade union or staff association or employee representative (whether or not recognised by the Authority and/or the Current Employer in respect of all or any of the Transferring Employees) arising from or connected with any failure by the Authority and/or the Current Employer to comply with any legal obligation to such trade union, staff association or other employee representative whether under Regulation 13 of the Transfer Regulations, under the ARD or otherwise save to the extent that any such failure is caused by a failure by the Contractor, Sub Contractor or Secondary Contractor to provide the Authority or Current Employer as appropriate with information pursuant to Regulation 13 of the Transfer Regulations;
- (e) any liability in relation to any employee or former employee, other than a Transferring Employee, of the Authority or of any Current Employer or any other contractor or sub-contractor engaged by the Authority or a Current Employer and whether arising before, on or after the relevant Service Commencement Date;
- (f) any claim arising out of any misrepresentation or mis-statement whether negligent or otherwise made by the Authority (or any Current Employer) to the Transferring Employees or their representatives whether before, on or after the Service Commencement Date and whether liability for any such claim arises before on or after the Service Commencement Date save that this shall not include any such misrepresentation or mis-statement wholly or mainly attributed to any inaccuracy or omission in the information provided to the Authority or any Current Employer by the Contractor or any relevant Sub Contractor or Secondary Contractor;

1.11.2 The Authority agrees that the Contractor may assign the benefit of any indemnities provider under this Schedule to any relevant Sub-Contractor or Secondary Contractor.

1.12 Contractor Indemnities

The Contractor shall indemnify and keep indemnified in full, the Authority, (and at the Authority's request and in the case of paragraphs 1.12(a) to 1.12(c) (inclusive)) each and every Future Contractor against:

- (a) all Direct Losses incurred by the Authority or any Future Contractor in connection with, or as a result of, any claim or demand against the Authority or any Future Contractor by any person who is, or has been, employed or engaged by the Contractor (or any Sub-Contractor or Secondary Contractor) in connection with the provision of any part of the Service where such claim arises as a result of any act, fault or omission of the Contractor (and/or any Sub-Contractor or Secondary Contractor) after the Service Commencement Date but before the Return Date;
- (b) all Direct Losses incurred by the Authority or any Future Contractor in connection with or as a result of a breach by the Contractor of its obligations under paragraph 1.3(b); and
- (c) all Direct Losses incurred by the Authority or any Future Contractor in connection with, or as a result of, any claim by any trade union or staff association or employee representative (whether or not recognised by the Contractor and/or the relevant Sub-Contractor or Secondary Contractor in respect of all or any of the Transferring Employees) arising from, or connected with any failure by the Contractor (and/or any Sub-Contractor or Secondary Contractor) to comply with any legal obligation to such trade union, staff association or other employee representative whether under Regulations 13 or 14 of the Transfer Regulations under the ARD or otherwise and, whether any such claim arises or has its origin before or after the date of the Service Commencement Transfer Date;
- (d) any claim other than a claim arising from or relating to any old age, invalidity or survivors, benefits by any Transferring Employees that any proposed or actual substantial change by the Contractor (or any Sub-Contractor or Secondary Contractor) to the Transferring Employees' working conditions is to the Relevant Employee's material detriment whether such claim arises before, on or after, the Service Commencement Date; and
- (e) any claim arising out of any misrepresentation or mis-statement whether negligent or otherwise made by the Contractor (or a Sub-Contractor or Secondary Contractor) to the Transferring Employees or their representatives whether before, on or after the Service Commencement Date and whether liability for any such claim arises before on or after the Service Commencement Date save that this shall not include any such misrepresentation or mis-statement wholly or mainly attributed to any inaccuracy or omission in the information provided to the Contractor or any Sub Contractor or Secondary Contractor by the Authority or any Current Employer,

and for the avoidance of doubt, the indemnities in this paragraph 1.11 shall not apply in respect of any sum for which the Authority is to indemnify the Contractor or a

relevant Sub-Contractor or Secondary Contractor pursuant to paragraph 1.12 or as a result of any adjustment to the Unitary Charge in accordance with paragraph 1.8 or to the extent that the claim arises from a wrongful act or omission of the Authority or any Future Contractor.

1.13 Provision of Details and Indemnity

The Contractor shall as soon as reasonably practicable and in any event within ten (10) Business Days of a request by the Authority, provide to the Authority details of any measures which the Contractor (or any Sub-Contractor or Secondary Contractor) envisages it or they will take in relation to any employees who are, or who will be, the subject of a Relevant Transfer, and if there are no measures, confirmation of that fact.

1.14 Retendering - Employment Obligations

The Contractor shall (and shall procure that any Sub-Contractor or Secondary Contractor shall) within the period of twelve (12) Months immediately preceding the Expiry Date or following the service of a Termination Notice.

- (a) on receiving a written request from the Authority provide within 20 Working Days in respect of any person engaged or employed by the Contractor (or any Sub-Contractor or Secondary Contractor) in the provision of the Service (the Assigned Employees) full and accurate details regarding the identity, number, age, sex, length of service, job title, grade and terms and conditions of employment of each of those Assigned Employees who it is expected, if they remain in the employment of the Contractor (or of any Sub-Contractor or Secondary Contractor) until immediately before the Termination Date or the Expiry Date (as the case may be), would be Returning Employees (the Retendering Information);
- (b) provide the Retendering Information promptly and at no cost to the Authority;
- (c) notify the Authority forthwith in writing of any material changes to the Retendering Information promptly as and when such changes arise;
- (d) be precluded from making any material increase or decrease in the numbers of Assigned Employees other than in the ordinary course of business and with the Authority's prior written consent (such consent not to be unreasonably withheld or delayed);
- (e) be precluded from making any material increase in the remuneration or other change in the terms and conditions of the Assigned Employees other than in the ordinary course of business and with the Authority's prior written consent (such consent not to be unreasonably withheld or delayed); and
- (f) be precluded from transferring any of the Assigned Employees to a part of its business which does not involve the provision of the Services or moving other employees from elsewhere in its, or their, business who have not previously been employed or engaged in providing the Service to provide the Service save with the Authority's prior written consent (such consent not to be unreasonably withheld or delayed),

and the Contractor shall indemnify and shall keep indemnified in full, the Authority and at the Authority's request any Future Contractor against all Direct Losses arising from any claim by any party as a result of the Contractor (or Sub-Contractor or Secondary Contractor) failing to provide or promptly to provide the Authority with any Retendering Information or to provide full Retendering Information or as a result of any material inaccuracy in or omission, from the Retendering Information provided that this indemnity shall not apply in respect of the Retendering Information to the extent that such information was originally provided to the Contractor by the Authority and was materially inaccurate or incomplete when originally provided.

1.15 The Authority will keep the Contractor or any relevant Sub-Contractor or Secondary Contractor indemnified against all Direct Losses arising directly from:

- (a) claims against the Contractor or any Sub-Contractor and any Secondary Contractor in respect of any and all liabilities for emoluments due to any Returning Employees which are accrued on or after the Return Date;
- (b) claims against the Contractor, any Sub-Contractor or Secondary Contractor by any Returning Employee that the terms and conditions or working conditions to be provided by the Authority or any Future Contractor are to that employee's detriment whether or not such claim or claims arise prior to, on or after, the Return Date;
- (c) the termination of employment of any of the Returning Employees by the Authority or any Future Contractor after the Return Date; and
- (d) any act or omission of the Future Contractor on or after the Return Date, in respect of the employment of the Returning Employees by the Authority or any Future Contractor.

1.16 The Authority shall and shall procure that any Future Contractor shall comply with its obligations under the Transfer Regulations (including but not limited to its obligations under Regulation 13 of the Transfer Regulations) on termination of the Services and the Contractor shall comply with its obligations under the Transfer Regulations (including but not limited to its obligations under Regulation 13 of the Transfer Regulations) on termination of the Services and each of the Authority and Contractor shall indemnify the other (and in the case of the indemnity provided by the Council, any relevant Sub-Contractor or Secondary Contractor) against any losses, costs, claims, liabilities, damages and expenses including reasonable legal costs sustained as a result of breach by the party in default.

1.17 Termination of Contract

On the expiry or earlier termination of this Contract, the parties agree that it is their intention that the Transfer Regulations shall apply in respect of the provision thereafter of any service equivalent to the Service or any part thereof and consistent with this intention shall use their reasonable endeavours to ensure that the Transfer Regulations shall apply to transfer the Returning Employees to the Authority or a Future Contractor as appropriate but the position shall be determined in accordance with Legislation at the Expiry Date or Termination Date and the following provisions are without prejudice to such determination:

- (a) the Contractor shall, or shall procure that, all wages, salaries and other benefits of the Returning Employees and other employees or former employees of the Contractor (or any Sub-Contractor or Secondary Contractor who had been engaged in the provision of the Service) and all PAYE tax deductions, pension contributions and national insurance contributions relating thereto in respect of the employment of the Returning Employees and such other employees or former employees of the Contractor (or Sub-Contractor or Secondary Contractor) up to the Return Date are satisfied;
- (b) without prejudice to paragraph 1.17(a), the Contractor shall:
 - (i) remain (and procure that any Sub-Contractor or Secondary Contractor shall remain) responsible for all the Contractor's (or Sub-Contractor's or Secondary Contractor's) employees (other than the Returning Employees) on or after the Return Date and shall indemnify the Authority and any Future Contractor against all Direct Losses incurred by the Authority or any Future Contractor resulting from any claim whatsoever, whether arising before on or after the Return Date by or on behalf of any of the Contractor's or Sub-Contractor's or Secondary Contractor's employees who do not constitute the Returning Employees;
 - (ii) in respect of the Returning Employees, the Contractor shall indemnify the Authority and any Future Contractor against all Direct Losses incurred by the Authority or any Future Contractor resulting from any claim whatsoever by or on behalf of any of the Returning Employees in respect of the period on or before the Return Date (whether any such claim, attributable to the period up to and on the Return Date, arises before, on or after the Return Date) including but not limited to any failure by the Contractor (or any Sub-Contractor or Secondary Contractor) to comply with its or their obligations under Regulation 13 of the Transfer Regulations as if such legislation applied, even if it does not in fact apply but excluding:
 - (A) any failure to comply with Regulation 13 of the Transfer Regulations which arises as a result of an act or omission of the Authority or any Future Contractor;
 - (B) any failure to comply with Regulation 11 of the Transfer Regulations;
 - (C) any claim referred to in Clause 1.15(b).
 - (iii) the Authority shall be entitled to assign the benefit of this indemnity to any Future Contractor.

For the purposes of this Schedule Returning Employees shall mean those employees assigned to the provision of the Services immediately before the expiry or termination of this Contract whose employment transfers to the Authority or a Future Contractor pursuant to the Transfer Regulations. Upon expiry or termination of this

Contract for whatever reason (such date being termed the Return Date), the provisions of this paragraph 1.17 shall apply.

1.18 Offer of Employment on Expiry or Termination

If the Transfer Regulations do not apply on the Expiry Date or if earlier, the Termination Date the Authority shall procure that each Future Contractor (or the Authority) (as appropriate) shall offer employment to the persons employed by the Contractor (or a Sub-Contractor or Secondary Contractor) and assigned to the provision of the Service immediately before the Return Date and the provisions of this paragraph 1.18 shall apply:

- (a) if an offer of employment is made in accordance with this paragraph 1.18, the employment shall be on the same terms and conditions (except for entitlement to membership of an occupational pension scheme,) as applied immediately before the Expiry Date or if earlier, Termination Date including full continuity of employment, except that the Authority or Future Contractor may, at its absolute discretion, not offer such terms and conditions if there has been any change to the terms and conditions of the persons concerned in breach of paragraph 1.14;
- (b) where any such offer as referred to in paragraph 1.18(a) is accepted, the Contractor shall indemnify and keep indemnified in full the Authority and/or any Future Contractor on the same terms and conditions as those set out in paragraph 1.12 as if there had been a Relevant Transfer in respect of each and every employee who has accepted any such offer and for the purposes of this paragraph 1 each and every such employee shall be treated as if they were a Returning Employee;
- (c) for the avoidance of doubt, where any such offer as referred to in paragraph 1.18(a) is not accepted and the Transfer Regulations do not apply, the employee shall remain an employee of the Contractor or Sub-Contractor or Secondary Contractor as appropriate.

1.19 Sub-Contractors

In the event that the Contractor enters into any sub-contract in connection with this Contract, it shall impose obligations on its Sub-Contractors or Secondary Contractors in the same terms as those imposed on it pursuant to this paragraph 1.19 and shall procure that the Sub-Contractor or Secondary Contractor complies with such terms. The Contractor shall indemnify and keep the Authority indemnified in full against all Direct Losses, incurred by the Authority or any Future Contractor as a result of, or in connection with, any failure on the part of the Contractor and/or any Sub-Contractor and/or Secondary Contractor to comply with this paragraph 1.19

2 Pensions

On a Relevant Transfer the Contractor shall comply with the provisions of sections 257 and 258 of the Pensions Act 2004 in respect of any Transferring Employees.