

SCHEDULE 16

Call-Off Schedule 28 (TUPE Surcharge)

In this schedule, the following words shall have the following meanings and they shall supplement (i) Joint Schedule 1 (Definitions) and (ii) Call-Off Schedule 2 (Staff Transfer):	
DEFINITION	MEANING
“Annual Pension Cost”	means Employer Pension Contributions, subject to the Employer Pension Contribution Cap;
“Direct Award TUPE Risk Premium”	<p>means the amount payable on an annual basis based on the difference between:</p> <p>a) the costs to employ Transferring Former Supplier Employees or where the Former Supplier becomes the Supplier those Former Supplier employees providing the Services at the Commencement Date and/or Transferring Buyer Employees (as the case may be); and</p> <p>b) the equivalent costs to employ staff used by the Supplier at Further Competition,</p> <p>in respect of payments due under contracts of employment in respect of the following:</p> <p>i) annual salary;</p> <p>ii) annual national insurance cost;</p> <p>iii) Annual Pension Cost;</p> <p>iv) annual life insurance cost;</p> <p>v) annual sick pay entitlement;</p> <p>vi) maternity/paternity costs; and</p> <p>vii) any other cost arising directly from the contract of employment of the Transferring Former Supplier Employee and or Transferring Buyer Employee,</p> <p>as set out in paragraph 1 of this Schedule;</p>

“Cost of Change”	means any costs that will be incurred in managing the transition of an individual who is listed as a TUPE employee, and will not be required to fulfil a role as part of the new contract, within the Call Off Pricing Matrix. Examples could include but not be limited to: staff consultation, redeployment costs, short-term salary cover associated with redeployment or release of labour, and temporary staffing;
"Employer Pension Contribution"	means standard employer pension contributions paid in accordance with the relevant pension scheme rules and used in the calculation of the TUPE Risk Premium less any costs recoverable under Annex D3: LGPS of Part D Pensions of Schedule 2 Staff Transfer;
"Employer Pension Contribution Cap"	means the 6% maximum rate of Employer Pension Contribution used in the calculation of the TUPE Risk Premium;
“Fixed Fee TUPE Risk Premium”	<p>means the amount payable on an annual basis based on the difference between:</p> <p>a) the costs to employ Transferring Former Supplier Employees or where the Former Supplier becomes the Supplier those Former Supplier employees providing the Services at the Commencement Date and/or Transferring Buyer Employees (as the case may be); and</p> <p>b) the equivalent costs to employ staff used by the Supplier at Further Competition,</p> <p>in respect of payments due under contracts of employment in respect of the following:</p> <p>i) annual salary;</p> <p>ii) annual national insurance cost;</p>

	iii) annual Pension Cost; iv) annual life insurance cost; v) annual sick pay entitlement; vi) maternity/paternity costs; and vii) any other cost arising directly from the contract of employment of the Transferring Former Supplier Employee and or Transferring Buyer Employee, as set out in paragraph 3 of this Schedule;
"Further Competition TUPE Risk Premium"	<p>means the amount payable on an annual basis based on the difference between:</p> <p>a) the costs to employ Transferring Former Supplier Employees or where the Former Supplier becomes the Supplier those Former Supplier employees providing the Services at the Commencement Date and/or Transferring Buyer Employees (as the case may be); and</p> <p>b) the equivalent costs to employ staff used by the Supplier at Further Competition,</p> <p>in respect of payments due under contracts of employment in respect of the following:</p> <p>i) annual salary;</p> <p>ii) annual national insurance cost;</p> <p>iii) Annual Pension Cost;</p> <p>iv) annual life insurance cost;</p> <p>v) annual sick pay entitlement;</p> <p>vi) maternity/paternity costs; and</p> <p>vii) any other cost arising directly from the contract of employment of the Transferring Former Supplier Employee and or Transferring Buyer Employee, as set out in paragraph 2 of this Schedule;</p>

"LGPS Eligible Employees"	as defined in Schedule 2 / Call-Off Schedule 2 (Staff Transfer)
"Other Pension Cost"	<p>means:</p> <p>a) in respect of CSPA Eligible Employees those sums set out at Clauses 7.1.1 (annual administration charges covering core services), 7.1.5 (employer contributions), 7.1.7 (the ASLC) and 7.1.8 (flat charges applicable to the Partnership Pension Account) of the CSPA Admission Agreement;</p> <p>b) in respect of NHSPA Eligible Employees, the standard employer contribution rate applicable to NHS Pensions employers during the Contract Period and payable by the Supplier (but no other costs, contributions, charges or surcharges payable by the Supplier to or in respect of NHS Pensions or in respect of any NHS Premature Retirement Rights, unless otherwise agreed in writing by the Buyer);</p> <p>c) in respect of LGPS Eligible Employees, the standard employer contribution rate applicable to LGPS Eligible Employees during the Contract Period and payable by the Supplier such sums expressed and set out in the rates and adjustments certificate under regulation 62 of the LGPS Regulations (but no other costs, contributions, charges or surcharges payable by the Supplier to or in respect of the LGPS unless otherwise agreed in writing by the Authority) less any costs recoverable under Annex D3: LGPS of Part D Pensions of Schedule 2 Staff Transfer; and</p> <p>d) such other pension contributions, charges or costs incurred by the Supplier which have been expressly agreed by the Buyer in writing to constitute "Other Pension Costs"</p>

“Relevant Transfer”	means, for the purposes of this Schedule only, a transfer of employment to which the Employment Regulations applies, or the event which would have otherwise been a transfer of employment to which the Employment Regulations would have applied had the Supplier not been the Former Supplier;
“Transferring Former Supplier Employees”	means, for the purposes of this Schedule only, in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date, or would have applied had the Supplier not been the Former Supplier.
"TUPE Count"	means the total number of Transferring Former Supplier Employees and/or Transferring Buyer Employees identified in the "employee liability information" as such term is defined in regulation 11 of the Employment Regulations;
"TUPE Risk Premium"	means either the: a) Direct Award TUPE Risk Premium; b) Further Competition TUPE Risk Premium; or b) Fixed Fee TUPE Risk Premium, as the context requires;
"TUPE Risk Premium Average"	means the average calculated by dividing the Further Competition TUPE Risk Premium by the lower of either: a) Labour Count; or b) the TUPE Count.

1. Option 1 – Direct Award – TUPE Risk Premium

1.1. Not Used.

2. Option 2- Further Competition TUPE Risk Premium

2.1. The Further Competition TUPE Risk Premium shall be priced for at Further Competition as set out in Annex 1 - Call Off Schedule 5 (Pricing Details)

2.1.1. Where a Relevant Transfer takes place, or will take place, the Supplier shall, no later than 20 Working Days after the Relevant Transfer Date, submit to the Buyer:

(a) notice that no adjustment is required and the Further Competition TUPE Risk Premium submitted at Call-Off Tender will be used.

or

(b) its updated calculation of the Further Competition TUPE Risk Premium together with a breakdown and supporting evidence as may be reasonably required for the Buyer to corroborate and assess the calculation of the Further Competition TUPE Risk Premium.

2.2. Further Competition TUPE Risk Premium, when post award adjustment

2.2.1. The Supplier may request a Further Competition TUPE Risk Premium adjustment, and the Buyer may grant the request, if:

(a) the Supplier can evidence any inaccuracies or omissions in the information in the following areas provided during the Further Competition:

(i) TUPE Count;

(ii) any costs covered by the Further Competition TUPE Risk Premium; and/or

(b) there are any other unknown costs arising directly from the contract of employment of the Transferring Former Supplier Employee and/or Transferring Buyer Employee,

and where a full breakdown and supporting evidence is submitted in support of a request to adjust the Further Competition TUPE Risk Premium.

2.2.2. receipt of the Suppliers calculation of the Further Competition TUPE Risk Premium and, if applicable, a request for a Further Competition TUPE Risk Premium adjustment, the Buyer shall either:

(a) Notify the Supplier in writing of acceptance of the Further Competition TUPE Risk Premium and, if applicable, the Further Competition TUPE Risk Premium adjustment relating to the Relevant Transfer;

(b) Request further information/evidence; and/or

(c) Request a meeting to discuss/clarify the evidence provided.

2.2.3. Where the Further Competition TUPE Risk Premium is agreed following the receipt of further information/evidence or following a

meeting, the Buyer shall notify the Supplier in writing and confirm the Further Competition TUPE Risk Premium to apply.

- 2.2.4. Where the Supplier requests a Further Competition TUPE Risk Premium adjustment and it is agreed by the Buyer, the Further Competition TUPE Risk Premium shall be adjusted accordingly.
- 2.2.5. In the event that the Parties are unable to agree either the Further Competition TUPE Risk Premium or, if applicable, the Further Competition TUPE Risk Premium adjustment, the Parties shall follow the Dispute Resolution Procedure.
- 2.2.6. On agreement of the Further Competition TUPE Risk Premium the Further Competition TUPE Risk Premium Average shall be calculated and this will be used as the basis for the annual review of the Further Competition TUPE Risk Premium.

2.3. Annual review of Further Competition TUPE Risk Premium

- 2.3.1. The Further Competition TUPE Risk Premium shall be reviewed by the Buyer at the commencement of each Contract Year.
- 2.3.2. The Supplier shall submit to the Buyer, no later than 20 Working Days prior to the beginning of each Contract Year, evidence of any change to the TUPE Count in the previous Contract Year or since it was last adjusted.
- 2.3.3. Where the TUPE Count is less than the TUPE Count in the previous Contract Year, the Further Competition TUPE Risk Premium shall be adjusted using the following calculation:
 - (a) Difference in TUPE Count (Previous Contract Year less current Contract Year) x TUPE Risk Premium Average.
- 2.3.4. The Buyer shall cease to be liable to pay the Further Competition TUPE Risk Premium Average in respect of a particular Transferring Former Supplier Employee or a Transferring Buyer Employee from the date upon which he ceases to be employed by the Supplier or engaged on this Contract (whichever occurs the earliest).
 - (a) If an employee ceases to be employed part way through the year, the TUPE Risk Premium Average allocated to that employee will be deducted on a pro rata basis.
- 2.3.5. On receipt of the Supplier's calculation of the Further Competition TUPE Risk Premium submitted pursuant to paragraph 2.3.2 the Buyer shall either:
 - (a) Notify the Supplier in writing of acceptance of the adjusted Further Competition TUPE Risk Premium; or
 - (b) Request further information/evidence; and/or
 - (c) Request a meeting to discuss/clarify the evidence provided.
- 2.3.6. Where the adjustment to the Further Competition TUPE Risk Premium is agreed following the receipt of further information/evidence or

following a meeting, the Buyer shall notify the Supplier in writing and confirm the Further Competition TUPE Risk Premium that will apply.

- 2.3.7. In the event that the Supplier and the Buyer are unable to agree the adjustment to the Further Competition TUPE Risk Premium, they shall follow the Dispute Resolution Procedure.
- 2.3.8. The adjusted Further Competition TUPE Risk Premium shall be used as the benchmark in the subsequent annual review of the Further Competition TUPE Risk Premium.
- 2.3.9. Where the adjusted Further Competition TUPE Risk Premium is more than the Further Competition TUPE Risk Premium in the previous Contract Year, the Further Competition TUPE Risk Premium shall not be adjusted.

2.4. Right of audit

- 2.4.1. The Buyer reserves the right to review and audit the calculation of the Further Competition TUPE Risk Premium at any time.
- 2.4.2. Where an overpayment of the Further Competition TUPE Risk Premium is identified following a review and/or audit carried out or by any other means, the Supplier shall repay to the Buyer any over payment of the Further Competition TUPE Risk Premium within 20 Working Days of being notified or becoming aware of the overpayment.

3. Option 3 – Further Competition - Fixed Fee TUPE Risk Premium

- 3.1. Not Used.

4. Employer Pensions Contribution Cap & other pension cost

- 4.1. For options detailed at paragraphs 1, 2 and 3 above the following shall apply.

- 4.1.1. Where any Annual Pension Cost would have included Employer Pension Contribution in excess of the 6% Employer Pension Contribution Cap or Other Pension Costs, the Supplier may request a pension adjustment to cover the additional cost. Such request for a pension adjustment must be submitted to the Buyer no later than 20 Working Days after the end of the relevant Contract Year.
- 4.1.2. If the Supplier requests a pension adjustment in accordance with the provisions of paragraph 4.1.1. above the TUPE Risk Premium, they must provide sufficient evidence to the Buyer to justify the pension adjustment.
- 4.1.3. On receipt of the Supplier's calculation of the pension adjustment the Buyer shall either:
 - (a) Notify the Supplier in writing of acceptance of the pension adjustment;

- (b) Request further information/evidence; and/or
 - (c) Request a meeting to discuss/clarify the evidence provided.
- 4.1.4. Where the pension adjustment in Paragraph 4.1.1 is agreed following the receipt of further information/evidence or following a meeting, the Buyer shall notify the Supplier in writing.
- 4.1.5. In the event that the Supplier and the Buyer are unable to agree the pension adjustment, they shall follow the Dispute Resolution Procedure.
- 4.1.6. If paragraph 4.1.4 above applies, the excess amount calculated for the pension adjustment is not included in any calculation of the TUPE Risk Premium Average.
- 4.1.7. Any pension adjustment agreed by the Buyer over the Employer Pension Contribution Cap or in respect of Other Pension Cost shall be paid within timescales as agreed between Buyer and Supplier

5. Cost of Change

- 5.1. Option 1 and 2 Direct Award TUPE Risk Premium and Further Competition TUPE Risk Premium.
 - 5.1.1. If the Supplier requests a post award adjustment, they must provide sufficient evidence to the Buyer to justify the post award adjustment.
 - 5.1.2. On receipt of the Suppliers calculation of the post award adjustment the Buyer shall either:
 - (a) Notify the Supplier in writing of acceptance of the Cost of Change adjustments, or
 - (b) Request further information/evidence; and/or
 - (c) Request a meeting to discuss/clarify the evidence provided.
- 5.2. Option 3 – Further Competition Fixed Fee TUPE Risk Premium
 - 5.2.1. There shall be no post award adjustment to Cost of Change.