

TUPE TERMS

1. In this document the definitions in the Agreement apply together with the following definitions:

Employees: those employees whose contract of employment transfer to Ultima from the Customer as at the Commencement Date as set out under separate cover of this document.

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

- (a) the identity and age of the Employee;
- (b) those particulars of employment that an employer is obliged to give the Employee 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 Commencement Date in relation to the Employee pursuant to regulation 5(a) of the Employment Regulations;
- (f) any other information not already detailed in this definition but detailed in regulation 11 of the Employment Regulations;
- (g) 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.

Employment Regulations: the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

Staffing Information: in relation to all persons detailed on Ultima's Provisional Staff List, such information as the Customer may reasonably request (subject to the Data Protection Legislation), but including in an anonymised format:

- (a) their ages, dates of commencement of employment or engagement and gender;
- (b) details of whether they are employees, workers, self-employed, contractors or consultants, agency workers or otherwise;
- (c) the identity of their employer or relevant contracting party;
- (d) their relevant notice periods and any other terms relating to termination of employment or engagement, including any redundancy procedures and contractual redundancy payment schemes;
- (e) the current wages, salaries (including holiday pay), profit sharing, incentive and bonus arrangements applicable to them and how they are calculated;
- (f) details of other employment-related benefits including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and customer car schemes applicable to them;
- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long-term sickness absence, maternity or other statutory leave or otherwise absent from work; and
- (i) copies of all relevant documents and materials relating to such information including copies of relevant contracts of employment or engagement (or relevant standard contracts if applied generally in respect of such individuals).

Claims: has the meaning accorded to it in paragraph 2.3(e) of this document.

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 Successor Service Provider.

Successor Service Provider: any new supplier selected by the Customer upon a termination of the Agreement.

Ultima's Provisional Staff List: a list prepared and updated by Ultima of all Ultima's Personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of preparation of the list.

Transferring Employees: those employees whose contract of employment will be transferred to the Customer or a Successor Service Provider pursuant to the Employment Regulations on expiry or termination of this Agreement.

2. Transfer of Employees to Ultima at the Commencement Date

2.1 In the event that the Customer and Ultima believe that, pursuant to the Employment Regulations, at the Commencement Date, Ultima will become the employer of the Employees the terms of this document shall apply.

2.2 The Customer represents, warrants and undertakes to Ultima that:

- (a) no persons are employed or engaged in the provision of the Services other than the Employees;
- (b) 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;
- (c) full particulars of the terms of employment of all the Employees (including all remuneration, incentives, commission, bonuses, expenses, pension benefits and other payments and benefits whatsoever payable) are disclosed and copies of all contracts of employment, handbooks, policies and other documents which apply to the Employees have been provided to Ultima;
- (d) all contracts of employment with directors or employees of the Customer (or any contract for services with any individual) relating to the Services can be terminated by three months' notice or less giving rise to the making of a payment in lieu of notice or a claim for damages or compensation only in respect of that notice period (other than a statutory redundancy payment or statutory compensation for unfair dismissal) and Ultima has not liability other than for salary, wages, commission or pension to or for the benefit of any person who is an Employee;
- (e) no Employee:
 - (i) 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;
 - (ii) has been off sick for a period of 21 days or more in any six-month period within the three years ending on the Commencement Date;
 - (iii) is on secondment, maternity or other statutory leave or otherwise absent from work;
 - (iv) has objected or indicated an objection to the transfer of their employment to Ultima; and
 - (v) has any entitlement to any accrued but unused holiday from previous holiday years.
- (f) 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:
 - (i) 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;
 - (ii) maintained adequate and suitable records regarding the service of each of its employees;
 - (iii) 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;

- (iv) 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; and
 - (v) complied with all relevant orders and awards made under any statute affecting their conditions of service.
 - (g) the Customer 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;
 - (h) there is not outstanding any agreement or arrangement to which the Customer 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;
 - (i) the Customer has not recognised nor 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;
 - (j) the Customer 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;
 - (k) no amounts due to or in respect of any of the Employees (including but not limited to PAYE and National Insurance and pension contributions) are in arrears or unpaid and no liability has been incurred by the Customer which remains undischarged for breach of any employment contract; or redundancy payments (statutory or otherwise, including protective awards); or compensation under any employment legislation or regulations; or in respect of statutory holiday pay; or wrongful dismissal, unfair dismissal, equal pay, sex, race or disability discrimination or otherwise.
 - (l) no order has been made at any time for the reinstatement or re-engagement of any of the Employees or any person formerly employed or engaged or working for the Customer on the Services being provided by Ultima;
 - (m) 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 of 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;
 - (n) the Customer 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;
 - (o) 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;
 - (p) the Customer has notified Ultima in writing of any change in the Employee Liability Information since the date on which it was provided;
 - (q) the Employee Liability Information was provided not less than 28 days before the Commencement Date;
 - (r) the Customer has complied with its information and consultation obligations under regulation 13 of the Employment Regulations; and
 - (s) the Customer has agreed to, and co-operated with, pre-transfer consultation by the transferee in accordance with Part IV of TULRCA, if required.
- 2.3 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:
- (a) the termination by the Customer of the employment of any of the Employees;
 - (b) the employment of the Employees on or before the Commencement Date;
 - (c) any failure to inform and consult with Employees as required under the Employment Regulations or any other failure to perform or discharge any obligation in relation to any of the Employees up to and including the Commencement Date;

- (d) 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;
- (e) any claim made at any time by any employee of the Customer other than the Employees who claim to have become an employee of or have rights against Ultima by virtue of the Employment Regulations including the termination by Ultima of such an employee's employment (**Claims**); and

provided that in relation to sub-paragraphs (a)-(c) above such costs, claims, expenses and liabilities are not payable as a result of any act or omission of Ultima.

2.4 Ultima shall procure that its employees, agents and successors in title shall promptly:

- (a) take such action in connection with the Claims as the Customer shall from time to time reasonably request;
- (b) provide all such assistance and information as the Customer may reasonably request relating to the Claims to enable the Claims to be pursued;
- (c) subject to any restriction imposed by law, provide the Customer, its legal and other advisers with access to all documents, records or other information held by Ultima relating to the Claims;
- (d) provide the Customer and/or its professional advisers and experts with access from time to time to such members of staff as may be necessary to assist the Customer with the preparation of its cases in relation to the Claims;
- (e) permit and require such employees as the Customer and/or its professional advisers may reasonably request to meet with the Customer and/or its legal advisers in normal working hours to prepare witness statements for trial, attend meetings with Counsel or experts and/or to attend any court hearing or trial in connection with the Claims;
- (f) provide such other assistance as the Customer may reasonably request in order to ensure the due and timely prosecution of the Claims;
- (g) resist in connection with the Claims any request for documents, information, access to relevant premises or to employees of the business by any third party without first informing the Customer and obtaining its agreement to any approval of the request; and
- (h) preserve and not waive legal professional privilege or any other privilege attaching to any of the documents or other information relating to the Claims in their possession without first obtaining the Customer's consent to such waiver, such consent not to be unreasonably withheld;

provided always that any expenses reasonably incurred by Ultima and employees in complying with this clause are met by the Customer.

2.5 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 Commencement Date and by Ultima after the Commencement Date.

2.6 During the currency of this Agreement Ultima shall provide to the Customer any information the Customer may reasonably require relating to any individual employed, assigned or engaged in providing the Services under this Agreement (subject to the Data Protection Legislation).

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 Successor Service Provider would inherit liabilities in respect of the Transferring Employees. Accordingly if the Employment Regulations apply on a Service Transfer the provisions in Paragraph 3.5 to paragraph 3.9 of this document shall apply.

3.2 Ultima agrees that, subject to compliance with the Data Protection Legislation:

- (a) within 20 days of the earliest of:
 - (i) receipt of a notification from the Customer of a Service Transfer or intended Service Transfer; or
 - (ii) receipt of the giving of notice of early termination of this Agreement or any part thereof; or

- (iii) the date which is 12 months before the expiry of the Term or any Subsequent Term,
and, in any event, within 20 days of receipt of a written request of the Customer at any time, it shall provide Ultima's Provisional Staff List and the Staffing Information to the Customer or, at the direction of the Customer, to a Successor Service Provider and it shall provide an updated Ultima's Provisional Staff List when reasonably requested by the Customer or, any Successor Service Provider;
 - (b) at least 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 Successor Service Provider, Ultima's Final Staff List, which shall be complete and accurate in all material respects. Ultima's Final Staff List shall identify which of Ultima's Personnel named are Transferring Employees; and
 - (c) the Customer shall be permitted to use and disclose Ultima's Provisional Staff List, Ultima's Final Staff List and the Staffing Information for informing any tenderer or other prospective Successor Service Provider for any services which are substantially the same type of services (or any part thereof) as the Services; and
 - (d) it will promptly notify the Customer or, at the direction of the Customer, the Successor Service Provider of any notice to terminate employment received from any persons listed on Ultima's Provisional Staff List regardless of when such notice takes effect.
- 3.3 From the date of the earliest event referred to in paragraph 3.2 of this document, Ultima agrees that it shall not without the prior written consent of the Customer, assign any person to the provision of the Services (or the relevant part) which is the subject of a Service Transfer who is not listed in Ultima's Provisional Staff List and shall not without the prior written consent of the Customer (such consent not to be unreasonably withheld or delayed):
- (a) increase the total number of employees listed on Ultima's Provisional Staff List save for fulfilling assignments and projects previously scheduled and agreed with the Customer;
 - (b) make, propose or permit any changes to the terms and conditions of employment of any employees listed on Ultima's Provisional Staff List;
 - (c) increase the proportion of working time spent on the Services (or the relevant part) by any of Ultima's Personnel save for fulfilling assignments and projects previously scheduled and agreed with the Customer;
 - (d) introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on Ultima's Provisional Staff List; and
 - (e) replace any of Ultima's Personnel listed on Ultima's Provisional Staff List or deploy any other person to perform the Services (or the relevant part) or increase the number of employees or terminate or give notice to terminate the employment or contracts of any persons on Ultima's Provisional Staff List.
- 3.4 At least 21 days before the expected Service Transfer Date, Ultima shall provide to the Customer or any Successor Service Provider, in respect of each person (subject to compliance with Data Protection Legislation) on Ultima's Final Staff List who is a Transferring Employee, their:
- (a) pay slip data for the most recent month;
 - (b) cumulative pay for tax and pension purposes;
 - (c) cumulative tax paid;
 - (d) tax code;
 - (e) voluntary deductions from pay; and
 - (f) bank or building society account details for payroll purposes.
- 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 Successor Service Provider'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:
- (a) their employment, termination and any act or omission by the Customer or the Successor Service Provider relating to a Transferring Employee occurring on or after the Service Transfer Date; and

Ultima Business Solutions Limited
TUPE Terms

- (b) 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 Successor Service Provider 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 with the 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 Successor Service Provider shall assume) the outstanding obligations of Ultima in relation to any Transferring Employees in respect of accrued holiday entitlements and accrued holiday remuneration prior to the Service Transfer Date.