

Ultima Business Solutions Limited

TUPE Terms

1. INTERPRETATION

1.1. The definitions and rules of interpretation in this paragraph apply in this TUPE Link.

Employee Liability Information: in respect of each of the Employees:

- (a) the identity and age of the Employee;
- (b) the Employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996);
- (c) information about any disciplinary action taken against the Employee and any grievances raised by the Employee, where a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes or any other applicable code or statutory procedure applied, within the previous two years;
- (d) information about any court or tribunal case, claim or action either brought by the Employee against the Customer within the previous two years or where the Customer has reasonable grounds to believe that such action may be brought against Ultima arising out of the Employee's employment with the Customer;
- (e) information about any collective agreement which will have effect after the TUPE Transfer Date in relation to the Employees pursuant to regulation 5(a) of the Employment Regulations;
- (f) details of whether they are employees, workers, self-employed, contractors or consultants, agency workers or otherwise;
- (g) the current wages, salaries, profit sharing, incentive and bonus arrangements applicable to them;
- (h) their relevant notice periods and any other terms relating to termination of employment or engagement, including any redundancy procedures and contractual and/or enhanced redundancy payment or compensation schemes;
- (i) details of other employment-related benefits including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and car schemes applicable to them;
- (j) details of any such individuals on long-term sickness absence (being sickness absence in excess of 4 weeks), maternity or other statutory leave or otherwise absent from work;
- (k) details of any current performance improvement plans, extended probationary periods or similar;
- (l) detail of holiday accrued but not taken in the applicable leave year together with details and dates of holiday booked to be taken for the leave year;
- (m) copies of all relevant documents and materials relating to such information including copies of relevant applicable handbooks, codes, policies and policies;
- (n) any other information not already detailed in this definition but detailed in regulation 11 of the Employment Regulations;
- (o) any information that Ultima may reasonably require in respect of each of the Employees and regarding any personnel who are not Employees but are providing the Services that Ultima is to provide under the Agreement.

Employees: those employees whose contracts of employment transfer to Ultima (or any relevant Ultima group company) from either the Customer or the Existing Service Supplier as at the TUPE Transfer Date, being those employees as set out under separate cover of this document;

Employment Regulations: means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI/2006/246) (as amended) or any regulations which replace or amend these;

Existing Service Supplier: the current supplier of existing Services to the Customer prior to the TUPE Transfer Date;

Replacement Services: any services which are identical or substantially similar to any of the Services and which the Customer receives in substitution for any of the Services following the termination or expiry of this Agreement, whether those services are provided by the Customer internally or by any Replacement Supplier;

Replacement Supplier: any third party supplier of Replacement Services appointed by the Customer from time to time;

Service Transfer Date: the date on which the Services (or any part of the Services), for whatever reason transfer from Ultima to the Customer or any Replacement Supplier;

Staffing Information: in relation to all Transferring Employees, such information as the Customer may reasonably request (subject to the Data Protection Laws), but including in an anonymised format:

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- (a) their identity and ages;
- (b) those particulars of employment that an employer is obliged to give the Transferring Employee under section 1 of the Employment Rights Act 1996;
- (c) information about any disciplinary procedure taken against the Transferring Employee and any grievances raised by the Transferring Employee within the previous two years, where a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes or any other applicable code or statutory procedure applied;
- (d) information about any court or tribunal case, claim or action either brought by the Transferring Employee against Ultima within the previous two years or where Ultima has reasonable grounds to believe that such action may be brought against Customer arising out of the Transferring Employee's employment with Ultima; and
- (e) information about any collective agreement which will have effect after the Service Transfer Date in relation to the Transferring Employee pursuant to regulation 5(a) of the Employment Regulations.

Transferring Employees: those employees whose contract of employment will be transferred to the Customer or a Replacement Supplier pursuant to the Employment Regulations on expiry or termination of this Agreement;

TUPE Transfer Date: means the date on which the Employees, for whatever reason, transfer from the Customer or any Existing Supplier to Ultima;

Ultima Personnel: means all employees, staff, other workers, agents and consultants of Ultima and of any sub-contractors who are engaged in the provision of the Services from time to time.

2. TRANSFER OF EMPLOYEES TO ULTIMA

- 2.1. In the event the Customer and Ultima believe that, pursuant to the Employment Regulations, at the TUPE Transfer Date, Ultima will become the employer of the Employees, the terms of this TUPE Link shall apply.
- 2.2. The Customer represents, warrants and undertakes to Ultima that:
 - 2.2.1. no persons are employed or engaged in the provision of the Services other than the Employees;
 - 2.2.2. none of the Employees has given or received notice terminating their employment or will be entitled to give notice as a result of the provisions of this Agreement;
 - 2.2.3. full particulars of the terms of employment of all the Employees (including all remuneration, incentives, bonuses, expenses and other payments and benefits whatsoever payable) are set out as part of the Employee Liability Information; and
 - 2.2.4. there is not in existence any contract of employment with directors or employees of the Customer or Existing Service Supplier (or any contract for services with any individual) relating to the Services which cannot be terminated by three months' notice or less without giving rise to the making of a payment in lieu of notice or a claim for damages or compensation (other than a statutory redundancy payment or statutory compensation for unfair dismissal);
 - 2.2.5. no Employee:
 - (a) has been offered or promised or entered into any agreement for any future variation in any contract of employment including but not limited to an increase in their remuneration or benefits;
 - (b) has been off sick for a period of 21 days or more in any six-month period within the three years ending on the TUPE Transfer Date;
 - (c) is on secondment, maternity or other statutory leave or otherwise absent from work;
 - (d) has objected or indicated an objection to the transfer of their employment to Ultima; and
 - (e) has any entitlement to any accrued but unused holiday from previous holiday years.
 - 2.2.6. the Customer warrants that neither the Customer nor the Existing Service Supplier has been involved in any has not been involved in any industrial or trade disputes in the last three years and to the best of the Customer's knowledge, information and belief there are no circumstances which may result in any industrial dispute involving any of the Employees and none of the provisions of this Agreement including the identity of Ultima is likely to lead to any industrial dispute;

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- 2.2.7. there is not outstanding any agreement or arrangement to which the Customer or the Existing Service Supplier is party in relation to the Employees for profit sharing or for payment to any of the Employees of bonuses or for incentive payments or other similar matters;
 - 2.2.8. the Customer or Existing Service Supplier has not entered into any recognition agreement with a trade union in relation to the Employees nor has it done any act which may be construed as recognition;
 - 2.2.9. the Customer and/or the Existing Service Supplier has complied with all recommendations made by the Advisory Conciliation and Arbitration Service in relation to the Employees and with all awards and declarations made by the Central Arbitration Committee in relation to the Employees;
 - 2.2.10. with the exception of those set out in Employment Liability Information, there is no agreement, arrangement, scheme or obligation (whether legal or moral) for the payment of any pensions, allowances, lump sums or other like benefits on redundancy, on retirement or on death or during periods of sickness or disablement for the benefit of any of the Employees or former employees employed or engaged in the provision of the Services or for the benefit of dependants of such persons;
 - 2.2.11. no amounts due to or in respect of any of the Employees (including PAYE and National Insurance and pension contributions) are in arrears or unpaid;
 - 2.2.12. no monies or benefits other than in respect of contractual emoluments are payable to any of the Employees and there is not at present a claim, occurrence or state or affairs which may hereafter give rise to a claim against the Customer arising out of the employment or termination of employment of any of the Employees for compensation for loss of office or employment or otherwise and whether under contract or any statute or regulations or otherwise;
 - 2.2.13. the Customer and/or Existing Service Supplier has provided the Employee Liability Information to Ultima regarding each of the Employees either in writing or by making it available to Ultima in a readily accessible form;
 - 2.2.14. the Employee Liability Information contains information as at a specified date not more than 14 days before the date on which the information was provided to Ultima;
 - 2.2.15. the Customer and/or Existing Service Supplier has notified Ultima, and shall continue to notify Ultima up until the TUPE Transfer Date, in writing of any change in the Employee Liability Information since the date on which it was provided; and
 - 2.2.16. the Employee Liability Information was provided not less than 8 weeks before the TUPE Transfer Date or such shorter timeframe as may be agreed between the Supplier and the Customer (providing always that the Employee Liability Information is provided at least 28 days prior to the TUPE Transfer Date).
- 2.3. In relation to each of the Employees (and so far as relevant to each of its former employees who were employed or engaged in the provision of the Services) the Customer has or warrants that the Existing Service Supplier has:
- 2.3.1. complied with all obligations imposed on it by Articles of the Treaty on the Functioning of the European Union, European Commission Regulations and Directives and all statutes, regulations and codes of conduct relevant to the relations between it and its employees or it and any recognised trade union or appropriate representatives;
 - 2.3.2. maintained adequate and suitable records regarding the service of each of its employees;
 - 2.3.3. calculated and paid all holiday pay for periods of holiday taken under regulation 13 of the Working Time Regulations 1998 (SI 1998/1833) in accordance with Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time;
 - 2.3.4. complied with all collective agreements and customs and practices for the time being dealing with such relations or the conditions of service of its employees;
 - 2.3.5. complied with all relevant orders and awards made under any statute affecting their conditions of service; and
 - 2.3.6. not been involved in any industrial or trade disputes in the last three years.

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- 2.4. The Customer shall indemnify Ultima in full for and against all claims, costs, expenses or liabilities whatsoever and howsoever arising incurred or suffered by Ultima including without limitation all legal expenses and other professional fees (together with any VAT thereon) in relation to:
- 2.4.1. the termination by the Customer or the Existing Service Supplier of the employment of any of the Employees;
 - 2.4.2. anything done or omitted to be done in respect of any of the Employees which is deemed to have been done by Ultima by virtue of the Employment Regulations; and
 - 2.4.3. any claim made at any time by any employee of the Customer or Existing Service Supplier other than the Employees who claim to have become an employee of or have rights against Ultima by virtue of the Employment Regulations;
- provided that such costs, claims, expenses and liabilities are not payable as a result of any act or omission of Ultima.
- 2.5. The Customer shall indemnify Ultima in full for and against all claims, costs, expenses or liabilities whatsoever and howsoever arising incurred or suffered by Ultima including without limitation all legal expenses and other professional fees (together with any VAT thereon) in respect of the termination or transfer of employment of any of the Employees prior to the TUPE Transfer Date and for any terminations by Ultima of any of the Employees within three (3) months after the TUPE Transfer Date.
- 2.6. The Customer shall procure that all salaries and other emoluments including holiday pay, taxation and National Insurance contributions and contributions to retirement benefit schemes relating to the Employees shall be borne by the Customer up to and including the TUPE Transfer Date and by Ultima with effect from the TUPE Transfer Date.

3. EMPLOYMENT EXIT PROVISIONS

- 3.1. This Agreement envisages that subsequent to the commencement of this Agreement, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination of this Agreement, or part, or otherwise) resulting in a transfer of the Services in whole or in part ("**Service Transfer**"). If a Service Transfer is a relevant transfer for the purposes of the Employment Regulations then, in such event, the Customer or a Replacement Supplier would inherit liabilities in respect of the Transferring Employees. Accordingly if the Employment Regulations apply on a Service Transfer the provisions in this paragraph 3 of this TUPE Link shall apply.
- 3.2. Ultima agrees that, at least twenty eight (28) days before the Service Transfer Date, Ultima shall prepare and provide to the Customer and/or, at the direction of the Customer, to the Replacement Supplier, Staffing Information, which shall be complete and accurate in all material respects.
- 3.3. The Customer shall be permitted to use and disclose the Staffing Information, in accordance with applicable data protection legislation, for informing any tenderer or other prospective Replacement Supplier for any services which are substantially the same type of services (or any part thereof) as the Services, provided always that the Customer shall require any such prospective Replacement Supplier or other tenderer:
- 3.3.1. to treat such information in confidence and at all times in accordance with applicable data protection legislation;
 - 3.3.2. not to communicate such information except to persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to tender issued by the Customer; and
 - 3.3.3. not to use it for any other purpose.
- 3.4. Ultima shall promptly notify the Customer or, at the direction of the Customer, the Replacement Supplier of any notice to terminate employment received from any Transferring Employee.
- 3.5. In connection with a relevant transfer to which the Employment Regulations apply, the parties agree that Ultima shall perform and discharge all its obligations in respect of all the Transferring Employees and their representatives for its own account up to and including the Service Transfer Date.
- 3.6. The Customer shall indemnify Ultima against all claims arising from the Customer's or the Replacement Supplier's failure to perform and discharge any obligation and against any claims in respect of any Transferring Employees arising from or as a result of:

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- 3.6.1. any act or omission by the Customer or the Replacement Supplier relating to a Transferring Employee occurring on or after the Service Transfer Date; and
 - 3.6.2. all and any claims in respect of all emoluments and outgoings in relation to the Transferring Employees (including without limitation all wages, bonuses, PAYE, National Insurance contributions, pension contribution and otherwise) accrued and payable after the Service Transfer Date (the “**Further Claims**”).
- 3.7. The Customer or the Replacement Supplier shall procure that its employees, agents and successors in title shall promptly take such action in connection with the Further Claims as Ultima shall from time to time reasonably request including but not limited to providing assistance, information, documentation and access to their employees as Ultima may reasonably request relating to the Further Claims.
- 3.8. The parties shall co-operate to ensure that any requirement to inform and consult employee representatives in relation to any relevant transfer as a consequence of a Service Transfer will be fulfilled.
- 3.9. The Customer shall assume (or shall procure that the Replacement Supplier shall assume) the outstanding obligations of Ultima in relation to any Transferring Employees in respect of accrued holiday entitlements and accrued holiday remuneration before the Service Transfer Date.