

Transport for London

Revenue Collection Services

Schedule 20 – Part A: TUPE and Employees

TfL RESTRICTED

Restricted to: TfL Group, Contractor Group and Consultants with NDA

Copyright Transport for London 2014

11/21704222_1

Part A: Tupe and Employees

Contents

- 1 TUPE AND EMPLOYEES..... 3
 - 1.1 Scope..... 3
 - 1.2 Transfer of Employees to the Contractor 3
 - 1.3 Exit provisions 4
 - 1.4 Exit indemnities 7
 - 1.5 Claims handling..... 9
 - 1.6 Redundancy Costs..... 9
 - 1.7 Secondment of Personnel 10
 - 1.8 Pensions and Other Employee Matters 10
- Appendix 1: Staff Travel Facilities and BR Privilege Facilities for Certain Employees
..... 11

1 TUPE AND EMPLOYEES

1.1 Scope

1.1.1 This Schedule 20 (Part A: TUPE and Employees):

- (a) apportions employment-related liabilities between the Contractor and TTL on commencement and on termination or expiry of the Services (or any part of the Services); and
- (b) sets out the Contractor's obligations to provide certain information relating to Contractor Personnel (including any Transferring Employees and/or Re-Transferring Employees).

1.1.2 This Schedule should be read in conjunction with, in particular, Clauses 30 (Contractor Personnel), 31 (Key Personnel), 32 (Training), 33 (London Living Wage), 34 (Non-Solicitation), 62 (Liability Provisions and Indemnities) and Schedules 8.1 (Organisation & Governance), 8.6 (Training), 12.4 (Contract Management) and 19 (Handback of Services) of the Contract.

1.1.3 To the extent that the Contractor sub-contracts the provision of some or all of the Services to any Sub-Contractor, and without prejudice to any other provision of the Contract, the terms set out in this Schedule and Clauses 30 (Contractor Personnel), 31 (Key Personnel) and 34 (Non-Solicitation) of the Contract shall apply equally to such Sub-Contractor, on the condition that the Contractor shall require that such Sub-Contractors shall comply with the terms of this Schedule and Clauses 30 (Contractor Personnel), 31 (Key Personnel), 34 (Non-Solicitation) of the Contract as if they applied directly to such Sub-Contractor and the Contractor shall be responsible for any failure of the Sub-Contractor to do so.

1.2 Transfer of Employees to the Contractor

1.2.1 TTL and the Contractor acknowledge that the transfer to the Contractor and/or any Sub-Contractor of the provision of the Existing Services (in whole or in part) may result in the transfer to the Contractor and/or any Sub-Contractor by operation of TUPE on the Relevant Transfer Date of the employment and related liabilities of certain employees of Third Parties ("**Existing Employers**") who are immediately prior to the Relevant Transfer Date assigned to, or work wholly or mainly in connection with, the provision of the Existing Services or who would have been so assigned or who would have so worked if those employees had not been dismissed in the circumstances described in Regulation 7(1) of TUPE (the "**Transferring Employees**").

1.2.2 The Contractor shall comply with its obligations to inform and/or consult in relation to the Transferring Employees in connection with the commencement of the provision of the Services (or any part thereof), including for the avoidance of doubt, providing such information to the Existing Employers as is necessary for the Existing Employers to comply with their information and/or consultation duties. The Contractor shall indemnify TTL against any costs, claims, damages, compensation, fines, losses, expenses and other liabilities incurred by TTL arising from, as a result of, or otherwise in connection with the Contractor's failure to comply with this paragraph 1.2.2.

1.2.3 The Contractor shall, and shall procure that its Sub-Contractors shall (and the Contractor shall be responsible if those Sub-Contractors do not), indemnify and hold harmless TTL against all costs, claims, damages, compensation, fines, losses,

expenses and other liabilities which affect TTL arising out of any act or omission of the Contractor and/or any of the Contractor Personnel and/or any Sub-Contractor in connection with:

- (a) the employment of the Transferring Employees by the Contractor and/or any Sub-Contractor on or after the Relevant Transfer Date, including but not limited to any claim in respect of personal injury or death, breach of statutory duty, any other claim in tort, any claim for damages for breach of contract or for compensation for unfair or wrongful dismissal or redundancy or failure to provide comparable pension rights;
- (b) any changes made or proposed by or on behalf of the Contractor or any Sub-Contractor (or relevant employer to whom the Contractor or a Sub-Contractor transfers such employee) in the working conditions or terms of employment of all or any of the Transferring Employees that taken individually or collectively are to the detriment of all or any of the Transferring Employees; or
- (c) any rights, obligations or entitlements arising from, out of or in relation to a breach by the Contractor or any Sub-Contractor (or any other relevant employer to whom the Contractor or a Sub-Contractor transfers such employee) of TUPE.

1.2.4 TTL shall indemnify and hold harmless the Contractor against all costs, expenses, damages, compensation, fines and other liabilities arising out of or in connection with any claim by or on behalf of any Transferring Employee arising out of or in connection with his or her employment prior to the Relevant Transfer Date, the termination of such employment prior to the Relevant Transfer Date and/or the termination of such employment on or after the Relevant Transfer Date where the notice of such termination was given (whether by the Transferring Employee or his employer) prior to the Relevant Transfer Date.

1.2.5 If it is subsequently determined by a court or other tribunal of competent jurisdiction that TUPE does not apply to the Transferring Employees, TTL shall use reasonable endeavours to ensure that the Contractor and/or any Sub-Contractor is able to engage the Transferring Employees in the provision of the Services, subject to the Parties agreeing on an equitable basis for the reimbursement by the Contractor of TTL's costs in so doing. The Contractor acknowledges that TTL does not control information relating to the Transferring Employees but TTL will, to the extent permissible by Law and to the extent reasonably requested by the Contractor, use reasonable endeavours to provide to the Contractor such information as is reasonably required by the Contractor.

1.3 Exit provisions

1.3.1 TTL and the Contractor acknowledge that if, when the Contractor ceases to be responsible in whole or in part for the provision of the Services, the responsibility for the provision of the Services (in whole or in part) is transferred (in TTL's absolute discretion) to an entity within the TTL Group (a "**TTL Entity**") or to a Successor Operator (each a "**Re-Transferee**"), the employment of the relevant Re-Transferring Employees or liability in connection with the Re-Transferring Employees shall transfer to the relevant Re-Transferee (unless any Re-Transferring Employee objects to the transfer pursuant to Regulation 4(7) of TUPE) (the "**Re-Transfer**").

1.3.2 Without limiting any provisions of Schedule 19 (Handback of Services), the Contractor shall, and shall procure that its Sub-Contractors shall:

-
- (a) co-operate in the orderly management of issues relating to the Contractor Personnel in connection with the expiry or termination of the Contract or any of the Services (in whole or in part);
 - (b) comply promptly with all reasonable instructions from TTL with regard to the Contractor Personnel in connection with the expiry or termination of the Contract or any of the Services (in whole or in part);
 - (c) comply with any and all of its or their obligations relating to the Re-Transferring Employees which may arise from a transfer to TTL or to a TTL Entity or to any relevant Successor Operator under TUPE on an End Date or on the Expiry Date or on other termination of this Contract and/or any other expiry or termination of the Services (in whole or in part);
 - (d) enable and assist TTL and/or any Successor Operator (as appropriate), if requested, to inform and consult or communicate with and meet any relevant Contractor Personnel or their trade union or other representatives; and
 - (e) insofar as it is within the Contractor's control and without prejudice to the Contractor's obligations to comply with the terms of this Contract (including but not limited to compliance with Laws and any relevant Handback Plan), take all commercially reasonable steps to reduce the circumstances under which TTL or any Successor Operator may incur cost in connection with the Contractor Personnel as a result of the expiry or termination of the Contract or of any of the Services (in whole or in part).

1.3.3 Without prejudice to paragraph 2 of Schedule 19 (Handback of Services) or any other provision in the Contract, at any time during (i) the two (2) year period prior to any End Date or the Expiry Date or other termination of this Contract; or (ii) (if longer) during any period of notice terminating the Contract and/or during any period of notice terminating any of the Services (in whole or in part) or at any time after any End Date or the Expiry Date or other termination of the Contract and/or termination of any Services (in whole or in part), TTL may require the Contractor to provide, or require that any relevant Sub-Contractor provides, within a specified period of not less than ten (10) Business Days, to TTL (or to any other contractor or contractors notified by TTL) such information, to the extent permissible by Law, as is reasonably required by TTL relevant to the potential liabilities of TTL or any of its group undertakings or any relevant Successor Operator arising under TUPE, including but not limited to information on the following:

- (a) a list of those Re-Transferring Employees who are wholly or mainly assigned to the provision of the relevant Services (the "**Designated Employees**"), which list shall be updated by the Contractor and/or the relevant Sub-Contractor on a regular basis and, in any event, within five (5) Business Days of each request by TTL;
- (b) the anonymised details of the Designated Employees (of the Contractor and/or any relevant Sub-Contractor) providing the Services, including their salaries and all other conditions of employment (including applicable employment-related benefits and policies), evidence of their right to work in the UK, ages and length of service, as far as is lawful;
- (c) the method of organisation of the Designated Employees (of the Contractor and/or any relevant Sub-Contractor) providing the Services and documentary evidence relating to such organisation including an organisation chart;

- (d) the proposals for consultation with affected employees;
- (e) details of collective agreements and union recognition agreements;
- (f) the standard terms of employment of the Contractor; and
- (g) for each Contractor Site, the information required to be provided in relation to the TUPE questionnaire set out at Appendix 1 to Schedule 19 (Handback),

and shall in addition provide copies to TTL upon request of any communication with any potential or intended Successor Operator or the Contractor's or any relevant Sub-Contractor's employees or their representatives relating to the effect on such employees of the expiry or termination of the Contract and/or any expiry or termination of the Services (in whole or in part).

1.3.4 The Contractor shall, and shall require that its relevant Sub-Contractors shall, provide TTL upon request with the name and address of a person within the Contractor's or any relevant Sub-Contractor's organisation to whom all queries and requests for information under this Schedule shall be addressed.

1.3.5 Before (i) the fifty-two (52) week period prior to any End Date or the Expiry Date or other termination of this Contract; or (ii) (if longer) during any period of notice terminating the Contract and/or during any period of notice terminating the Services (in whole or in part), TTL shall consult with the Contractor for a four (4) week period as to whether TUPE will apply.

1.3.6 No later than ten (10) Business Days following any Re-Transfer, the Contractor shall provide, or procure the provision of, to TTL or any Successor Operator (as appropriate) updated payroll information following the final payroll run and P45 details in respect of the Re-Transferring Employees (if any) and:

- (a) agrees to pay or to provide to the Re-Transferring Employees (if any) all emoluments due or accrued in the period up to and including the relevant End Date or Expiry Date or other date of termination of this Contract or termination of the Services (in whole or in part) (as applicable) and shall pay to the Successor Operator or TTL (as applicable) an apportioned sum in respect of accrued but untaken holiday pay (less any holiday pay for holiday taken but not yet accrued) and accrued but unpaid bonuses, benefits and any and all other accrued, but unpaid liabilities or costs in respect of the Re-Transferring Employees as at the relevant End Date, Expiry Date or other date of termination of this Contract or termination of the Services (in whole or in part) (as applicable); and
- (b) shall provide personnel records relevant to any Re-Transferring Employees requested by TTL.

1.3.7 The Contractor undertakes and agrees that it shall not (and require that its relevant Sub-Contractors shall not) in the fifty-two (52) weeks prior to any End Date or the Expiry Date or other termination of the Contract (or part thereof) (or, where notice of any End Date or the Expiry Date or other termination of the Contract and/or any Services (in whole or in part) is given of less than fifty-two (52) weeks, during any such period of notice) without the written permission of TTL:

- (a) substantially reorganise or substantially alter the numbers or method of organisation of the Contractor Personnel providing the Services, except to the

extent that any such change is the result of a bona fide business reorganisation of the Contractor and/or any relevant Sub-Contractor or a division thereof which is not related or confined to the Contractor Personnel providing the Services or the expected expiry or termination of the Contract and/or any Services; or

- (b) make any increase to the salaries or any significant change to the terms and conditions of employment of the Contractor Personnel providing the Services, except where such increases or changes would have arisen in the ordinary course of the Contractor's and/or relevant Sub-Contractor's business and are not related to the expiry or termination of the Contract and/or any Services (either because they are applied to all of the Contractor's or any relevant Sub-Contractor's employees, whether or not providing the Services, or are the result of a bona fide business reorganisation of the Contractor or any relevant Sub-Contractor which is not related or confined to the Contractor Personnel providing the Services or expiry or termination of the Contract and/or any Services).

1.4 Exit indemnities

1.4.1 The Contractor shall, and shall procure that its Sub-Contractors shall, indemnify TTL and any relevant TTL Entity and any relevant Successor Operator against all costs, claims, damages, compensation, fines, losses, expenses and other liabilities arising out of or in connection with:

- (a) any claim or by or on behalf of any Re-Transferring Employee arising out of or in connection with:
 - (i) his employment on or prior to the relevant End Date;
 - (ii) the termination of his employment (howsoever arising) on or prior to the relevant End Date; and/or
 - (iii) the termination of his employment on or after the relevant End Date, where the notice of such termination was given (whether by the Re-Transferring Employee or his employer) on or prior to the relevant End Date;
- (b) any claim by any Non-Re-Transferring Employee arising out of or in connection with his employment or the termination of that employment (at any stage and howsoever arising);
- (c) any claim by or on behalf of any trade union or staff association or other body or person representing all or any of the Re-Transferring and/or Non-Re-Transferring Employees arising out of or in connection with any failure by or on behalf of the Contractor and/or any relevant Sub-Contractor prior to or on the relevant End Date to comply with any legal obligation or any obligation under any collective agreement or other custom, practice or arrangement (whether or not legally binding), including without limitation any claim on behalf of or in respect of any Re-Transferring Employee or Non-Re-Transferring Employee arising out of or in connection with the failure to comply with any obligation to provide information or carry out consultation;
- (d) any claim by or on behalf of any Re-Transferring Employee or Non-Re-Transferring Employee arising out of or in connection with the failure prior to or on the relevant End Date to comply with any obligation to supply information to

and/or consult with any Re-Transferring Employee or Non-Re-Transferring Employee or his representative(s) or any failure to comply with an order to pay compensation for such failure;

- (e) any claim by or on behalf of any Re-Transferring Employee or Non-Re-Transferring Employee in respect of the making by such employee's employer (directly or indirectly) to such employee or to a representative of that employee of any inaccurate, misleading or incomplete statement or representation of information in connection with the transfer; and
- (f) the transfer to TTL and/or any TTL Entity and/or any Successor Operator pursuant to TUPE of the contract of employment, liabilities arising out of or in connection with the employment, or liabilities arising out of or in connection with the termination (howsoever arising) of the employment, of any Re-Transferring Employee other than the Designated Employees.

1.4.2 This paragraph shall apply if the contract of employment of any Designated Employee is found or alleged not to have effect after the relevant End Date as if originally made with the relevant Re-Transferee as a consequence of the Re-Transfer but to continue after the relevant End Date as a contract of employment with such party as employed him or her immediately before the relevant End Date (the "**Original Employer**"). In that event, the Contractor and TTL agree that:

- (a) forthwith upon either Party becoming aware of any such finding or allegation, that Party will notify the other;
- (b) TTL and/or the relevant Re-Transferee will be entitled (but not required) to make to that Designated Employee an offer in writing to employ him or her under a new contract of employment to take effect upon a date to be agreed between the parties or, in the absence of agreement, as soon as is reasonably practicable; and
- (c) if such offer is accepted by any such Designated Employee, the Contractor shall, and shall require that its relevant Sub-Contractors shall and the Contractor shall be responsible if those Sub-Contractors do not, release the Designated Employee from any obligation to work for the Original Employer on or after the date referred to in paragraph 1.4.2(b) above and waive in writing any right to enforce any provisions of the Designated Employee's employment contract with the Original Employer applicable after its termination.

1.4.3 The Contractor shall, and shall require that any Sub-Contractor shall, indemnify TTL and/or any Re-Transferee against all costs, claims, damages, compensation, fines, losses, expenses and other liabilities arising out of or in connection with the termination of the employment of any Designated Employee pursuant to paragraph 1.4.2 or any failure to terminate such employment in accordance with the terms of paragraph 1.4.2.

1.4.4 TTL shall, and shall procure that any Re-Transferee shall, indemnify the Contractor against all costs, claims, damages, compensation, fines, losses, expenses and other liabilities arising out of or in connection with any claim by or on behalf of any relevant Re-Transferring Employee arising out of or in connection with his employment with TTL or any relevant TTL Entity or any relevant Successor Operator or the termination of that employment after the relevant End Date. For the avoidance of doubt this indemnity does not cover liability arising out of or in connection with any claim by or on behalf of the employees described in paragraph 1.4.1(f).

1.5 Claims handling

- 1.5.1 In relation to the indemnities given by either Party under paragraphs 1.2.2, 1.2.3, 1.2.4, 1.4.1, 1.4.3 and 1.4.4 of this Schedule and Third Party Claims which may lead to claims under such indemnities, the indemnified Party shall:
- (a) upon receiving notice of a Third Party Claim, notify the indemnifying Party as soon as reasonably practicable;
 - (b) not compromise or settle a Third Party Claim without the indemnifying Party's prior written consent which shall not be unreasonably withheld or delayed;
 - (c) take all such steps including those reasonably required by the indemnifying Party to mitigate any costs, claims, liabilities and expenses claimed under the indemnity and to avoid, dispute, resist, appeal, compromise, admit or contest any Third Party Claims;
 - (d) where reasonably required, transfer to the indemnifying Party conduct of any Third Party Claims or, if no such transfer is required, consult where reasonably required with the indemnifying Party about the conduct of the proceedings; and
 - (e) take all steps reasonably required by the indemnifying Party in connection with the conduct and defence of any proceedings.
- 1.5.2 TTL shall not be entitled to claim under the indemnities in paragraphs 1.2.2, 1.2.3, 1.4.1 and 1.4.3 of this Schedule to the extent that any such costs, claims, damages, compensation, fines, losses, expenses and other liabilities arise out of a failure by TTL or any relevant TTL Entity or any relevant Successor Operator to comply with its obligations under TUPE.
- 1.5.3 The Contractor shall not be entitled to claim under the indemnities in paragraphs 1.2.4 and 1.4.4 of this Schedule to the extent that any such costs, claims, damages, compensation, fines, losses, expenses and other liabilities arise out of a failure by the Contractor or any relevant Sub-Contractor to comply with its obligations under TUPE.

1.6 Redundancy Costs

- 1.6.1 Subject to paragraphs 1.6.2, 1.6.3, 1.6.4 and 1.6.5 of this Schedule, TTL shall reimburse the Contractor for the Redundancy Costs that the Contractor incurs in respect of the Redundant Employees.
- 1.6.2 Within 28 days of becoming aware of potential Redundancy Costs, the Contractor shall notify TTL of:
- (a) the number and identity of the potentially Redundant Employees and the selection criteria applied to each potentially Redundant Employee; and
 - (b) the potential Redundancy Cost in respect of each potentially Redundant Employee.

TTL will have the right (but will not be required) to offer employment to any of the potentially Redundant Employees.

- 1.6.3 The Contractor will use all reasonable endeavours to mitigate the amount of

Redundancy Costs including, without limitation, by redeployment or reassignment of any potentially Redundant Employees throughout the Contractor, the Contractor Group or to a Sub-Contractor.

- 1.6.4 TTL will reimburse the Contractor for such Redundancy Costs on receipt of written evidence from the Contractor that such Redundancy Costs have been appropriately incurred and properly discharged.
- 1.6.5 For the purposes of these provisions relating to Redundancy Costs, TTL shall not be liable for the Redundancy Costs of a Redundant Employee who has first been assigned to the provision of the Services after the Service Commencement Date to the extent that the Redundancy Costs are greater than the Redundancy Costs of any other Redundant Employee in an equivalent position and of equivalent experience who has from the Service Commencement Date remained wholly or mainly assigned to the provision of the Services (in whole or in part).

1.7 Secondment of Personnel

- 1.7.1 TTL and the Contractor acknowledge that a number of the Non-Re-Transferring Employees whose principal purpose was providing or performing the Services will have special technical expertise in relation to the Services and in order to enhance an efficient transfer of knowledge between the Parties, the Contractor shall use reasonable endeavours to second such employees to TTL (or any other company in the TTL Group) for up to a maximum of fifty-two (52) weeks following the Re-Transfer at TTL's cost, the costs of which shall be calculated in accordance with Clause 82.9.2(B).

1.8 Pensions and Other Employee Matters

- 1.8.1 TTL and the Contractor shall comply with the provisions relating to TTL Group staff travel facilities and British Rail privilege facilities for the Transferring Employees set out in Appendix 1 to Part A of this Schedule.
- 1.8.2 TTL and the Contractor agree that they shall comply with the provisions of Part B of this Schedule, and by the Service Commencement Date the Contractor shall, and shall require that the Employer(s) shall, enter into a deed of participation agreed with Transport for London and the trustees of the TfL Pension Fund (subject to the agreement of any of the parties not being unreasonably withheld or delayed) in substantially the same form as the draft deed of participation appended to this Schedule.

Appendix 1: Staff Travel Facilities and BR Privilege Facilities for Certain Employees

1.1 Background

- 1.1.1 Pursuant to the TSC, certain employees (the "**Original Employees**") were transferred from the employment of LT to the employment of the Existing Contractor or one of its group undertakings or one of their respective sub-contractors in accordance with the Transfer of Undertaking (Protection of Employment) Regulations 1981.
- 1.1.2 It was agreed under the TSC that, provided certain conditions were fulfilled by the Existing Contractor and/or its relevant group undertaking, LT would continue to provide certain travel related benefits to the Original Employees, on a similar basis to that which applied in respect of the Original Employees before the transfer of their employment from LT.
- 1.1.3 The TSC was transferred from LT to TTL by way of statutory transfer scheme and TTL assumed the responsibilities of LT.
- 1.1.4 It has now been agreed that, provided the Contractor complies with the terms of the Contract, including the terms of this Appendix 1 to Schedule 20, Part A, then TTL will continue to provide, on a similar basis, such travel related benefits to such Original Employees who are Transferring Employees or who otherwise remain employed by the Contractor in connection with the provision of the Services in accordance with the terms of the Contract (the "**Eligible Employees**").
- 1.1.5 To the extent that the Contractor sub-contracts the provision of some or all of the Services to any Sub-Contractor, the terms set out in this Schedule shall apply equally in respect of any Eligible Employees who transfer to the employment of such Sub-Contractor, on the condition that the Contractor shall require that such Sub-Contractor shall comply with the terms of this Schedule as if it applied directly to such Sub-Contractor.

1.2 Obligations of TTL

- 1.2.1 In consideration of the Contractor complying with the obligations contained herein, TTL hereby agrees to provide, or secure the provision of, TTL Staff Travel Facilities and the BR Privilege Facilities and the Other Travel Concessions upon the terms and conditions set down in this Appendix 1 to Schedule 20, Part A.

1.3 Obligations of the Contractor

- 1.3.1 The Contractor acknowledges the following:
- (a) the Eligible Employees shall only be eligible to retain such of the TTL Staff Facilities and the BR Privilege Facilities as they enjoyed immediately before the Service Commencement Date and shall be eligible to exchange facilities i.e. exchange TTL Staff Travel Facilities for their spouse, civil partner, dependant and child for BR Privilege Facilities or vice versa on the Terms and Conditions of Issue that prevail at the time of the request to exchange facilities. All applications to exchange facilities must be made to the TTL office designated to process Eligible Employee Staff Passes;

-
- (b) the Eligible Employees and their eligible spouses, civil partners, dependants and children shall, unless they are eligible to retain such facilities under the Terms and Conditions of Issue, cease to be eligible for TTL Staff Travel Facilities and BR Privilege Facilities on the earlier of the date on which:
 - (i) the relevant Eligible Employee leaves the employment of the Contractor or any relevant Sub-Contractor; and
 - (ii) the relevant Eligible Employee ceases to be wholly or mainly engaged in the provision of the Services;
 - (c) where length of service is relevant to the retention of the facilities to which this Appendix 1 to Schedule 20, Part A refers, TTL shall take into account an Eligible Employee's actual service with TTL, its group undertakings, the Contractor, Electronic Data Systems Limited and/or any relevant sub-contractor provided that the relevant Eligible Employee continues to be wholly or mainly engaged in the provision of the Services;
 - (d) the provision of TTL Staff Travel Facilities will be reviewed by TTL upon any deregulation of services in London and may thereafter be revised or withdrawn by TTL provided TTL has given three (3) months' notice to the Contractor of any major revision to eligibility or withdrawal;
 - (e) the provision of BR Privilege Facilities and Other Travel Concessions is subject to agreements and arrangements between TTL and Third Parties and the existence of this Appendix shall not prevent TTL entering into such agreements and arrangements upon such terms as it considers appropriate. In the event of Third Parties revising or withdrawing their agreement with TTL, TTL may revise or withdraw the provision of BR Travel Facilities or Other Travel Concessions;
 - (f) the TTL Staff Travel Facilities, BR Privilege Facilities and Other Travel Concessions are discretionary benefits. As such they are not contractual rights of the Eligible Employees and are subject to TTL and ATOC rules of issue from time to time; and
 - (g) the Eligible Employees shall be eligible for the same travel concessions on promotion or demotion as applicable within TTL in accordance with TTL's current policy and Terms and Conditions of Issue at the Service Commencement Date. At no time may the number of Eligible Employees benefiting from each type of facility exceed the number of Eligible Employees enjoying each facility at the Service Commencement Date.

1.3.2 Without prejudice to the Contractor's obligations under the Contract, the Contractor shall take reasonable steps as required by TTL to assist in the administration of TTL Staff Travel Facilities, BR Privilege Facilities and Other Travel Concessions and the control of fraud and abuse. For the time being, the obligations of the Contractor shall be as follows:

- (a) to maintain accurate records of the dates when Eligible Employee Staff Passes are issued and returned to permit TTL to audit such records upon reasonable notice and at reasonable times and to comply with any recommendations by TTL as to the maintenance of such records;
- (b) where required by TTL, to retain Eligible Employee Staff Passes securely until issued or returned to TTL;

-
- (c) to advise TTL immediately after the Contractor knows that an Eligible Employee is about to or has ceased to be an employee of the Contractor and/or is about to or has ceased wholly or mainly to provide some or all of the Services and to provide TTL with all information reasonably required about the circumstances of such cessation;
 - (d) to secure the return of Eligible Employee Staff Passes from Eligible Employees prior to their leaving the employment of the Contractor or any Sub-Contractor and/or prior to any such Eligible Employee ceasing wholly or mainly to provide some or all of the Services and to return them to TTL immediately. Where an Eligible Employee may be eligible to continue to retain facilities in such circumstances, an application should be made to the Passes & Permits division of TTL for confirmation of eligibility and the issue of appropriate facilities;
 - (e) to take all reasonable steps to verify claims for Eligible Employee Staff Passes for eligible spouses, civil partners, dependants and children in accordance with any guidelines issued by TTL from time to time and to certify to TTL the nature of the documents which have been examined by the Contractor and the fact that they confirm the eligibility of the applicant;
 - (f) to report promptly to TTL the loss or theft of or failure to return Eligible Employee Staff Passes;
 - (g) to take all reasonable steps to secure the return of Eligible Employee Staff Passes which should have been returned and to assist TTL in securing their return, including providing TTL with relevant addresses where known to the Contractor;
 - (h) to take all reasonable steps to identify the abuse of Eligible Employee Staff Passes and to assist TTL in promoting compliance with the Terms and Conditions of Issue by circulating to Eligible Employees relevant literature issued by TTL and ATOC;
 - (i) to notify TTL of any abuse of Eligible Employee Staff Passes by Eligible Employees which are known to the Contractor; and
 - (j) to notify Eligible Employees that breach of the Terms and Conditions of Issue of Eligible Employee Staff Passes could be treated by the Contractor or any relevant Sub-Contractor as a disciplinary issue.
- 1.3.3 Notwithstanding paragraph 1.3.2(j), TTL shall be entitled to withdraw Eligible Employee Staff Passes from any Eligible Employee who infringes or ceases to be eligible under the Terms and Conditions of Issue.
- 1.3.4 TTL shall be entitled to withdraw all Eligible Employee Staff Passes from all Eligible Employees, their spouses, civil partners, dependants and children, if the Contractor fails to comply with its obligations under this Appendix 1 to Schedule 20, Part A. TTL shall give the Contractor details in writing of any such breach. The Contractor shall remedy the breach immediately. If the administration of passes does not meet TTL's requirements, TTL may withdraw the facility of Eligible Employee Staff Passes.
- 1.3.5 The Contractor shall pay to TTL such sum per Eligible Employee (as advised by TTL from time to time) and at such times as are demanded by TTL in respect of BR

Privilege Facilities which sum gives each Eligible Employee eligibility for BR Privilege Facilities for themselves and any spouse, civil partner, dependant and child. In the event of charges being levied by operators who do not currently charge (including LUL) the Contractor agrees to pay such charges as have been agreed by TTL.

- 1.3.6 The Contractor agrees and undertakes that it will bear the cost of providing BR Privilege Facilities and shall not recover such costs directly or indirectly from the Eligible Employees. The Contractor shall not charge the Eligible Employees directly or indirectly for TTL Staff Travel Facilities or Other Travel Concessions.

1.4 Conditions

- 1.4.1 If at any time TTL in its reasonable opinion considers that it does not have the surplus capacity it requires in order to have the power to administer the Eligible Employee Staff Passes within the terms of the Greater London Authority Act 1999, it may cease to administer the Eligible Employee Staff Passes forthwith by giving notice to the Contractor of the termination of the terms of this Appendix 1 to Schedule 20, Part A. TTL shall where possible endeavour to give the Contractor three (3) months' prior notice of any such anticipated loss of surplus capacity. The Contractor shall be liable for any sums payable under paragraph 1.3.5 of this Appendix 1 to Schedule 20, Part A upon such termination.

1.5 Termination

- 1.5.1 The terms of this Schedule shall cease to apply on the date of termination of the Contract.

Part B: Pensions

Contents

- 1 Interpretation 16
- 2 Participation by Pensionable Employers 17
- 3 Participation in the TfL Pension Fund 18
- 4 Change in Employer..... 20
- 5 Electing To Cease To Be An Active Member 21
- 6 Continued Participation 22
- 7 Pensions Act Issues..... 23
- 8 Independent Actuary 24
- Appendix 1: Draft Contractor Deed of Participation 25
- Annex 1: Deeds of the TfL Pension Fund 31

1 Interpretation

1.1 Except where the context otherwise requires:

- 1.1.1 words and phrases which are defined in the Pension Schemes Act 1993, the Pensions Act 1995, the Finance Act 2004 or the Pensions Act 2004 shall have the same meanings in this Schedule;
- 1.1.2 any reference to an enactment is a reference to it as from time to time amended, consolidated or re-enacted (with or without modification) and includes all instruments or orders made thereunder;
- 1.1.3 references to paragraphs are to the paragraphs of this Schedule; and
- 1.1.4 headings are inserted for convenience only and shall not affect the construction of this Schedule.

2 Participation by Pensionable Employers

- 2.1 The Contractor (and any other appropriate Employers) shall participate in and/or become responsible for the Cubic Section of the TfL Pension Fund in relation to the Pensionable Employees after the Service Commencement Date.
- 2.2 Subject to the TfL Pension Fund existing, the Contractor shall procure that each Employer does everything within its power to ensure that, subject to paragraph 5.3 below, each Pensionable Employee has the right (at his or her option) to remain an active member of the Cubic Section of the TfL Pension Fund while he or she remains in Protected Employment. TTL will use its best endeavours to obtain the approval of the trustees of the TfL Pension Fund to the continued participation of the Contractor (and any subsequent Employers).
- 2.3 The Contractor shall do, and shall procure that each Employer does, everything within its power to facilitate the continued participation of the Pensionable Employees in the TfL Pension Fund.

3 Participation in the TfL Pension Fund

3.1 TTL shall:

3.1.1 subject to:

- (a) the approval of the trustees of the TfL Pension Fund; and
- (b) to the extent not already done, the execution by the Contractor (and any other appropriate Employers) on or before the Service Commencement Date of a deed of participation in accordance with paragraph 3.2 below,

permit the participation of the Contractor (and any other appropriate Employers) as a participating employer in the TfL Pension Fund in respect of the Pensionable Employees (but not any other employees); and

3.1.2 use reasonable endeavours to assist the Contractor and any Employer to procure that such of the Pensionable Employees as are in contracted-out employment by reference to the TfL Pension Fund at the Service Commencement Date shall continue to be in contracted-out employment by reference to the TfL Pension Fund while the TfL Pension Fund is contracted-out for such Pensionable Employees.

3.2 The Contractor shall, and shall require that any appropriate Employer shall, on or before the Service Commencement Date (and to the extent such a deed is not already in place), duly execute a deed of participation to the TfL Pension Fund in relation to the Pensionable Employees substantially in the form set out in Appendix 1 of this Part B (Pensions) of Schedule 20 (with any other amendments the trustees of the TfL Pension Fund may require) and shall provide TTL and the trustees of the TfL Pension Fund with such evidence as either of them shall require confirming the due execution of such deed.

3.3 The Contractor shall, and shall procure that each Employer shall:

- 3.3.1 pay in accordance with the Rules to the trustees of the TfL Pension Fund the regular contributions due and payable to the TfL Pension Fund by and in respect of the Pensionable Employees;
- 3.3.2 comply in all other respects with the provisions of the TfL Pension Fund and any relevant legislation and regulatory guidance;
- 3.3.3 not increase in any year commencing on the Service Commencement Date and each anniversary thereof the average Pensionable Salary (as defined in the Rules) of Pensionable Employees during that year by an amount exceeding one point five per cent (1.5%) plus the then latest rate of the 'Index' (as defined in Rule 28(1)(a) of the Rules) except on such terms as to payment of additional contributions to the TfL Pension Fund as calculated in paragraph 3.5 below;
- 3.3.4 while the TfL Pension Fund is contracted-out, if required by the HMRC National Insurance Contributions Office or any successor, take such steps as are necessary or desirable to procure that a separate contracting-out certificate is obtained from the NISPI, or such successor, for the Employer in relation to the TfL Pension Fund with effect on and from the Service Commencement Date;

Schedule 20 – Part B: Pensions

- 3.3.5 not exercise any power, right or discretion conferred on it by the TfL Pension Fund or legislation relevant to the TfL Pension Fund except with the prior approval of TTL on such terms as TTL may specify; and
- 3.3.6 not do or omit to do anything whereby the position of the TfL Pension Fund as a contracted-out scheme would or might be prejudiced.
- 3.4 To the extent that in any year commencing on the Service Commencement Date and each anniversary thereof payments required to be made to the TfL Pension Fund (save in accordance with paragraph 3.3.3 above) by an Employer materially exceed three point zero five (3.05) times each member's normal contributions under Rule 13(1) of the Rules in respect of the Pensionable Employees of that Employer, TTL will reimburse each Employer in respect of the excess by making a lump sum payment within thirty (30) days of notification by that Employer to TTL of the amount of that excess.
- 3.4.1 To the extent that in any year commencing on the Service Commencement Date and each anniversary thereof payments required to be made to the TfL Pension Fund (save in accordance with paragraph 3.3.3 above) by an Employer are materially less than three point zero five (3.05) times each member's normal contributions under Rule 13(1) of the Rules in respect of the Pensionable Employees of that Employer, the Contractor will require that each relevant Employer will reimburse TTL in respect of the shortfall by making a lump sum payment within thirty (30) days of notification by TTL to that Employer and the Contractor of the amount of that excess.
- 3.4.2 Any dispute about this paragraph 3.4 shall be referred to the Dispute Resolution Procedure contained in Clause 56 (Dispute Resolution). For the purposes of this paragraph, any reimbursement by either TTL or any relevant Employer will only apply where any such amount exceeds [REDACTED]. For the avoidance of doubt, no Employer will be under any obligation to make a payment to TTL under this paragraph 3.4 in respect of any period during which there are no Pensionable Employees in its employment who are active members of the TfL Pension Fund.
- 3.5 If paragraph 3.3.3 above applies, the Contractor shall procure that an amount is paid by the Employers to the TfL Pension Fund which is agreed between TfL's Actuary and the Contractor's Actuary (or in default of agreement specified by the independent actuary appointed under paragraph 8 below) having regard to the actuarial assumptions adopted for the most recent actuarial review of the TfL Pension Fund as being the capital value of the additional liability (the "**Special Contribution**") within thirty (30) days of certification, together with interest on the amount at two per cent (2%) above the Applicable Rate in respect of the period from thirty (30) days after the certification to actual payment of the Special Contribution.
- 3.6 The Contractor shall require that each Employer shall do everything in its power (and co-operate with TTL, TfL and the trustees of the TfL Pension Fund as requested by them) to facilitate communication by TTL, TfL and the trustees of the TfL Pension Fund to the Pensionable Employees and to facilitate reasonable access by those bodies to the Pensionable Employees for purposes connected with the TfL Pension Fund and to enable them to fulfil their duties, including passing communications freely to Pensionable Employees and providing information to the Pensionable Employees.

4 Change in Employer

- 4.1 If any Pensionable Employee becomes employed by or is transferred to any other Employer ("**successor**") in circumstances where his or her employment remains Protected Employment, the Contractor will procure that:
- 4.1.1 the successor duly executes a deed of participation to the TfL Pension Fund in relation to the Pensionable Employees in substantially the same form as set out in Appendix 1 of this Part B of Schedule 20 with such reasonable amendments as may be required by the trustees of the TfL Pension Fund and shall provide TTL and the trustees of the TfL Pension Fund with such evidence as either of them shall require confirming the due execution of such deed;
 - 4.1.2 the successor enters into an identical undertaking with TTL and the trustees of the TfL Pension Fund as the Contractor's undertaking to TTL in paragraph 3 of this Schedule; and
 - 4.1.3 the undertaking includes an undertaking by the successor to ensure that identical obligations are imposed on any subsequent employers to whom such rights are transferred.
- 4.2 The Contractor will indemnify TTL and the trustees of the TfL Pension Fund on an after-tax basis against any failure by the successor or any such subsequent employer in respect of the period of the Contract to comply with the obligations in paragraph 4.1 and in the undertakings specified in paragraph 4.1 and any breach by the successor or any subsequent employer of those obligations or undertakings will be treated as if it were a breach by the Contractor of its obligations under paragraph 3.
- 4.3 The Contractor shall procure that each Employer does everything within its power to ensure that:
- 4.3.1 it remains as a participating employer in the TfL Pension Fund; and
 - 4.3.2 it complies in all respects with any reasonable terms and conditions as may be determined from time to time by TfL and the trustees of the TfL Pension Fund to be in the interests of the TfL Pension Fund.

5 Electing To Cease To Be An Active Member

- 5.1 The Contractor agrees that, should it request that any Pensionable Employees who are for the time being in Protected Employment elect to cease to be an active member of the TfL Pension Fund, it shall be responsible for all and any consideration payable in respect of service thereafter to any such Pensionable Employees who are for the time being in Protected Employment in respect of such election.
- 5.2 The Contractor shall indemnify TTL and the trustees of the TfL Pension Fund against any costs, liabilities or claims for which TTL may be held responsible or which it may incur as a consequence of such option, including, but not limited to any claim that the option is ineffective or has been improperly obtained.
- 5.3 Any such Pensionable Employee who remains in Protected Employment after electing to cease to be an active member of the TfL Pension Fund may, subject to the Rules and to any agreement with the Employer, at any time elect to rejoin the TfL Pension Fund as an active member for future service.

6 Continued Participation

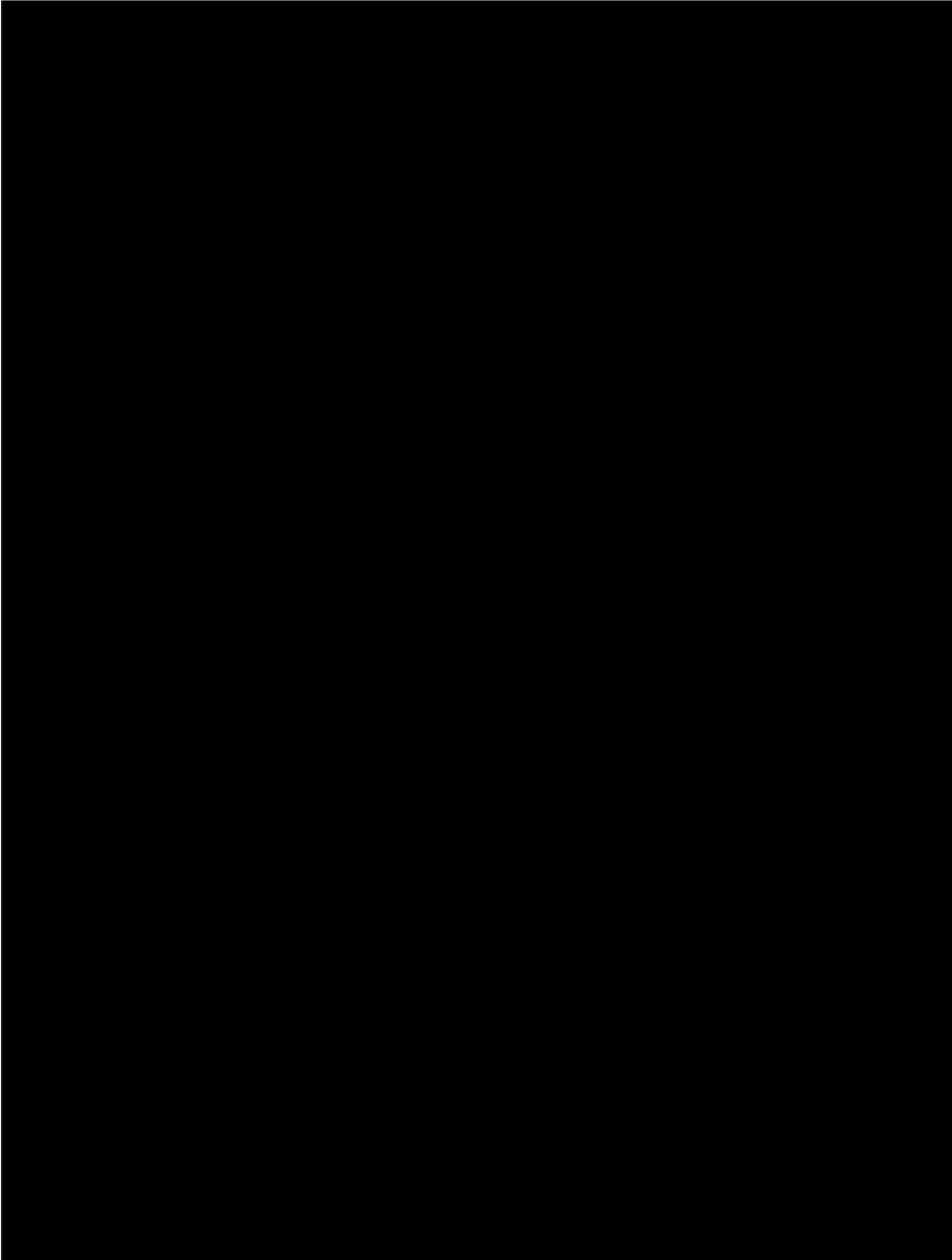
- 6.1 The Contractor shall (and shall require that each Employer shall) pay contributions to the trustees of the TfL Pension Fund at the rate specified in the Rules and the Schedule of Contributions for the Cubic Section of the TfL Pension Fund in force from time to time.
- 6.2 The Contractor shall (and shall require that each Employer shall) at the request of TTL from time to time execute all such deeds, documents, agreements, consents or approvals for the purpose of complying with its obligations under paragraph 6.1 above as may be considered necessary or desirable by TTL.
- 6.3 TTL will consult in advance in good time with the Contractor about the proposals or changes for the TfL Pension Fund which will or might affect the Contractor or the Pensionable Employees.
- 6.4 The Contractor shall not, without the consent of TTL take (or omit to take) any action which would or might prejudice the status of the TfL Pension Fund as a Registered Pension Scheme under Section 150 of the Finance Act 2004 or prejudice its contracted out status under the Pension Schemes Act 1993.

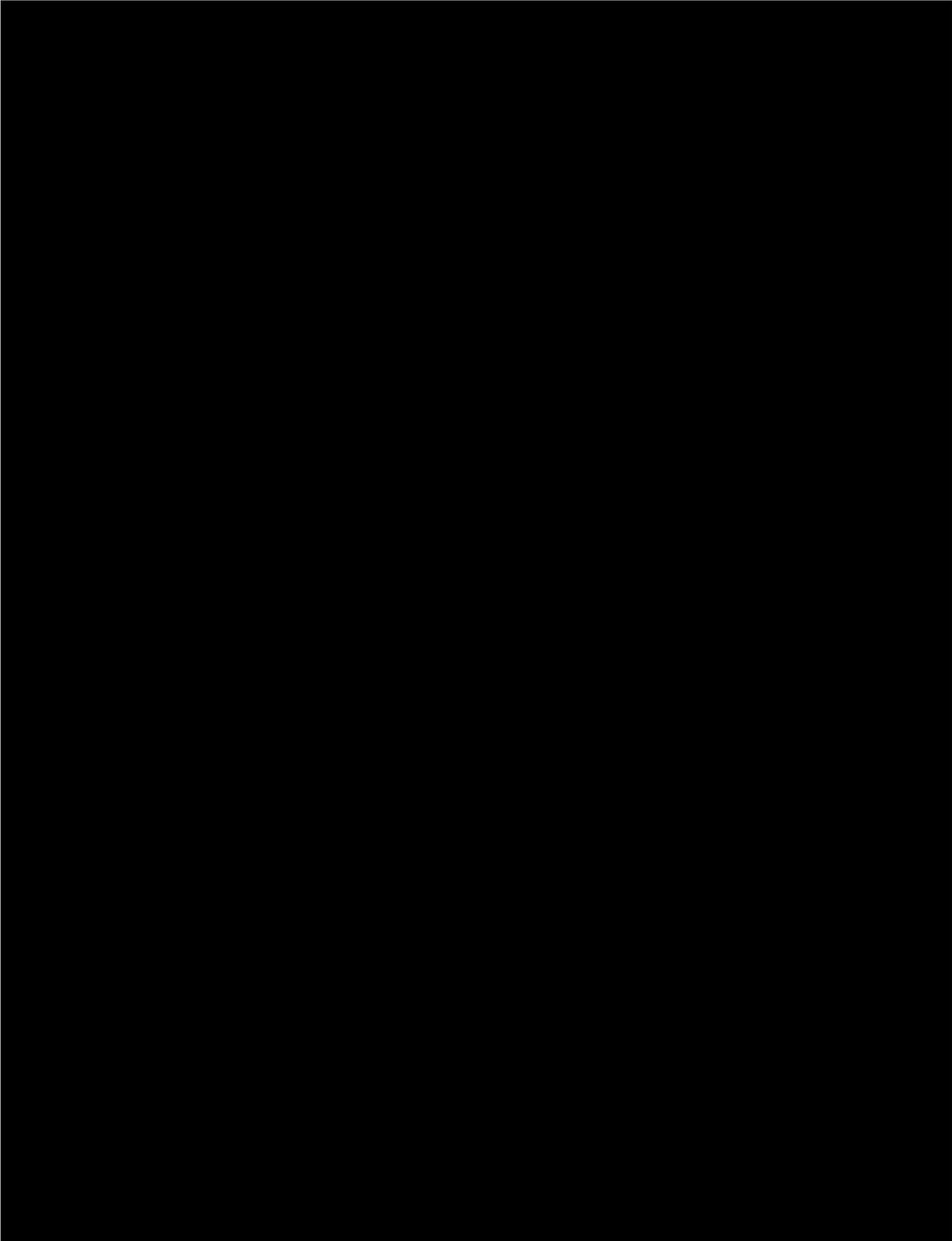
7 Pensions Act Issues

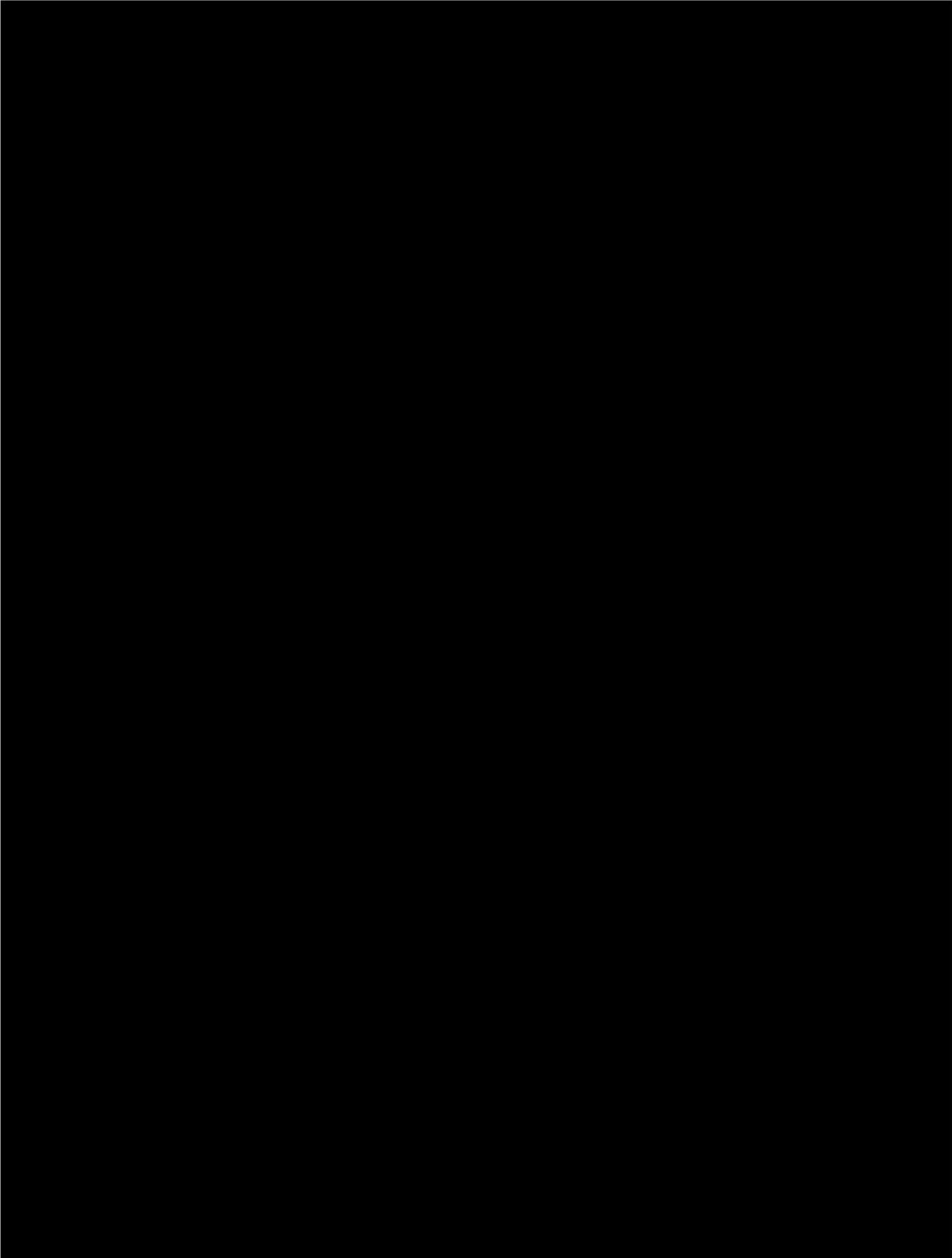
- 7.1 TTL and the Contractor acknowledge that the Pensions Act 1995, the Pensions Act 2004, the Finance Act 2004 and regulations already made under them or to be made under them in the future (the "**Pensions Legislation**") will impose requirements and discretions on employers under and in relation to the TfL Pension Fund.
- 7.2 The Contractor will require that each Employer agrees that TTL (or a subsidiary or associated company of TTL, determined in its absolute discretion by TTL, and the said subsidiary or nominated company shall be substituted for all references to TTL in paragraphs 7.2 to 7.5) may make all decisions and exercise all discretions in relation to the TfL Pension Fund envisaged or desirable by or under the Pensions Legislation as though TTL were the sole employer participating in the TfL Pension Fund.
- 7.3 The Contractor will, and shall require that each Employer will, in relation to the TfL Pension Fund:
- 7.3.1 exercise no right or discretion conferred on it by or under the Pensions Legislation without the prior written consent of TTL;
- 7.3.2 exercise each right or discretion conferred on it by or under the Pensions Legislation as directed from time to time in writing by TTL;
- 7.3.3 from time to time execute all such deeds, documents, agreements, consents or approvals for the purpose of complying with its obligations under sub-paragraphs 7.3.1 or 7.3.2 above as may be considered necessary or desirable by TTL;
- 7.3.4 co-operate with TTL, TfL and the trustees of the TfL Pension Fund in providing information about, and access to, its employees from time to time; and
- 7.3.5 if requested by TTL, execute a deed irrevocably appointing TTL as its attorney to execute (in the name of the Employer or otherwise) from time to time any of the deeds, documents, agreements, consents or approvals specified in paragraph 7.3.3 above.
- 7.4 Without prejudice to the generality of the foregoing, the Contractor will, and will require that each Employer will, at the request of TTL irrevocably:
- 7.4.1 nominate TTL as the person to act for it for the purposes of section 241 of the Pensions Act 2004 and the Occupational Pension Schemes (Member-nominated Trustees and Directors) Regulations 2006 in relation to the TfL Pension Fund;
- 7.4.2 agree that the consultation required by section 35(5)(b) of the Pensions Act 1995 by the trustees of the TfL Pension Fund with the Employer in relation to the written statement of investment principles may be with TTL to the exclusion of the Employer; and
- 7.4.3 nominate TTL as the representative of the Employer for the purposes of section 227 of the Pensions Act 2004 in relation to the TfL Pension Fund.
- 7.5 TTL may exercise the authorities and discretions envisaged by this paragraph 7 in its absolute unfettered discretion and in its own interests. TTL does not owe any duty or responsibility to the Contractor or any Employer in relation to the exercise of the authorities and discretions envisaged as conferred on TTL by this paragraph 7.

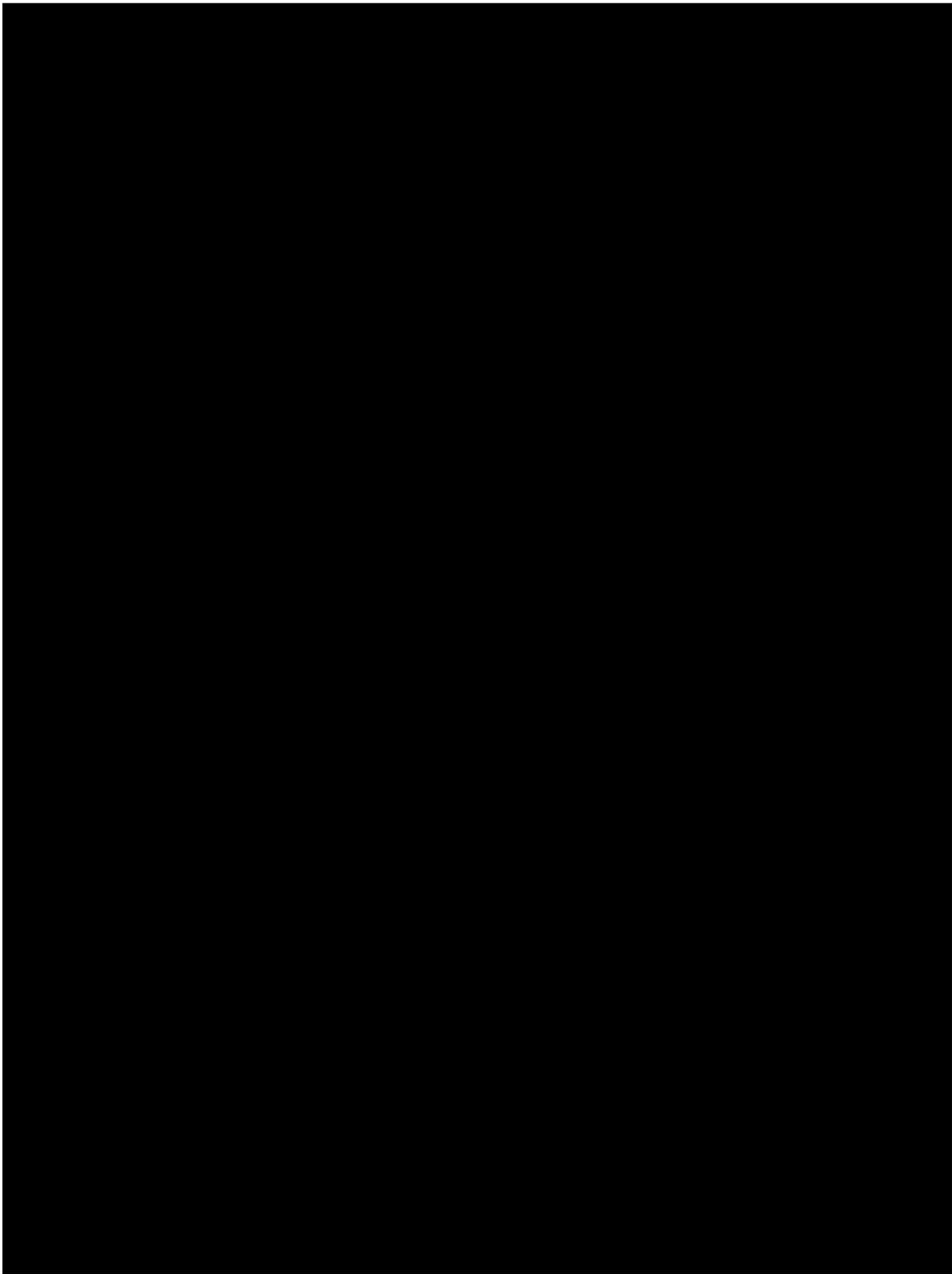
8 Independent Actuary

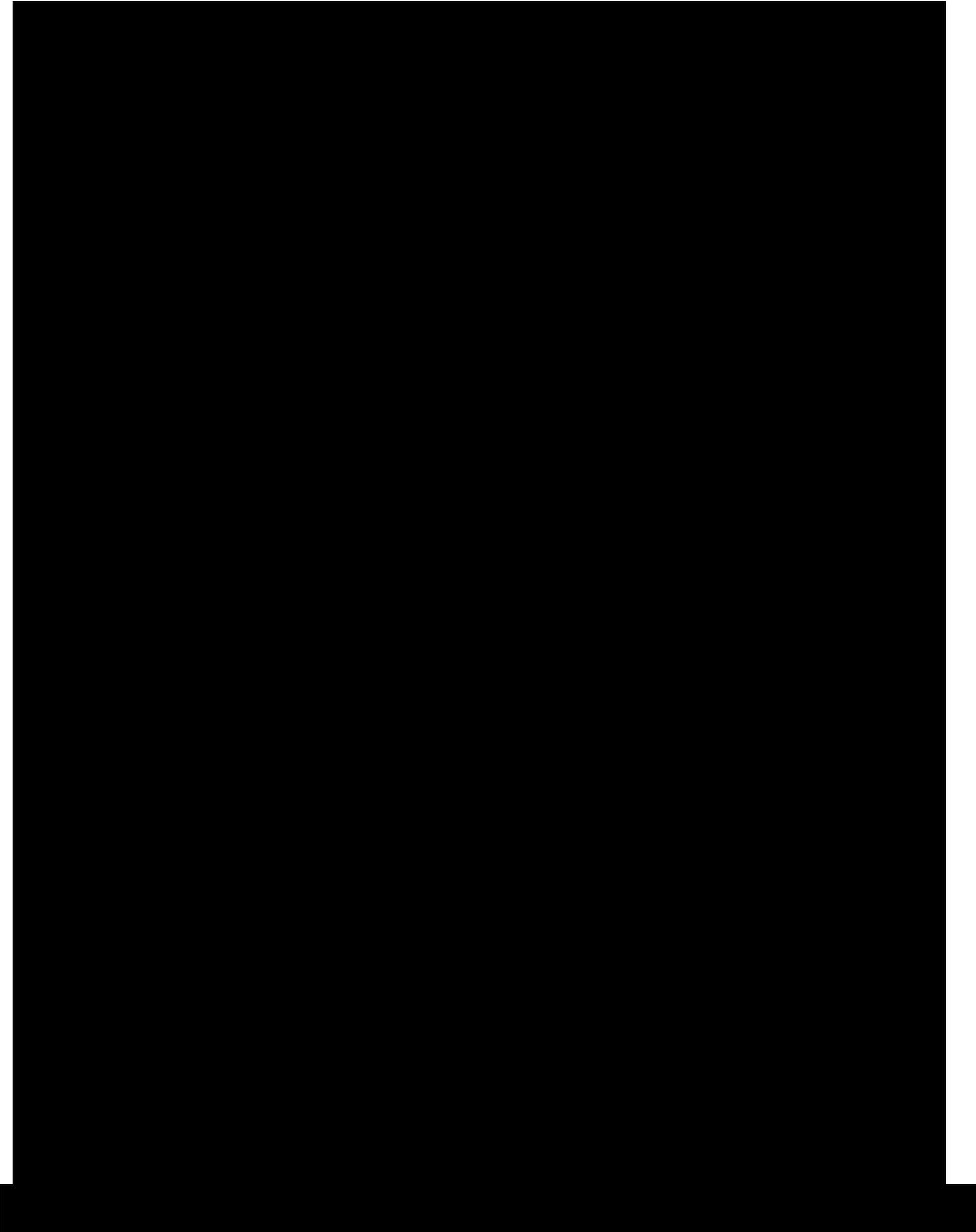
- 8.1 Any dispute between TfL's Actuary and the Contractor's Actuary under paragraph 3.5 shall, in the absence of agreement between them, be referred to an independent actuary agreed by TTL and the Contractor or, failing such agreement, appointed by the President for the time being of the Institute of Actuaries. Such independent actuary shall act as an expert and not as an arbitrator. His expenses shall be borne equally by TTL and the Contractor (or as he may otherwise determine). His decision shall be final and binding on the Parties.

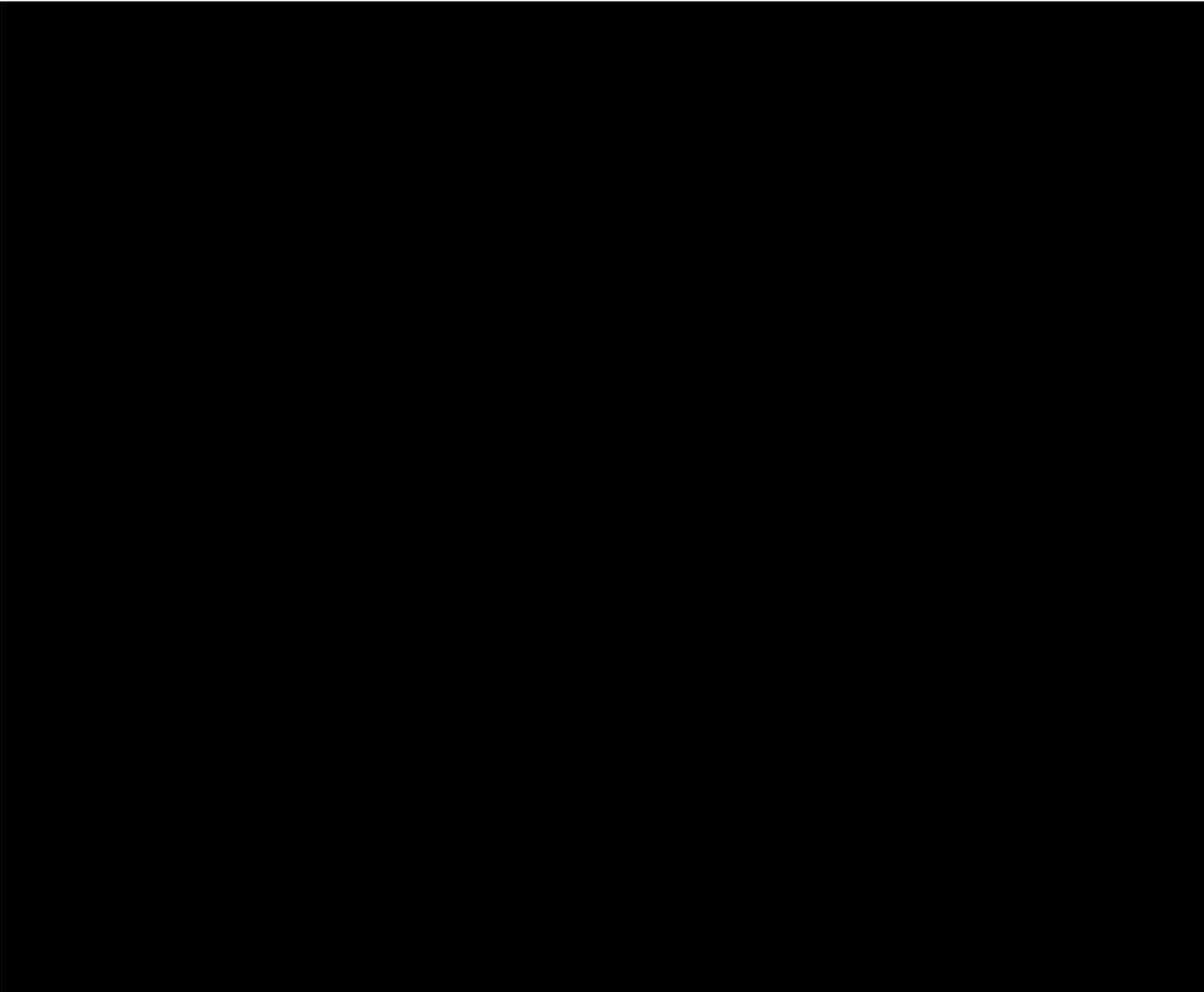












Annex 1: Deeds of the TfL Pension Fund

[Note: To be completed with the assistance of TfL when the Deed of Participation is executed.]