



# Standard Terms and Conditions for Goods and Services

## APPLICABILITY OF THESE TERMS AND CONDITIONS

Unless expressly agreed otherwise in a separate written contract signed by both parties, the terms and conditions of this agreement ("**Agreement**") shall govern all transactions for the provision of goods and services by SBFM Limited and its Affiliates to the exclusion of all other terms. By placing an order, making a purchase, or otherwise engaging with our goods and services, you acknowledge and agree to be bound by the terms and conditions of this Agreement in their entirety.

## AGREED TERMS

### 1. Definitions and Interpretation

1.1 In this Agreement the following words have the following meanings:

**Affiliate:** in respect of either party, any company from time to time directly or indirectly Controlling, Controlled by or under common Control with that party;

**Applicable Laws:** any and all:

- (a) legislation (including statutes, statutory instruments, regulations, edicts, bye-laws, orders, directives or treaties) and common law;
- (b) judgments, resolutions, decisions, orders, notices and demands of any court, regulator or tribunal; and
- (c) rules, policies, guidance or recommendations issued by any governmental, statutory or regulatory body,

in each case whether local, national, international or otherwise existing from time to time in any relevant jurisdiction which relates to a party, this Agreement and/or the Services;

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when the banks in London are open for business;

**Change:** a change to any Service (including the cessation of any part of the Services) or the addition of any new services to the Services or any amendment to this Agreement;

**Change of Control:** a change in Control;

**Charges:** the charges payable for the Services as advised by SBFM from time to time;

**Consumables:** the goods or products to be used or consumed by users of the Customer Premises;

**Confidential Information:**

- (a) the existence and terms of this Agreement;
- (b) all information (including business, customer, supplier, financial and pricing information, know-how and inventions) disclosed to the relevant party by or on behalf of the other party in connection with this Agreement and which relates to the provisions of this Agreement, the negotiations relating to this Agreement or the subject matter of this Agreement;
- (c) all other information disclosed to the relevant party by or on behalf of the other party (whether before or after the date of this Agreement) which is marked as or has been otherwise indicated to be confidential or which would be regarded as confidential by a reasonable business person;

**Control:** has the meaning given to that term in section 1124 of the Corporation Tax Act 2010 and **Controlled** and **Controlling** shall be construed accordingly;

**Customer:** means a person or entity that places an order or request Goods or Services from SBFM or its Affiliates;

**Customer Materials:** all documents records, reports, papers, drawings, designs, transparencies, photos, graphics, logos, typographical arrangements, data, specifications, Software, and all other products and materials in whatever form, (including hard copy and electronic form) provided by the Customer in connection with the Services;

**Customer Premises:** the site or sites owned, leased or otherwise occupied by the Customer at which SBFM will provide the Services;

**Dispute Resolution Procedure:** the dispute resolution procedure set out in clause 19;

**DP Legislation:** all applicable legislation and regulatory requirements in force from time to time in the UK relating to the use of personal data and the privacy of electronic communications, including (i) the Data Protection Act 2018, (ii) the retained EU law version of General Data Protection Regulation ((EU) 2016/679) ("**GDPR**"), and (iii) the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426);

**Extended Term:** has the meaning set out in clause 2.3;

**Force Majeure Event:** any event or circumstances outside the reasonable control of either party affecting its ability to perform any of its obligations under this Agreement including but not limited to Act of God, fire, flood, severe weather, epidemic or pandemic, war,

revolution, acts of terrorism, riot or civil commotion, trade embargo, strikes, lock-outs or other industrial action, and interruption of utility service;

**Good Industry Practice:** the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in providing services of the same kind as the Services;

**Index:** the United Kingdom Retail Price Index (all items) published by the office for National Statistics or its successor from time to time;

**Initial Period:** the period commencing on the date of this Agreement or the Start Date, whichever is earlier and ending on the third anniversary of the Start Date;

**Insolvency Event:** means a party:

- (a) enters liquidation;
- (b) has a receiver, liquidator, administrator, trustee or an individual with a similar role appointed over any of its assets;
- (c) proposes to make any arrangement with its creditors or goes into liquidation; or
- (d) suffers an event which, under the law of any jurisdiction, is equivalent to any of the acts or events specified above;

**Intellectual Property Right:** any current and future intellectual property rights and interests including patents, utility models, designs, design rights, copyright (including rights in software), decryption rights, database rights, trade marks, rights pursuant to passing off, service marks, business and trade names, domain names, know-how, topography rights, inventions, rights in confidential information (including technical and commercial trade secrets) and image rights, and rights of a similar or corresponding character in any part of the world, in each case whether registered or not and including any application for registration and renewals or extensions of such rights in any country in the world;

**Loss or Losses:** all losses, liabilities, damages, costs, claims and expenses (including legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest, penalties and remedial actions);

**Material Breach:** a breach that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from a substantial portion of this Agreement;

**Month:** a calendar month;

**Previous Supplier:** any service provider or combination of service providers (including the Customer) who provided the Services (or any part of the Services) prior to the Transfer Date;

**Replacement Services:** those Services to be undertaken by a Successor Supplier;

**Review Date:** each anniversary of the Start Date during the Term;

**SBFM Materials:** the cleaning materials used by SBFM to perform the Services (which, for the avoidance of doubt, excludes the Consumables);

**Services:** the services which the parties agree are to be supplied by SBFM;

**Service Transfer Date:** the date on which the Services (or any part of the Services) for whatever reason transfer from SBFM to a Successor Supplier;

**Software:** computer programs together with any technical information and documentation necessary for the use of such programs;

**Start Date:** means the date on which SBFM first commenced the provision of the Services;

**Subcontractor:** any subcontractor appointed by SBFM in connection with the supply of the Services;

**Successor Supplier:** any service provider or combination of service providers (including the Customer) which is to succeed SBFM in the provision of the Services, or any part of them, following the termination or part termination of this Agreement, or the removal of such Services from the scope of this Agreement;

**TUPE:** the Transfer of Undertakings (Protection of Employees) Regulations 2006 (as amended) as particularly outlined under Schedule 1;

**Term:** the period of the Initial Period as may be varied by any extension to this Agreement which is agreed pursuant to clause 2.3;

**Transfer Date:** the date on which the Services cease to be provided by the Customer or any Previous Supplier and begin to be provided by SBFM;

**Year:** a period of 12 (twelve) consecutive calendar months beginning on the Start Date and on each successive anniversary of the Start Date.

1.2 In this Agreement (except where the context otherwise requires):

1.2.1 the singular includes the plural and vice versa, and references to any gender includes the other genders;

- 1.2.2 references to a “**person**” includes an individual, corporation (whether incorporated or unincorporated), partnership, trust, unincorporated association and any other entity or association of any nature;
  - 1.2.3 references to a party to this Agreement include a reference to its successors and permitted assigns under this Agreement;
  - 1.2.4 headings are for convenience only and do not affect its interpretation;
  - 1.2.5 any words following the terms “**including**”, “**include**”, “**for example**” or any similar expression are by way of illustration and emphasis only and shall not limit the generality or extent of any other words or expressions;
  - 1.2.6 where any period of time dates from a given day or the day of an act or event, such period is to be calculated exclusive of that day; and
  - 1.2.7 references to any legislation include any modification or re-enactment of that legislation and any subordinate legislation made (before or after this Agreement) under that legislation.
- 1.3 All Schedules to this Agreement form part of it and shall have effect as if set out in full in the body of this Agreement. References to this Agreement include its schedules and references to clauses and schedules are references to clauses and schedules of this Agreement.
- 1.4 The terms “**subsidiary**” and “**holding company**” shall have the same meaning as set out in section 1159 Companies Act 2006.
- 1.5 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.6 Where in any clause consent is required from a party, unless specified to the contrary in the relevant clause, such party shall be entitled to give or withhold such consent in its sole and absolute discretion.
- 1.7 In the case of conflict or ambiguity between the provisions of this Agreement and the schedules then the provisions of clauses 1 to 21 of this Agreement shall prevail over the schedules.
- 2. Term**
- 2.1 This Agreement shall come into force on the earlier of the Start Date or the date of this Agreement.
- 2.2 This Agreement shall continue, unless terminated earlier in accordance with clause 16 (Termination), for the Initial Period.

- 2.3 The Initial Period shall be automatically extended for a further twelve (12) months (“**Extended Term**”) unless either party gives at least three (3) months’ notice in writing to terminate the Agreement (such notice to expire no earlier than the expiry date of the Initial Period).
- 2.4 The Extended Term shall be automatically extended for a further twelve (12) months unless either party gives at least three (3) months’ notice to terminate the Agreement (such notice to expire no earlier than the expiry date of the Extended Term).

### **3. Appointment**

- 3.1 The Customer exclusively appoints SBFM to provide the Services during the Term.
- 3.2 In consideration of the payment by the Customer of the Charges, SBFM agrees to provide the Services to the Customer from the Start Date and during the remainder of the Term in accordance with the terms of this Agreement.
- 3.3 If the Customer requires any new services which are similar to or an extension of the Services, the Customer shall notify SBFM and shall allow SBFM the first opportunity to tender to provide those new services to the Customer and the provision of any additional services shall be treated as a Change.

### **4. SBFM’s Obligations**

- 4.1 SBFM shall use its reasonable endeavours to provide the Services to the Customer from the Start Date in accordance with:
- 4.1.1 Good Industry Practice; and
- 4.1.2 all Applicable Laws,
- in all material respects.
- 4.2 SBFM shall:
- 4.2.1 meet all its obligations and responsibilities under this Agreement;
- 4.2.2 promptly provide all assistance, information, and advice which the Customer may reasonably require; and
- 4.2.3 promptly do all acts which the Customer may reasonably request,
- to enable the Customer to comply with its obligations and responsibilities under this Agreement.
- 4.3 SBFM shall supply the SBFM Materials. Any additional materials or Consumables supplied by SBFM shall be invoiced to and payable by the Customer.

- 4.4 SBFM shall ensure that the Services are performed substantially by employees of SBFM possessing suitable skills and experience.
- 4.5 SBFM shall ensure that all employees to provide the Services are provided with uniforms.
- 4.6 SBFM shall use its reasonable endeavours to comply with any dates agreed for commencement, performance or completion of the Services (or any part of them) but any such dates are estimates and time for performance of the Services shall not be of the essence of this Agreement.
- 4.7 SBFM shall obtain at its own expense the licences, powers and consents necessary for it to perform its obligations under this Agreement.
- 4.8 SBFM shall use its reasonable endeavours to comply with all rules and regulations in relation to health and safety or security which may apply at the Customer's Premises and which have been notified to SBFM in accordance with clause 5.2.8.1 SBFM shall not be liable for any breach of its obligations under this Agreement if such breach is caused by SBFM's compliance with this clause 4.

## 5. Customer's Obligations

- 5.1 The Customer shall:
  - 5.1.1 meet all its obligations and responsibilities under this Agreement;
  - 5.1.2 promptly provide all assistance, information, and advice which SBFM may reasonably require and ensure that that information is and remains complete and accurate in all material respect; and
  - 5.1.3 promptly do all acts which SBFM may reasonably request,  
to enable SBFM to comply with its obligations and responsibilities under this Agreement.
- 5.2 The Customer shall at all times during the Term:
  - 5.2.1 promptly provide Customer Material and such other information as SBFM may reasonably require, and ensure it is correct;
  - 5.2.2 promptly allow SBFM such access to the Customer's Premises (including, if applicable, the provision of passes, permits and keys), as SBFM may require during its performance of the Services;
  - 5.2.3 ensure that the Customer's Premises:
    - 5.2.3.1 are safe and comply with all Applicable Laws; and



- 5.2.3.2 have unrestricted and uninterrupted access to supplies of all things necessary to provide the Services including water, light, an electrical supply, power, waste disposal facilities and secure storage;
- 5.2.4 provide SBFM's personnel with such access to the Customer Premises at such hours as may be arranged in advance as SBFM reasonably requires for it to discharge its obligations under this agreement, giving in advance any special instructions regarding unavoidable restrictions if required, and provide them with a security pass and the use of a parking space or parking permit (if such parking is required by SBFM's personnel) for the periods during which the Services are to be provided;
- 5.2.5 provide SBFM with special instructions for activating and deactivating any alarm systems and ensure that any keys necessary to open the locks without difficulty are provided. SBFM reserves the right to charge the full cost of the Services if the alarm system or keys do not enable its personnel to access the Customer Premises;
- 5.2.6 ensure that any equipment provided by the Customer to SBFM for the performance of the Services shall be safe to use, in good working order and accompanied by clear and detailed operating instructions where necessary. SBFM accepts no liability for damage caused to the equipment supplied by the Customer where the Customer has failed to comply with its obligations in this clause in respect of that equipment;
- 5.2.7 keep all materials, equipment, documents and other property of the SBFM Materials that SBFM reasonably needs to store at the Customer Premises in safe custody at its own risk and not dispose of or use the SBFM Materials other than in accordance with the SBFM's written instructions or authorisation;
- 5.2.8 inform SBFM in writing of:
  - 5.2.8.1 all rules and regulations in relation to health and safety, security or any other matter which may apply at the Customer's Premises;
  - 5.2.8.2 any known hazards at any Customer Premises; and
  - 5.2.8.3 any manufacturer instructions or warnings associated with any item on which the Services will or may be performed; and
- 5.2.9 obtain and maintain all necessary licences and consents and comply with all Applicable Laws in relation to:
  - 5.2.9.1 the Services; and
  - 5.2.9.2 SBFM's use of the Customer's Premises and the Customer Material.

- 5.3 The Customer shall at all times during the Term of this Agreement and for a period of 12 months following termination of the Agreement:
- 5.3.1 cooperate fully with SBFM by providing access to relevant documentation in whatever medium, including CCTV footage upon request, to assist SBFM in the performance of this Agreement and in the investigation of any claims arising in connection with the Services provided at the Customer Premises;
- 5.3.2 promptly share such documentation in a secure and timely manner, subject to any applicable legal or regulatory restrictions;
- 5.3.3 retain CCTV footage and any other relevant documentation (including but not limited to incident reports and accident logs) for a period of 12 months, or as otherwise required by Applicable Laws, in relation to any incidents that may reasonably give rise to a claim under this Agreement; and
- 5.3.4 acknowledge that failure to retain or provide such CCTV footage and records when reasonably requested may hinder SBFM's ability to effectively perform its obligations, investigate incidents, or defend against claims. Where such failure results in loss, liability, or cost to SBFM, the Customer shall indemnify and hold SBFM harmless against any such losses, except where disclosure is legally prohibited.

## 6. Supplier Relief

- 6.1 If SBFM's performance of any of its obligations under the Agreement prevented or delayed by any failure by the Customer to perform any of its obligations (**Customer Default**), then, without limiting or affecting any other right or remedy available to SBFM:
- 6.1.1 SBFM may suspend performance, and rely on the Customer Default to relieve it from the performance, of the affected obligations until the Customer remedies the Customer Default;
- 6.1.2 SBFM shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from SBFM's failure or delay to perform any of its obligations as set out in this clause 6; and
- 6.1.3 the Customer shall reimburse SBFM on written demand for any costs or losses sustained or incurred by SBFM arising directly or indirectly from the Customer Default.

## 7. Service Review

- 7.1 Each party will designate a service manager who will have day to day responsibility for the performance of their appointer's obligations under this Agreement. Each party will

promptly give the other details of the person appointed and any changes in that appointment from time to time.

7.2 The service managers shall meet (by phone or in person) at least once every 3 (three) Months to discuss matters relating to the Services and this Agreement.

## **8. Price and Payment**

8.1 Subject to clause 8.2, the Customer shall pay SBFM the Charges for the Services .

8.2 The Customer acknowledges and agrees that on and from the Start Date and for a period of six (6) months thereafter (or such other period agreed between the parties (such agreement not to be unreasonably withheld, delayed or conditioned) SBFM shall be entitled to invoice the Customer for the Services based on the hours and hourly rates set out in the Employee Liability Information provided by the Previous Supplier or the Customer (as applicable) before the Start Date rather than on the basis of the Charges.

8.3 The Charges are exclusive of VAT which shall be payable by the Customer to SBFM at the rate prescribed by law.

8.4 SBFM shall invoice the Customer in advance for the Charges on or around the first Business Day of each Month in respect of the Services to be provided in that Month based on the agreed monthly cost.

8.5 The Customer shall promptly provide any information requested by SBFM which it requires to produce its invoices.

8.6 The Customer shall pay each invoice issued to it by SBFM within 14 (fourteen) days of the date of invoice, in full and in cleared funds in pounds sterling, by electronic transfer to the bank account nominated by SBFM from time to time.

8.7 The Charges are subject to an annual increase on each Review Date. The Charges shall be increased by the same percentage as the percentage increase in the Index (if any) since the last Review Date (or, in the case of the first Review date, since the Start Date).

8.8 The increase in the Charges referred to in clause 8.7 shall take effect from the Review Date (and be applied retrospectively if necessary).

8.9 Notwithstanding the terms of clause 8.7, if the cost to SBFM of providing the Services is increased due to a change in an Applicable Law or an increase in any Subcontractor's costs occurring after the Start Date, then the amount of such increase will be added to the Charges after SBFM has given notice to the Customer of such increase.

8.10 If the Charges are increased pursuant to clause 8.9 because of an increase in the "National Living Wage", "National Minimum Wage" or the Real Living Wage advised by the Living Wage Foundation (or any other Applicable laws in relation to minimum wages) or national

insurance contributions payable by SBFM, the increased Charges will include an increase to the hourly rate paid by the Customer for SBFM's cleaning operatives and supervisors.

8.11 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay SBFM on the due date:

8.11.1 the Customer shall pay interest on the overdue amount at the rate of 4 (four) per cent per annum above Barclays Bank plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount;

8.11.2 (except where the Customer has complied with its obligations in clause 8.12 below) SBFM may suspend all or part of the Services until payment has been made in full;

8.11.3 All of SBFM's invoices which remain unpaid shall become immediately due and owing; and

8.11.4 SBFM may elect to terminate the Agreement in accordance with clause 16.

8.12 If the Customer disputes the payment of any Charges or a part of them, the Customer shall:

8.12.1 notify SBFM of the disputed amount on or before the due date for payment of the invoice in which such disputed amount is included giving reasonable details of the dispute; and

8.12.2 pay the amount of Charges not in dispute in accordance with clause 8.1,

if the dispute is not resolved within 5 (five) Business Days of such referral it shall be dealt with under the Dispute Resolution Procedure.

8.13 The Customer shall not be entitled to withhold, set off or reduce payment of any amounts payable under this Agreement by any amounts which it claims are owed to it by SBFM under this Agreement or any other agreement.

## **9. Limitation and Exclusions of Liability**

9.1 All warranties, conditions and other terms, express (other than those set out in this Agreement) or implied, statutory, customary or otherwise which but for this clause 9 would or might subsist in favour of the Customer, are (to the fullest extent permitted by law) excluded from this Agreement.

9.2 Nothing in this Agreement limits or excludes the liability of SBFM:

- 9.2.1 for death or personal injury resulting from negligence; or
  - 9.2.2 for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by SBFM; or
  - 9.2.3 for any liability that is not permitted to be limited or excluded by law.
- 9.3 Subject to clause 9.2 SBFM shall not under any circumstances whatever be liable, whether or not arising pursuant to an indemnity, in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise for loss of profits; loss of business; depletion of goodwill and/or similar losses; loss of anticipated savings; loss or corruption of data or information; or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- 9.4 Subject to clauses 9.2, 9.3 and 9.5 SBFM's total liability, whether or not arising pursuant to an indemnity, in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising under or in connection with the performance or contemplated performance of this Agreement shall in all circumstances be limited to;
- 9.4.1 £5,000 (five thousand pounds sterling) per claim; and
  - 9.4.2 in respect of all claims (connected or unconnected) in any Year, an amount equal to the Charges paid for the Services in that Year.
- 9.5 SBFM accepts no liability for any breakages unless notified to SBFM before the end of the next Working Day following the relevant cleaning visit. In the event of a breakage for which SBFM accepts responsibility, SBFM shall, at its option and as the Customer's sole remedy, either repair the item at its cost or credit the Customer with the item's present actual cash value against SBFM's next invoice.
- 9.6 SBFM's liability for the costs of replacement keys or a locksmith arising from its personnel losing keys shall not exceed £50 per claim.
- 9.7 Subject to clause 9.2 SBFM shall not be liable for any loss suffered by the Customer caused by:
- 9.7.1 a failure to activate the Customer's alarm system following a cleaning visit or otherwise failing to adequately secure the Customer's Premises, save where this arises through the wilful default or negligence of its personnel;
  - 9.7.2 any equipment or cleaning products provided by the Customer; and
  - 9.7.3 the Customer's failure to properly seal any surfaces.

9.8 The Customer agrees to take all steps necessary to mitigate any losses, costs, expenses, claims and demands that it may seek to claim from SBFM under or in connection with this Agreement.

9.9 The parties agree that they have negotiated this clause 9 and that it represents a fair and equitable position.

## **10. Insurance**

10.1 SBFM shall take out and maintain in force during the Term such policies of insurance as it reasonably considers appropriate and adequate to cover its liabilities to the Customer under this Agreement.

10.2 SBFM shall on the written request of the Customer from time to time provide the Customer with reasonable details of the insurance policies maintained in force by SBFM and a copy of the premium receipt in respect of each policy.

## **11. Services to Customer Affiliates**

11.1 The parties acknowledge and agree that no Affiliate of the Customer is intended to have any right to enjoy the benefit or enforce any of the terms of this Agreement.

11.2 If, notwithstanding clause 11.1, SBFM provides the Services to any Affiliate of the Customer or such Affiliate enjoys the benefit of this Agreement then the Customer shall:

11.2.1 procure that such Affiliate shall comply with the obligations placed upon the customer pursuant to this Agreement to the same extent as if such Affiliate had executed this Agreement in its own right; and

11.2.2 indemnify SBFM and keep it indemnified against all costs, claims, demands and expenses (including without limitation legal expenses) arising out of or in connection with any claims made against SBFM by any of the Customer's Affiliates arising as a result of this Agreement, however (subject to the limitations set out in this Agreement) the Customer shall be entitled to bring a claim against SBFM in respect of such costs, claims, demands and expenses incurred by the Affiliates of the Customer which arise as a direct result of breach by SBFM of the terms of this Agreement which, for the purposes of this clause 11.2 shall be deemed to be costs, claims, demands or expenses of the Customer.

## **12. Intellectual Property**

12.1 All Intellectual Property Rights belonging to a party prior to the signing of this Agreement will remain vested in that party.

12.2 The Customer shall not use any Intellectual Property Rights in SBFM's trade marks and brands for any purpose without SBFM's prior written consent and then only if used in accordance with SBFM's instructions as provided from time to time.

12.3 The Customer undertakes that the performance of its obligations under this Agreement and SBFM's use of the Customer Materials will not infringe any Intellectual Property Rights of any third party.

### **13. Data Protection**

13.1 The terms "Data Controller", "Data Processor", "Data Subject", "Personal Data", "Process" and "Processing" have the meanings prescribed in the DP Legislation. Each party shall comply with all applicable requirements of the DP Legislation. SBFM will be Data Controller of any Personal Data SBFM may receive from the Customer. If either party is required to Process Personal Data on behalf of the other and the extent of that Processing requires detailed specification, the parties shall enter into a separate data processing agreement or confirm separately in writing the subject matter and duration of the Processing, the nature and purpose of the Processing, the types of Personal Data, the categories of Data Subject and the obligations and rights of SBFM if the parties agree (acting reasonably and in good faith) that such agreement or written confirmation is necessary.

### **14. Confidentiality**

14.1 Each party may have access to Confidential Information of the other party under this Agreement. A party's Confidential Information shall not include information that:

14.1.1 is or becomes publicly known through no act or omission of the receiving party; or

14.1.2 was in the other party's lawful possession prior to the disclosure; or

14.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or

14.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence.

14.2 Subject to clause 14.4, each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party or use the other's Confidential Information for any purpose other than the implementation of this Agreement.

14.3 Each party agrees to take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.

14.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 14.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

14.5 This clause 14 shall survive termination of this Agreement for any reason.

## 15. Change

15.1 Subject to clause 15.5 where either party wishes to propose a Change then it will notify the other party of that fact by sending a written request to the other party's service manager, specifying in as much detail as is reasonably practicable the nature of the Change so as to enable the other party to assess the Change

15.2 Where SBFM is the party requesting a Change, it shall as soon as reasonably practicable (and in any event no later than 10 (ten) Business Days) after sending its written request proposing that Change provide the Customer with an evaluation of: the impact of the proposed Change on the Services, the cost of implementation and on-going operation of the relevant Change, (including details of any alteration of the Service Charges or additional charges relating to the proposed Change), a timetable for the implementation of the Change and details of the impact, if any, of the Change on the compliance of the Services with any Applicable Laws (a "**Change Evaluation**").

15.3 Where the Customer is the party requesting a Change, SBFM shall consider whether it is able to make such a Change and if it is, it shall at the Customer's cost prepare a Change Evaluation and provide it to the Customer as soon as reasonably practicable (and in any event no later than 20 (twenty) Business Days) after receiving the written request for the Change.

15.4 The Customer will review the Change Evaluation as soon as reasonably practicable after its receipt and will either accept or reject the proposed Change Evaluation. If the Customer accepts the proposed Change Evaluation it will issue a written notice authorising the Change as soon as reasonably practicable but no later than 10 (ten) Business Days after receiving the Change Evaluation. If the parties cannot reach agreement on any Change Evaluation within the time frame above, either party may escalate the matter for resolution in accordance with the Dispute Resolution Procedure.

15.5 If in SBFM's reasonable opinion, a Change is required to respond to an emergency, SBFM shall use all reasonable efforts to obtain the Customer's prior approval for the Change but if it is not able to obtain such approval, SBFM may nevertheless make a temporary Change to respond to the emergency.



15.6 Except as set out in clause 15.5 neither party will have any obligation to commence work or make any payment in connection with any Change until the relevant Change Evaluation has been accepted in accordance with this clause 15.

## 16. Termination

16.1 Either party shall be entitled to terminate this Agreement immediately upon giving notice to the other if the other party commits a Material Breach and:

16.1.1 such Material Breach is not capable of remedy; or

16.1.2 such Material Breach is capable of remedy, and the breaching party fails to remedy the breach within 20 (twenty) Business Days after receipt of notice giving full particulars of the breach and requiring it to be remedied.

16.2 Either party shall be entitled to terminate this Agreement immediately upon giving notice to the other if:

16.2.1 the other party stops trading or is unable to pay its debts and/or an Insolvency Event applies to the other party; or

16.2.2 a Force Majeure Event continues for a period of 3 months in any annual period.

16.3 SBFM may terminate this Agreement by giving not less than 30 days' notice to that effect to the Customer if the Customer fails to make any payment due to SBFM under this Agreement on or before the due date for payment.

16.4 If any circumstances arise which give either party a right to terminate this Agreement under clause 16.1 or 16.2, such party shall exercise its right of termination within 20 (twenty) Business Days of becoming aware of those circumstances and if such party does not give written notice to the other to terminate this Agreement by the end of such period then that party shall be deemed to have waived its right of termination in respect of those circumstances.

16.5 Either party may exercise its rights of termination under clauses 16.1, 16.2 or 16.3 in respect of the whole Agreement or (at its sole discretion) in respect of only one or more elements of the Services. If either party exercises its rights of termination in respect of only one or more elements of the Services then:

16.5.1 this Agreement shall terminate in respect of those Services and the provisions of this Agreement relating to termination shall apply in relation to those Services; and

16.5.2 in all other respects this Agreement shall continue in full force and those elements of the Services in respect of which the party has terminated this Agreement will be deemed to be removed from the definition of the Services.

## 17. Consequences of Termination

- 17.1 The termination of this Agreement shall be without prejudice to the rights and remedies of either party which may have accrued up to the date of termination.
- 17.2 On termination of this Agreement for any reason whatsoever:
- 17.2.1 the relationship of the parties shall cease and any rights or licences granted under or pursuant to this Agreement shall cease to have effect save as (and to the extent) expressly provided for in this clause 17;
  - 17.2.2 any provision which expressly or by implication is intended to come into or remain in force on or after termination shall continue in full force and effect
  - 17.2.3 each of the parties shall immediately return to the other party (or, if the other party so requests by notice in writing, destroy) all of the other party's property in its possession at the date of termination, including all of its Confidential Information, together with all copies of such Confidential Information, and shall make no further use of such Confidential Information; and
  - 17.2.4 the Customer shall immediately pay to SBFM all of SBFM's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, SBFM may submit an invoice, which shall be payable immediately on receipt.

## 18. Force Majeure

- 18.1 Subject to due compliance with clause 18.2, neither party shall be liable to the other for any delay or non-performance of its obligations under this Agreement arising from any Force Majeure Event.
- 18.2 In the event of either party being delayed or prevented from performing its obligations due to a Force Majeure Event such party shall:
- 18.2.1 give notice of such delay or prevention to the other party as soon as reasonably practical stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;
  - 18.2.2 use its reasonable endeavours to mitigate the effects of such delay or prevention upon the performance of its obligations under this Agreement; and
  - 18.2.3 resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.

## 19. Dispute Resolution

- 19.1 If any dispute between the parties has not been resolved in the normal course of business, either party may call a meeting of the parties by service of not less than 10 (ten) Business Days' notice and each party agrees to procure that each party's service manager shall attend a meeting called in accordance with this clause 19.1 with the aim of resolving the dispute.
- 19.2 Those attending the meeting pursuant to clause 19.1 shall use all reasonable endeavours to resolve the dispute(s) arising out of this Agreement. If the meeting fails to resolve the dispute within 10 (ten) Business Days of it being referred to it, either party by notice in writing may refer the dispute to the Managing Director or CEO (or their nominees) of both parties, who shall co-operate in good faith to resolve the dispute as amicably as possible within 15 (fifteen) Business Days of the dispute being referred to them.
- 19.3 If the dispute between the parties is not resolved having applied the process set out at clauses 19.1 and 19.2, then the Dispute Resolution Procedure shall be deemed exhausted and either party may resolve the dispute by any other route, including through the courts pursuant to clause 21.15.
- 19.4 Notwithstanding the provisions of this clause 19 either party may commence or take proceedings or seek remedies before the courts or any other competent authority for interim, interlocutory or injunctive remedies in relation to this Agreement.

## 20. Non-Solicitation

- 20.1 During the Term and for a period of 6 (six) Months after the end of the Term the Customer shall not solicit the services (either as principal, agent, independent contractor or in any other form of employment or engagement) of any senior staff of SBFM or any of its Affiliates who have been engaged in the provision of the Services or the management of this Agreement or any significant part of it, other than:
- 20.1.1 by means of a national advertising campaign open to all-comers and not specifically targeted at such staff of the other party; or
- 20.1.2 with the prior written consent of SBFM.

## 21. General

- 21.1 The Customer may not without the written consent of SBFM, assign, mortgage, charge (otherwise than by floating charge) or dispose of any of its rights hereunder, or sub-contract or otherwise delegate any of its obligations hereunder.
- 21.2 SBFM may sub-contract assign, mortgage, charge (otherwise than by floating charge) or dispose of any of its rights hereunder all or any of its obligations under this Agreement. The appointment of any subcontractor shall not relieve SBFM from any liability or

obligation under this Agreement and SBFM shall be responsible for all acts and omissions of the subcontractor to the same extent as if they were acts or omissions of SBFM.

- 21.3 Nothing in this Agreement shall create, or be deemed to create, a partnership or the relationship of principal and agent or employer and employee between the parties.
- 21.4 This Agreement contains the entire agreement between the parties with respect to the subject matter hereof, supersedes all previous agreements and understandings between the parties with respect thereto, and may not be modified except by an instrument in writing signed by the duly authorised representatives of the parties.
- 21.5 Each party acknowledges that, in entering into this Agreement, it does not do so on the basis of, and not rely on, any representation, warranty or other provision except as expressly provided herein, and that all conditions, warranties or other Terms implied by statute or common law are hereby excluded to the fullest extent permitted by law.
- 21.6 If any provision of this Agreement is held by any court or other competent authority to be void or unenforceable in whole or part, this Agreement shall continue to be valid as to the other provision thereof and the remainder of the affected provision.
- 21.7 The parties agree that any notice issued under this Agreement must be made in writing to the company's registered address and shall be deemed to have been received 2 (two) days after the date on which it was posted. Any notice given by fax or electronically on any day shall be deemed to have been received at the beginning of the next working day, so long as a confirmation of successful send receipt is received.
- 21.8 Each party shall comply with the Bribery Act 2010 and the Modern Slavery Act 2015 and not do, or omit to do, any act that will cause the other to be in breach of the Bribery Act 2010 or the Modern Slavery Act 2015.
- 21.9 If at any time either party has a claim against the other which it does not pursue quickly, that shall not mean that the claim can't be pursued subsequently, when the party concerned is ready.
- 21.10 If a court decides that part of this Agreement is not enforceable in law, that decision does not alter the enforceability of the rest of the Agreement.
- 21.11 No party not a signatory to this Agreement will be entitled to enforce any right or obligation detailed in this Agreement, whether under the Agreements (Rights of Third Parties) Act 1999 or otherwise.
- 21.12 At any time, each party shall, at the request of the other party, sign all documents and do or cause to be done all further acts and things as that party so requiring may reasonably require to give full effect to the terms of this Agreement.

- 21.13 With the exception of Changes, which shall be subject to the provisions of clause 15, no purported amendment or variation of this Agreement or any provision of this Agreement shall be binding on the parties unless it is set out in writing expressed to amend this Agreement signed by of each of the parties.
- 21.14 This Agreement may be executed and delivered in any number of counterparts, each of which is an original and which, together, have the same effect as if each party had signed the same document. Transmission of the executed signature page of a counterpart of this agreement by email (in PDF, JPEG or other agreed format) takes effect as the transmission of an executed "wet-ink" counterpart of this agreement.
- 21.15 This Agreement (and any non-contractual matters arising in relation to its subject matter) will be governed by English law and be subject to the exclusive jurisdiction of the English courts.

## Schedule 1 – TUPE

### 1. Definitions and Interpretation

1.1 The following definitions and rules of interpretation shall apply throughout this Schedule 1:

**Employment Liabilities:** includes all awards, compensation, costs, expenses, losses, liabilities, damages, claims, proceedings, awards, fines, orders, demands, actions, payments by way of settlement, penalties, payments pursuant to Court or Tribunal awards or orders and other liabilities (including legal and other professional fees (together with any VAT thereon which is not recoverable from HM Revenue and Customs by the indemnified party) and expenses on an indemnity basis) whenever or howsoever arising or brought;

**Employee Liability Information:** the information which an employer is required to provide pursuant to regulation 11(2) of TUPE;

**Entry Service Transfer:** the transfer of the Services in whole or in part for whatever reason from the Customer or a Previous Supplier to SBFM;

**Entry Service Transfer Date:** the date of an Entry Service Transfer;

**ERA:** the Employment Rights Act 1996;

**Exiting Employees:** those employees whose contracts of employment will be transferred from SBFM to the Customer or a Successor Supplier pursuant to TUPE on expiry or termination of this agreement in whole or in part;

**Exit Service Transfer:** the transfer of the Services in whole or in part for whatever reason from SBFM to the Customer or any Successor Supplier;

**Exit Service Transfer Date:** the date of an Exit Service Transfer;

**Transferring Employees:** those employees whose contracts of employment will be transferred to SBFM from the Customer or a Previous Supplier pursuant to the TUPE on the Entry Service Transfer Date and who are identified on a list provided by the Customer to SBFM in accordance with paragraphs 3.1.1 and 3.1.3 below;

**TULRCA:** Trade Union and Labour Relations (Consolidation) Act 1992; and

**TUPE Exit Date:** the date on which TUPE will operate to transfer the employment of the Exiting Employees from SBFM to the Customer or a Successor Supplier.

- 1.1 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.2 Any phrase introduced by the words **including, includes, in particular** or **for example** or similar shall be construed as illustrative and shall not limit the generality of the related general words.
2. **Operation of this Schedule**
  - 2.1 The parties have agreed the terms and conditions which shall apply in relation to Transferring Employees and Exiting Employees in this Schedule and both parties shall comply with the provisions of this Schedule.
  - 2.2 If for any reason there is more than one Entry Service Transfer and/or Exit Service Transfer during the term of this agreement, and if TUPE applies to those transfers, then there may be more than one Entry Service Transfer Date and/or TUPE Exit Date.
  - 2.3 The parties agree that if there is more than one Entry Service Transfer, Exit Service Transfer, Entry Service Transfer Date and/or TUPE Exit Date:
    - 2.3.1 the parties shall comply with this Schedule in respect of each such transfer; and
    - 2.3.2 the obligations agreed and the indemnities provided in this Schedule shall apply to each such transfer separately and only in respect of the Entry Service Transfer Date and/or TUPE Exit Date, Transferring Employees and/or Exiting Employees relevant to each such transfer.
  - 2.4 The parties envisage that:
    - 2.4.1 SBFM may become the employer of the Transferring Employees pursuant to TUPE as a result of an Entry Service Transfer. If TUPE applies to the Entry Service Transfer, the parties agree that paragraphs 3 to 5 of this Schedule (inclusive) shall apply; and
    - 2.4.2 the identity of the provider of the Services (or any part of the Services) may change in the future (whether as a result of termination of the agreement, or part, or otherwise) resulting in an Exit Service Transfer. If TUPE applies to any Exit Service Transfer, the parties agree that paragraphs 6 to 10 of this Schedule (inclusive) shall apply.
  - 2.5 The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to this Schedule to the extent necessary to ensure that any Affiliate or Successor Supplier shall have the right to enforce the obligations owed to, and indemnities given, in its own right pursuant to section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

2.6 Notwithstanding clause 2.5, the parties may by agreement rescind or vary this Schedule or any term of this Schedule without the consent of any other person who has the right to enforce the terms of this Schedule or the term in question notwithstanding that such rescission or variation may extinguish or alter that person's entitlement under that right.

### 3. General Entry Provisions

3.1 In the event that TUPE applies to an Entry Service Transfer, the Customer shall co-operate in seeking to ensure the orderly transfer of any Transferring Employees to SBFM. To that end:

3.1.1 no later than 60 days before the Entry Service Transfer Date, the Customer shall provide (or procure that any Previous Supplier shall provide) to SBFM the Employee Liability Information for those persons who it expects to be Transferring Employees, which shall be complete and accurate in all material respects;

3.1.2 when reasonably requested to do so by SBFM, the Customer shall provide (or procure that any Previous Supplier shall provide) to SBFM updated Employee Liability Information for those persons who it expects to be Transferring Employees, which shall be complete and accurate in all material respects; and

3.1.3 no later than 28 days before the Entry Service Transfer Date, the Customer shall provide (or procure that any Previous Supplier shall provide) to SBFM the Employee Liability Information regarding each of the Transferring Employees, which shall be complete and accurate in all material respects and contain information at a specified date not more than 14 days before the date on which the information was provided to SBFM.

3.2 From the date of the earliest event referred to in paragraph 3.1 of this Schedule, the Customer shall not (and shall procure that any Previous Supplier shall not) without the prior written consent of SBFM (such consent not to be unreasonably withheld or delayed):

3.2.1 assign any person to the provision of the Services (or the relevant part) which is the subject of an Entry Service Transfer who is not listed in the Employee Liability Information referred to in paragraph 3.1 above;

3.2.2 increase the total number of employees listed in the Employee Liability Information referred to in paragraph 3.1 above;

3.2.3 make, propose or permit any changes to the terms and conditions of employment of any employees listed in the Employee Liability Information referred to in paragraph 3.1 above;



- 3.2.4 increase the proportion of working time spent on the Services (or the relevant part) by any of the employees listed in the Employee Liability Information referred to in paragraph 3.1 above;
  - 3.2.5 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed in the Employee Liability Information referred to in paragraph 3.1 above; and
  - 3.2.6 replace any of the employees listed in the Employee Liability Information referred to in paragraph 3.1 above, or deploy any other person to perform the Services (or the relevant part) or terminate or give notice to terminate the employment or contracts of any persons listed in the Employee Liability Information referred to in paragraph 3.1 above.
- 3.3 The Customer will (or procure that any Previous Supplier will) promptly notify SBFM of any notice to terminate employment received from any persons listed in the Employee Liability Information referred to in paragraph 3.1 above regardless of when such notice takes effect.
- 3.4 The Customer shall ensure that any requirement to inform and consult in relation to any Entry Service Transfer to which TUPE applies is fulfilled, whether by the Customer or any Previous Supplier.
- 3.5 If SBFM so requires, the Customer shall permit (and, if relevant, shall procure that any Previous Supplier shall permit) SBFM to send a representative to one or more consultation meetings with the Transferring Employees or their representatives before an Entry Service Transfer.
- 3.6 The Customer shall indemnify SBFM in full for and against all Employment Liabilities incurred or suffered by SBFM in relation to:
- 3.6.1 any failure by the Customer or any Previous Supplier to provide Employee Liability Information pursuant to paragraph 3.1 of this Schedule;
  - 3.6.2 the provision by the Customer or any Previous Supplier of inaccurate or incomplete Employee Liability Information pursuant to paragraph 3.1 of this Schedule;
  - 3.6.3 any breach by the Customer or any Previous Supplier of any of the provisions of paragraph 3.2 of this Schedule;
  - 3.6.4 any failure by the Customer or any Previous Supplier to comply with their obligations under regulations 11 or 13 of TUPE, except to the extent that the liability arises from SBFM's failure to comply with regulation 13(4) of TUPE;

- 3.6.5 the termination by the Customer or any Previous Supplier of the employment of any of the Transferring Employees before the Entry Service Transfer Date, or in connection with the Entry Service Transfer;
  - 3.6.6 anything done or omitted to be done by the Customer or any Previous Supplier in respect of any of the Transferring Employees before the Entry Service Transfer Date which is deemed to have been done by SBFM by virtue of TUPE; and
  - 3.6.7 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) arising from the period of employment with the Customer or a Previous Supplier which are accrued and payable before the Entry Service Transfer Date.
- 3.7 If, as a result of the application of TUPE, it is found or alleged that the employment of any person other than the Transferring Employees has transferred to SBFM on the Entry Service Transfer Date pursuant to TUPE (such person being a “**Additional Transferring Employee**”) then:
- 3.7.1 subject to the DP Legislation, each party shall notify the other of that finding or allegation as soon as reasonably practicable after becoming aware of it;
  - 3.7.2 the Customer or any Previous Supplier shall have 14 days of being informed of the allegation or finding to offer the Additional Transferring Employee employment or engagement within the Customer or any Previous Supplier, as applicable. If the Additional Transferring Employee is not offered employment or engagement or the Additional Transferring Employee does not accept any such offer, SBFM shall be entitled to terminate the employment of the Additional Transferring Employee; and
  - 3.7.3 provided that the Additional Transferring Employee’s employment is terminated by SBFM within a period of 28 days of written notice from the Customer of the outcome of events under paragraph 3.7.2, the Customer shall indemnify SBFM in full for and against all Employment Liabilities in relation to:
    - 3.7.3.1 any liabilities arising in connection with the employment of such Additional Transferring Employee before the alleged Entry Service Transfer Date which SBFM inherits or is alleged to have inherited by operation of TUPE; and
    - 3.7.3.2 the cost of employing that Additional Transferring Employee up to and including the date of dismissal and the cost and any and all liabilities arising in connection with the termination of employment of that Additional Transferring Employee (including, but not limited to, any liabilities and costs arising in connection with any disputes or

proceedings pursued by the Additional Transferring Employee in connection with their employment, the application of TUPE to their employment, and/or any termination of their employment by SBFM).

#### **4. Apportionments on Entry**

4.1 Subject to paragraph 4.2 of this Schedule:

4.1.1 the Customer (or any Previous Supplier) shall be responsible for all emoluments and outgoings in respect of the Transferring Employees (including without limitation all wages, bonuses, commissions, premiums, subscriptions, PAYE, national insurance contributions and pension contributions) which are accrued or payable up to and including the Entry Service Transfer Date; and

4.1.2 subject also to paragraph 3.7.3 of this Schedule, SBFM shall be responsible for all emoluments and outgoings in respect of the Transferring Employees (including without limitation all wages, bonuses, commissions, premiums, subscriptions, PAYE, national insurance contributions and pension contributions) which are accrued and payable after the Entry Service Transfer Date.

4.2 SBFM shall assume the outstanding obligations of the Customer or any Previous Supplier (as applicable) in relation to any Transferring Employee in respect of holiday entitlement accrued up to and including the Entry Service Transfer Date, but untaken as at that date, together with remuneration in respect of such untaken holiday entitlement. For the avoidance of doubt, any remuneration due or paid in respect of holidays taken by any Transferring Employee before the Entry Service Transfer Date shall remain the liability of the Customer or any Previous Supplier (as applicable).

4.3 Subject to paragraph 4.1, the parties agree that they shall deal with the retirement schemes and benefits of the Transferring Employees in accordance with TUPE.

#### **5. Potential Redundancy Costs on Entry**

5.1 In the event that the employment of the Transferring Employees transfers to SBFM from a Customer or a Previous Supplier on an Entry Service Transfer and any of them is made redundant (within the meaning of section 139 of ERA) on or within 180 days of the Entry Service Transfer Date, the Customer shall indemnify SBFM and place SBFM in funds for:

5.1.1 any and all costs, payments and liabilities arising from, related to or connected with the employment of any such Transferring Employee up to and including the date on which that employee's employment terminates by reason of redundancy;

5.1.2 any payment in lieu of accrued untaken holiday entitlement due to the Transferring Employee on termination of that employee's employment by reason of redundancy;

- 5.1.3 the payment in lieu of notice to which each such Transferring Employee is entitled under their contract of employment or pursuant to section 86 of the ERA, whichever is greater; and
- 5.1.4 the redundancy payment (statutory or contractual) payable to each such Transferring Employee.

## 6. General Exit Provisions

- 6.1 The parties shall, and the Customer shall use reasonable endeavours to procure that any Successor Supplier shall, use reasonable endeavours to agree whether TUPE applies to any Exit Service Transfer, each party acting in good faith.
- 6.2 No later than 28 days before the Exit TUPE Date, SBFM shall provide to the Customer and/or, at the direction of the Customer, to the Successor Supplier, the Employee Liability Information in respect of each of the Exiting Employees.
- 6.3 The Customer shall be permitted to use and disclose the Employee Liability Information for informing any tenderer or other prospective Successor Supplier for any services which are substantially the same type of services (or any part thereof) as the Services.
- 6.4 On reasonable request by the Customer, SBFM shall provide the Customer, or at the request of the Customer, the Successor Supplier, with access (on reasonable notice and during normal working hours) to such employment records (and provide copies) as the Customer or the Successor Supplier may reasonably request.
- 6.5 If there is a material change to the information supplied pursuant to paragraph 6.2 or if reasonably requested by the Customer, SBFM will provide the new or revised information to the Customer (for itself or for a Successor Supplier) within the earlier of 14 days of the change occurring or the change being agreed.
- 6.6 From the date of the event referred to in paragraph 6.2 of this Schedule, SBFM agrees that it shall not without notification to the Customer:
  - 6.6.1 assign any person to the provision of the Services (or the relevant part) which is the subject of an Exit Service Transfer who is not listed in the Employee Liability Information provided pursuant to paragraph 6.2 of this Schedule;
  - 6.6.2 increase the total number of employees listed in the Employee Liability Information provided pursuant to paragraph 6.2 of this Schedule, save for fulfilling assignments and projects previously scheduled and agreed with the Customer;
  - 6.6.3 make, propose or permit any changes to the terms and conditions of employment of any employees listed in the Employee Liability Information provided pursuant to paragraph 6.2 of this Schedule;

- 6.6.4 increase the proportion of working time spent on the Services or the Additional Services (or the relevant part) by any of the persons listed in the Employee Liability Information provided pursuant to paragraph 6.2 of this Schedule, save for fulfilling assignments and projects previously scheduled and agreed with the Customer;
  - 6.6.5 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed in the Employee Liability Information provided pursuant to paragraph 6.2 of this Schedule; and
  - 6.6.6 replace any of the employees listed in the Employee Liability Information provided pursuant to paragraph 6.2 of this Schedule, or deploy any other person to perform the Services (or the relevant part) or terminate or give notice to terminate the employment or contracts of any persons listed in the Employee Liability Information provided pursuant to paragraph 6.2 of this Schedule.
- 6.7 SBFM will promptly notify the Customer or, at the direction of the Customer, the Successor Supplier of any notice to terminate employment given to or received from any persons listed in the Employee Liability Information provided pursuant to paragraph 6.2 of this Schedule, when such notice takes effect on or after the Exit Service Transfer Date.
- 6.8 SBFM shall take such steps as are necessary under the DP Legislation, to enable it to comply with the requirement to provide information and documentation in respect of any Exiting Employees to the Customer or any Successor Supplier as set out in this Schedule.
- 7. Exit Service Transfers where TUPE applies**
- 7.1 SBFM shall co-operate with the Customer and/or any Successor Supplier in seeking to ensure the orderly transfer of the Exiting Employees to the Customer or the Successor Supplier, as applicable.
- 7.2 SBFM and the Customer shall, and the Customer shall use reasonable endeavours to ensure that a Successor Supplier shall, use reasonable endeavours to agree which of SBFM's employees listed in the Employee Liability Information provided pursuant to paragraph 6.2 of this Schedule shall be Exiting Employees.
- 7.3 SBFM shall co-operate with the Customer and any Successor Supplier to ensure that any requirement to inform and consult in relation to any Exit Service Transfer to which TUPE applies will be fulfilled.
- 7.4 On request by the Customer or any Successor, SBFM shall permit representatives of the Customer and/or any Successor Supplier to attend consultation meetings and/or consult with the Exiting Employees and/or their representatives before the TUPE Exit Date regarding their employment and any other associated matters relating to the Exit Service Transfer.

- 7.5 If applicable, the Customer shall use reasonable endeavours to procure that the Successor Supplier shall co-operate with SBFM to ensure that any requirement to inform and consult in relation to any Exit Service Transfer to which TUPE applies will be fulfilled.
- 7.6 If reasonably requested by the Customer or any Successor Supplier, SBFM agrees that it will consent to, and co-operate with, pre-transfer consultation by the Customer or any Successor Supplier under Part IV of TULRCA. Such co-operation may include (but shall not be limited to):
- 7.6.1 SBFM providing information and such other reasonable assistance, including access to the Exiting Employees and their representatives, as the Customer or any Successor Supplier requires in order to assist them to comply with collective consultation requirements under TULRCA;
  - 7.6.2 the Customer or the Successor Supplier being permitted to elect to consult representatives of the Exiting Employees before the TUPE Exit Date; and
  - 7.6.3 a representative of SBFM attending any consultation meetings carried out in accordance with this paragraph 7.6 at the reasonable request of the Customer or Successor Supplier.
- 7.7 Without prejudice to paragraph 5 of this Schedule, the Customer shall indemnify SBFM in full for and against all Employment Liabilities incurred or suffered by SBFM in relation to:
- 7.7.1 any act or omission by the Customer or the Successor Supplier in respect of any of the Exiting Employees after the TUPE Exit Date;
  - 7.7.2 the termination by the Customer or the Successor Supplier of the employment of any of the Exiting Employees after the TUPE Exit Date;
  - 7.7.3 any failure by the Customer or the Successor Supplier to comply with its obligations pursuant to the TUPE Regulations except to the extent that the liability arises from SBFM's failure to comply with regulation 11 or 13 of the TUPE Regulations;
  - 7.7.4 all and any claims in respect of all emoluments and outgoings in relation to the Exiting Employees (including without limitation all wages, bonuses, PAYE, National Insurance contributions, pension contribution and otherwise) accrued and payable by the Customer or the Successor Supplier after the TUPE Exit Date.
- 8. Apportionments on Exit**
- 8.1 Subject to paragraph 8.2 and paragraph 5.1 of this Schedule:
- 8.1.1 SBFM shall be responsible for all emoluments and outgoings in respect of the Exiting Employees (including without limitation all wages, bonuses, commissions,

premiums, subscriptions, PAYE, national insurance contributions and pension contributions) which are accrued or payable up to and including the TUPE Exit Date; and

- 8.1.2 the Customer shall, or shall procure that the Successor Supplier shall, be responsible for all emoluments and outgoings in respect of the Exiting Employees (including without limitation all wages, bonuses, commissions, premiums, subscriptions, PAYE, national insurance contributions and pension contributions) which are accrued and payable by the Customer or the Successor Supplier after the TUPE Exit Date.
- 8.2 Subject to paragraph 5.1, the Customer shall, or shall procure that any Successor Supplier shall, assume the outstanding obligations of SBFM in relation to any Exiting Employee who transfers to the Customer or the Successor Supplier in respect of holiday entitlement accrued up to and including the TUPE Exit Date, but untaken at the TUPE Exit Date together with remuneration in respect of such untaken holiday entitlement. For the avoidance of doubt, any remuneration due or paid in respect of holidays taken by any Exiting Employee before the TUPE Exit Date shall remain the liability of SBFM.
- 8.3 The parties agree that they shall, or in the Customer's case shall procure that a Successor Supplier shall, deal with the retirement schemes and benefits of the Exiting Employees who transfer to the Customer or the Successor Supplier in accordance with TUPE.

## **9. Exit Service Transfers where TUPE does not apply**

- 9.1 In the event of an Exit Service Transfer to which TUPE does not apply:
- 9.1.1 the Customer or the Successor Supplier as applicable can, at their discretion, to any of the persons listed in the Employee Liability Information provided pursuant to paragraph 6.2 of this Schedule, make an offer, in writing, to employ or engage that person under a new contract of employment or engagement to take effect at the earliest reasonable opportunity;
- 9.1.2 when the offer has been made by the Customer or any Successor Supplier and accepted by any such person, SBFM shall release the person from any post termination restrictions and permit them to leave their employment or engagement as soon as practicable and without the person having worked their full notice period, if they so request; and
- 9.1.3 if the person does not accept an offer of employment or engagement made by the Customer or any Successor Supplier, the person shall remain employed or engaged by SBFM and all claims in relation to the person shall remain with SBFM save as otherwise set out in this agreement.



## 10. Potential Redundancy Costs on Exit

- 10.1 In the event that TUPE does not apply to any of SBFM's employees who support the delivery of the Services, and any of them is made redundant by SBFM (within the meaning of section 139 of ERA) as a consequence of the reduction or termination of the Services in whole or in part on or within 90 days of the TUPE Exit Date ("**Redundant Employee**"), the Customer shall (or shall procure that the Successor Supplier shall) indemnify SBFM and place SBFM in funds for:
- 10.1.1 any and all costs, payments and liabilities arising from, related to or connected with the employment of any such Redundant Employee up to and including the date on which that Redundant Employee's employment terminates;
  - 10.1.2 any payment in lieu of accrued untaken holiday entitlement due to the Redundant Employee on termination of their employment;
  - 10.1.3 the payment in lieu of notice to which each such Redundant Employee is entitled under their contract of employment or pursuant to section 86 of the ERA, whichever is greater; and
  - 10.1.4 the redundancy payment (statutory or contractual) payable to each such Redundant Employee.

## 11. Assistance

- 11.1 Subject to any restriction imposed by law:
- 11.1.1 the Customer shall, and shall use reasonable endeavours to procure that any Successor Supplier shall; and
  - 11.1.2 SBFM shall,  
  
in relation to any claim, action, allegation or demand received by any of the others from a person employed or engaged or formally employed or engaged by it, relating to or arising out of the provision of the Services or the transfer of any of those Services or part of those Services pursuant to this agreement, following receipt of a reasonable request and upon reasonable notice each provide to the relevant other(s) and/or their respective professional advisers:
    - 11.1.3 such assistance, information and documentation as the other(s) may reasonably request to enable those claims to be defended, brought to a conclusion or otherwise dealt with in a timely manner;
    - 11.1.4 reasonable access from time to time to such members of its staff in normal working hours as may be necessary to assist the relevant other(s) with the preparation of its cases in relation to those claims;



- 11.1.5 subject to any Court or Tribunal order, resist in connection with those claims any request for documents, information, access to relevant premises or to employees of the business by any third party without first informing the relevant other(s), and obtaining its agreement to any approval of the request; and
  - 11.1.6 preserve and not waive legal professional privilege or any other privilege attaching to any of the documents or other information relating to those claims in their possession without first obtaining the relevant other(s) consent to such waiver, such consent not to be unreasonably withheld.
- 11.2 If a claim arises in respect of which one party (the “**Indemnifying Party**”) is liable to indemnify the other (the “**Indemnified Party**”) or the Successor Supplier under this Schedule, then subject to any restriction imposed by law, the following provisions will apply:
- 11.2.1 the Indemnified Party shall take all reasonably practicable steps to promptly inform the Indemnifying Party about the claim;
  - 11.2.2 the Indemnified Party shall:
    - 11.2.2.1 consider and take into account such action and proceedings as the Indemnifying Party reasonably requests to dispute, appeal, compromise, settle, remedy or mitigate the claim and not unreasonably refuse or fail to act in accordance with the Indemnifying Party’s request; and
    - 11.2.2.2 not admit liability or unreasonably settle any such claim without prior written authority from the Indemnifying Party (which will not be unreasonably withheld or delayed).
- 11.3 If SBFM is liable to indemnify the Successor Supplier in respect of a claim under this Schedule, the Customer shall take reasonable steps to procure that the Successor Supplier shall act in accordance with the obligations of an Indemnified Party under paragraph 11.2.