

## SCHEDULE 21

# Call-Off Schedule 29 (Redundancy Surcharge)

## Definitions

- 1.1 For the purposes of this Schedule 29, the following terms shall have the following meanings:

<b>"Affected Employee"</b>	means an employee of the Supplier (or, if relevant, a notified Sub-Contractor) who is at risk of redundancy as a result of either of the occurrence of either of the events set out in Paragraph 2.1 of this Schedule;
<b>"Early Retirement Right"</b>	any right to retirement benefit arising on termination for redundancy, whether such benefit is reduced or otherwise and whether such right arises on retirement or otherwise;
<b>"Redundancy Payment"</b>	<p>means any and all of the following payments which may be made by the Supplier (or, if relevant, the notified Sub-Contractor) to any Affected Employee:</p> <p>a) statutory redundancy payments made in accordance with section 162 of the Employment Rights Act 1996;</p> <p>b) contractual redundancy payments (which for this purpose shall mean redundancy payments made in accordance with the terms and conditions of employment to which the relevant Affected Employee was entitled at the Reference Date and for the avoidance of doubt, in each employee's case, shall not include any ex gratia payment, payment for accrued holiday or any other payment made as compensation for the termination of employment);</p> <p>c) where it is not reasonably practicable to require the Affected Employee to work their notice period, in respect of each Affected Employee, either:</p> <p>i) payment of damages for breach of the applicable statutory notice entitlement or, if higher, the notice entitlement under the terms and conditions of employment to which the relevant employee was entitled at the Reference Date; or</p> <p>ii) payment in lieu of any such notice entitlement, made pursuant to such terms and conditions of employment, but for the avoidance of doubt, shall not include any payment of salary or wages or of any benefit</p>

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	<p>in respect of any period of continuing employment (whether during a notice period or otherwise);</p> <p>d) any payment made in satisfaction of any Early Retirement Right to which the relevant employee was entitled under his or her terms and conditions of employment on the Reference Date;</p>
<b>“Reference Date”</b>	<p>means either:</p> <p>a) the date of commencement of employment, if the Affected Employee became employed by the Supplier (or, if relevant, notified Subcontractor) after the Relevant Transfer Date; or</p> <p>b) the Relevant Transfer Date,</p> <p>save that where the Supplier (or, if relevant, notified Subcontractor) and Former Supplier are the same entity such that the Employment Regulations do not apply to transfer staff, the relevant date shall be either the Contract Date or, if the Affected Employee became employed by the Supplier (or, if relevant, notified Subcontractor) after such date, the date of commencement of employment;</p>
<b>“Redundancy Surcharge”</b>	<p>means a surcharge on the Charges equal in amount to each relevant Redundancy Payment;</p>
<b>“Service Change Redundancy Surcharge”</b>	<p>means in relation to a redundancy as described in Paragraph 4.1 of this Schedule, a surcharge on the Charges equal in amount to the Redundancy Payment.</p>

## 2. Introduction

2.1 This Schedule sets out the process for determining the Redundancy Surcharge in the event that:

2.1.1 following a Relevant Transfer, a Transferring Former Supplier Employee and/or a Transferring Buyer Employee is made redundant by the Supplier as a result of an economic technical organisational reason entailing changes to the workforce; or

2.1.2 the Buyer makes a change to the Services which results in the removal of any Services or closure of any of the Buyer Premises.

## 3. Redundancy Surcharge

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- 3.1 Subject to Paragraphs 3.2, 3.3, 3.4 and 3.5, where the Supplier or any notified Subcontractor makes or intends to make a Redundancy Payment in relation to any termination for redundancy made as a direct result of an economic technical organisational reason entailing changes to the workforce following a Relevant Transfer, the Supplier may be entitled to a Redundancy Surcharge.
- 3.2 The Supplier shall not be entitled to a Redundancy Surcharge under Paragraph 3.1 unless it has, before any relevant termination for redundancy is made:
- 3.2.1 provided the Buyer with written notice of the proposal to make any such termination for redundancy and such other details regarding the proposal as the Buyer may reasonably request;
  - 3.2.2 consulted the Buyer about the proposal;
  - 3.2.3 provided the Buyer with written estimates of any relevant Redundancy Payment together with a breakdown of such estimates and such supporting evidence as the Buyer may reasonably request to corroborate and assess the calculations; and
  - 3.2.4 provided the Buyer with details of the steps the Supplier, or the notified Subcontractor (as applicable), has taken (or proposes to take) to mitigate such costs in accordance with Paragraph 3.4.
- 3.3 The Supplier shall not be entitled to a Redundancy Surcharge under Paragraph 3.1 unless it, or the notified Subcontractor (as applicable), has followed a fair dismissal procedure and complied with all contractual and legislative requirements (save for a breach of notice entitlement where payment is made on termination in satisfaction of the employee's claim for damages) in respect of each termination for redundancy to which the Redundancy Surcharge relates.
- 3.4 The Supplier shall mitigate the extent of any Redundancy Surcharge by:
- 3.4.1 redeploying such people where it is practicable for the Supplier to do so; or
  - 3.4.2 where redeployment is not practicable, taking such reasonable mitigation steps to minimise the costs of redundancy where practicable; and
  - 3.4.3 complying with the Law and any reasonable instructions from the Buyer.
- 3.5 The Supplier shall not be entitled to a Redundancy Surcharge under Paragraph 3.1 unless:
- 3.5.1 the Supplier (or, where relevant, notified Sub-Contractor) has notified and consulted with the Buyer, pursuant to paragraph 3.2, no later than 12 months after the Relevant Transfer; and

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- 3.5.2 the employment of any employee to whom the Redundancy Payment relates is terminated for redundancy no later than 12 months after the Relevant Transfer.
- 3.6 On receipt of the Supplier's calculation of the Redundancy Surcharge the Buyer shall either:
  - 3.6.1 notify the Supplier in writing of acceptance of the Redundancy Surcharge relating to the Relevant Transfer; and/or
  - 3.6.2 request further information/evidence; and/ or
  - 3.6.3 request a meeting to discuss/clarify the evidence provided.
- 3.7 Where the Redundancy Surcharge is agreed following the receipt of further information/evidence or following a meeting, the Buyer shall notify the Supplier in writing.
- 3.8 In the event that the Supplier and the Buyer are unable to agree the Redundancy Surcharge, they shall follow the Dispute Resolution Procedure.

## **4. Building closures/removal of Service(s)**

- 4.1 Subject to Paragraphs 4.2, 4.3, 4.4 and 4.5, where the Supplier or any notified Subcontractor makes or intends to make a Redundancy Payment in relation to any termination for redundancy made as a direct result of a Buyer instigated building closure or removal of service(s) (in whole or in part), the Supplier may be entitled to a Service Change Redundancy Surcharge.
- 4.2 The Supplier shall not be entitled to a Service Change Redundancy Surcharge under Paragraph 4.1 unless it has, before any relevant termination for redundancy is made:
  - 4.2.1 provided the Buyer with written notice of the proposal to make any such termination for redundancy and such other details regarding the proposal as the Buyer may reasonably request;
  - 4.2.2 consulted the Buyer about the proposal;
  - 4.2.3 provided the Buyer with written estimates of any relevant Service Charge Redundancy Payment together with a breakdown of such estimates and such supporting evidence as the Buyer may reasonably request to corroborate and assess the calculations; and
  - 4.2.4 Provided the Buyer with details of the steps the Supplier, or the notified Sub-Contractor (as applicable), has taken (or proposes to take) to mitigate such costs in accordance with Paragraph 4.4.
- 4.3 The Supplier shall not be entitled to a Service Change Redundancy Surcharge under Paragraph 4.1 unless it, or the notified Subcontractor (as applicable),

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has followed a fair dismissal procedure and complied with all contractual and legislative requirements (save for a breach of notice entitlement where payment is made on termination in satisfaction of the employee's claim for damages) in respect of each termination for redundancy to which the Service Change Redundancy Surcharge relates.

- 4.4 The Supplier shall (or, where relevant, shall procure that the notified Subcontractor shall) avoid having to make, or mitigate the extent of, any Redundancy Payment by:

- 4.4.1 redeploying any relevant person where it is practicable to do so;
- 4.4.2 where redeployment is not practicable, taking reasonable steps to minimise the amount of Redundancy Payment, including requiring employees to work their notice where this is practicable;
- 4.4.3 complying with the law and any reasonable instructions.

- 4.5 The Supplier shall not be entitled to a Service Change Redundancy Surcharge under Paragraph 4.1 unless:

- 4.5.1 the Supplier (or, where relevant, notified Sub-Contractor) has notified and consulted with the Buyer, pursuant to Paragraph 4.2, within one month of receiving notice by the Supplier of the building closure or removal of service(s); and
- 4.5.2 the employment of any employee to whom the Redundancy Payment relates is terminated for redundancy no later than three months after the relevant building closure or removal of service(s).

- 4.6 On receipt of the Supplier's calculation of the Service Change Redundancy Payments in accordance with paragraph 4.2 the Buyer shall either:

- 4.6.1 notify the Supplier in writing of acceptance of the Service Change Redundancy Surcharge relating to the relevant building closure or removal of service(s); and/or
- 4.6.2 request further information/evidence; and/ or
- 4.6.3 request a meeting to discuss/clarify the evidence provided.

- 4.7 Where the Service Change Redundancy Surcharge is agreed following the receipt of further information/evidence or following a meeting, the Buyer shall notify the Supplier in writing.

- 4.8 In the event that the Supplier and the Buyer are unable to agree the Service Change Redundancy Surcharge, they shall follow the Dispute Resolution Procedure.

## **5. Termination**

- 5.1 Subject to Paragraphs 5.2, 5.3, 5.4 and 5.5, where:

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- 5.1.1 the Supplier or any notified Subcontractor makes a Redundancy Payment to an Affected Employee in relation to any termination for redundancy made following the End Date as a direct result of an economic technical organisational reason entailing changes to the workforce;
- 5.1.2 the Affected Employee was wholly or mainly engaged or assigned in the Services or any relevant part of the Services immediately prior to the End Date and would be Transferring Supplier Employee if the Employment Regulations applied on the End Date; and
- 5.1.3 a Relevant Transfer for the purposes of the Employment Regulations does not take place in respect of such employees as a result of the cessation of the Buyer's requirements for the Service to which they were assigned,

the Supplier shall be entitled to a Redundancy Surcharge.

5.2 The Supplier shall not be entitled to a Redundancy Surcharge under Paragraph 5.1 unless it has, before any relevant termination for redundancy is made:

- 5.2.1 provided the Buyer with written notice of the proposal to make any such termination for redundancy and such other details regarding the proposal as the Buyer may reasonably request;
- 5.2.2 provided the Buyer with sufficient evidence to demonstrate that the Employment Regulations do not apply to such employee at the End Date;
- 5.2.3 consulted the Buyer about the proposal;
- 5.2.4 provided the Buyer with written estimates of any relevant Redundancy Payment together with a breakdown of such estimates and such supporting evidence as the Buyer may reasonably request to corroborate and assess the calculations; and
- 5.2.5 provided the Buyer with details of the steps the Supplier, or the notified Subcontractor (as applicable), has taken (or proposes to take) to mitigate such costs in accordance with Paragraph 5.4.

5.3 The Supplier shall not be entitled to a Redundancy Surcharge under Paragraph 5.1 unless it, or the notified Subcontractor (as applicable), has followed a fair dismissal procedure and complied with all contractual and legislative requirements (save for a breach of notice entitlement where payment is made on termination in satisfaction of the employee's claim for damages) in respect of each termination for redundancy to which the Redundancy Surcharge relates.

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- 5.4 The Supplier shall mitigate the extent of any Redundancy Surcharge by:
  - 5.4.1 redeploying such people where it is practicable for the Supplier to do so;  
or
  - 5.4.2 where redeployment is not practicable, taking such reasonable mitigation steps to minimise the costs of redundancy where practicable; and
  - 5.4.3 complying with the Law and any reasonable instructions from the Buyer.
- 5.5 The Supplier shall not be entitled to a Redundancy Surcharge under Paragraph 5.1 unless:
  - 5.5.1 the Supplier (or, where relevant, notified Subcontractor) has notified and consulted with the Buyer, pursuant to Paragraph 5.2, no later than one month after the End Date; and
  - 5.5.2 the employment of any employee to whom the Redundancy Payment relates is terminated for redundancy no later than three months after the End Date.
- 5.6 On receipt of the Supplier's calculation of the Redundancy Surcharge the Buyer shall either:
  - 5.6.1 notify the Supplier in writing of acceptance of the Redundancy Surcharge relating to the Relevant Transfer; and/or
  - 5.6.2 request further information/evidence; and/ or
  - 5.6.3 request a meeting to discuss/clarify the evidence provided.
- 5.7 Where the Redundancy Surcharge is agreed following the receipt of further information/evidence or following a meeting, the Buyer shall notify the Supplier in writing.
- 5.8 In the event that the Supplier and the Buyer are unable to agree the Redundancy Surcharge, they shall follow the Dispute Resolution Procedure.