

## ANNEX B

### TUPE

#### 1. Personnel

1.1 In this Annex the following definitions apply:

(a) **New Supplier:** another party chosen by Marie Curie to take over the provision of all or part of the Services.

(b) **Returning Employees:** those persons listed in a Schedule to be agreed by the parties prior to the Subsequent Transfer Date who it is agreed were employed by the Supplier wholly and/or mainly in the Services immediately before the Subsequent Transfer Date.

(c) **Subsequent Transfer Date:** means the date or dates on which there is a transfer of responsibility for the provision of the Services or part of the Services between the Supplier and Marie Curie and/or a New Supplier (as the case may be).

(d) **TUPE:** the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended).

1.2 The parties acknowledge and agree that where all or part of the Services cease to be provided by the Supplier for any reason and where all or part of the Services continue to be provided by Marie Curie and/or a New Supplier, there may be a relevant transfer of the Returning Employees to Marie Curie and/or the New Supplier for the purposes of TUPE. If there is such a transfer, the employment of the Returning Employees shall transfer to Marie Curie and/or the New Supplier in accordance with TUPE with effect from the Subsequent Transfer Date.

1.3 Save where the parties reasonably believe that there will be no relevant transfer for the purposes of TUPE, the parties shall co-operate in agreeing a list of Returning Employees prior to the Subsequent Transfer Date, and shall co-operate in seeking to ensure the orderly transfer of the Returning Employees to Marie Curie and/or the New Supplier.

1.4 The Supplier shall not later than two months prior to the expiry of this agreement (or, if earlier, within 14 days of notice being given of termination of this agreement) to the extent lawfully permitted provide Marie Curie with the following details:

(a) a list of those personnel engaged in the Services (Potential Returning Employees);

- (b) job title, age, length of continuous services, current remuneration, benefits, and notice periods of the Potential Returning Employees;
- (c) terms and conditions of employment of the Potential Returning Employees, including any particulars that the Supplier is obliged to give under section 1 of the Employment Rights Act 1996;
- (d) any current disciplinary or grievance proceedings ongoing in respect of the Potential Returning Employees and any such proceedings in the preceding two years;
- (e) any claims, current or which the Supplier has reasonable grounds to believe will be brought by the Potential Returning Employees or their representatives or which have been brought in the preceding two years;
- (f) all benefit schemes or arrangements (whether contractual or not) applicable in respect of the Potential Returning Employees; and
- (g) information on any collective agreements which will have effect in relation to the Potential Returning Employees after the Subsequent Transfer Date pursuant to TUPE.

The Supplier shall provide updates of the details listed above at regular intervals to be specified by Marie Curie.

1.5 The Supplier shall indemnify Marie Curie (both for itself and a New Supplier) against all costs, claims, liabilities and expenses (including reasonable legal expenses) incurred by Marie Curie and/or a New Supplier in connection with or as a result of:

- (a) any claim or demand by any Returning Employee or a trade union or other body or person representing a Returning Employee (whether in contract, tort, under statute, pursuant to European law or otherwise) arising from any act, fault or omission of the Supplier on or before the Subsequent Transfer Date;
- (b) any failure by the Supplier to comply with its obligations under regulations 13 and 14 of TUPE, or any award of compensation under regulation 15 of TUPE, save where such failure arises from the failure of Marie Curie and/or New Supplier to comply with its or their duties under regulation 13 of TUPE; and
- (c) a claim by any person who transfers or alleges that they have transferred to Marie Curie or the New Supplier but whose name is not included in the list of Returning Employees.

1.6 If TUPE applies to transfer the employment of any person employed by the Supplier to Marie Curie or any New Supplier then if Marie Curie or such New Supplier shall serve a notice terminating the employment of such person within six months after the date of such transfer, the Supplier shall indemnify Marie Curie (for itself and a New Supplier) in respect of any statutory or contractual redundancy payment payable in respect of such person, and any compensation or damages which Marie Curie or such New Supplier is obliged to pay to such person for unfair and/or wrongful dismissal or as a reasonable settlement of a claim for such compensation or damages.