

Schedule 7
TUPE Surcharge
(Call-Off Schedule 28)

Call-Off Schedule 28 (TUPE Surcharge)

<p>In this schedule, the following words shall have the following meanings and they shall supplement and be supplemented by Clause 11.2 of the core contract; contract schedule 4 (Staff Transfer) and contract schedule 8 (Redundancy Surcharge):</p>	
DEFINITION	MEANING
<p>“Annual Pension Cost”</p>	<p>means Employer Pension Contributions, subject to the Employer Pension Contribution Cap;</p>
<p>“Direct Award TUPE Risk Premium”</p>	<p>means the amount payable on an annual basis based on the difference between:</p> <ul style="list-style-type: none"> a) the costs to employ Transferring Former Service Provider Employees or where the Former Service Provider becomes the <i>Service Provider</i> those Former Service Provider employees providing the <i>services</i> at the Contract Date and/or Transferring Client Employees (as the case may be); and b) the equivalent costs to employ staff used by the <i>Service Provider</i> at Further Competition, <p>in respect of payments due under contracts of employment in respect of the following:</p> <ul style="list-style-type: none"> i) annual salary; ii) annual national insurance cost; 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 Service Provider Employee and or Transferring Client Employee, <p>as set out in paragraph 1 of contract schedule 7 (TUPE Surcharge);</p>

<p align="center">“Cost of Change”</p>	<p>means any costs that will be incurred in managing the transition of an individual who is listed as a TUPE employee, and who will be redeployed/relocated or made redundant including any Redundancy Surcharge relevant to proposed redundancies in the circumstances set out at 2.1.1 of contract schedule 8 (Redundancy Surcharge), as specified within the Price List. For the avoidance of doubt, additional related costs such as information technology provision and staff consultation shall not be included in the Cost of Change;</p>
<p align="center">“Employee Liability Information”</p>	<p>means information concerning the Transferring Former Service Provider Employees (or where the Former Service Provider becomes the <i>Service Provider</i> those Former Service Provider employees providing the Service at the Start Date) and/or the Transferring Client Employees (if any) provided to the <i>Service Provider</i> in writing prior to the Contract Date;</p>
<p align="center">"Employer Pension Contribution"</p>	<p>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 contract schedule 4 (Staff Transfer);</p>
<p align="center">"Employer Pension Contribution Cap"</p>	<p>means the 6% maximum rate of Employer Pension Contribution used in the calculation of the TUPE Risk Premium;</p>
<p align="center">“Fixed Fee TUPE Risk Premium”</p>	<p>means the amount payable on an annual basis based on the difference between:</p> <p>a) the costs to employ Transferring Former Service Provider Employees or where the Former Service Provider becomes the <i>Service Provider</i> those Former Service Provider employees Providing the Service at the Contract</p>

	<p>Date and/or Transferring Client Employees (as the case may be); and</p> <p>b) the equivalent costs to employ staff used by the <i>Service Provider</i> 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 Service Provider Employee and or Transferring Client Employee,</p> <p>as set out in paragraph 3 of contract schedule 7 (TUPE Surcharge);</p>
<p>“Further Competition”</p>	<p>means the competition procedure which led to the award of the contract.</p>
<p>“Further Competition TUPE Risk Premium”</p>	<p>means the amount payable on an annual basis based on the difference between:</p> <p>a) the costs to employ Transferring Former Service Provider Employees or where the Former Service Provider becomes the <i>Service Provider</i> those Former Service Provider employees providing the Service at the Start Date and/or Transferring Client Employees (as the case may be); and</p> <p>b) the equivalent costs to employ staff used by the <i>Service Provider</i> at Further Competition,</p> <p>in respect of payments due under contracts of employment in respect of the following:</p>

	<ul style="list-style-type: none"> i) annual salary; ii) annual national insurance cost; 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 Service Provider Employee or where the Former Service Provider becomes the <i>Service Provider</i> those Former Service Provider employees providing the Service at the Start Date and/or and or Transferring Client Employee, <p>as set out in paragraph 2 of contract schedule 7 (TUPE Surcharge);</p>
“Labour Count”	<p>means the total number of Transferring Former Service Provider Employees or where the Former Service Provider becomes the <i>Service Provider</i> those Former Service Provider employees providing the Service at the Start Date and/or Transferring Client Employees identified in the <i>Service Provider’s</i> solution;</p>
"Other Pension Cost"	<p>means:</p> <ul style="list-style-type: none"> a) in respect of CSPS 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 CSPS Admission Agreement; b) in respect of NHSPS Eligible Employees, the standard employer contribution rate applicable to NHS Pensions employers during the Service Period and payable by the <i>Service Provider</i> (but no other costs, contributions, charges or surcharges payable by the <i>Service Provider</i> to or in

	<p>respect of NHS Pensions or in respect of any NHS Premature Retirement Rights, unless otherwise agreed in writing by the <i>Client</i>);</p> <p>c) in respect of LGPS Eligible Employees, the standard employer contribution rate applicable to LGPS Eligible Employees during the Service Period and payable by the <i>Service Provider</i> 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 <i>Service Provider</i> to or in respect of the LGPS unless otherwise agreed in writing by the <i>Client</i>) less any costs recoverable under Annex D3: LGPS of Part D Pensions of contract schedule 4 (Staff Transfer); and</p> <p>d) such other pension contributions, charges or costs incurred by the <i>Service Provider</i> which have been expressly agreed by the <i>Client</i> in writing to constitute "Other Pension Costs"</p>
<p align="center">"TUPE Count"</p>	<p>means the total number of Transferring Former Service Provider Employees or where the Former Service Provider becomes the <i>Service Provider</i> those Former Service Provider employees providing the Service at the Start Date and/or Transferring Client Employees identified in the Employee Liability Information;</p>
<p align="center">"TUPE Risk Premium"</p>	<p>means either the:</p> <p>a) Direct Award TUPE Risk Premium;</p> <p>b) Further Competition TUPE Risk Premium; or</p> <p>b) Fixed Fee TUPE Risk Premium, as the context requires;</p>

"TUPE Risk Premium Average"	<p>means the average calculated by dividing the Further Competition TUPE Risk Premium by the lower of either:</p> <p>a) Labour Count; or</p> <p>b) the TUPE Count.</p>
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1. Option 1 – Direct Award – TUPE Risk Premium – 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 the Price List. In the event of any inaccuracy or omission from the Employee Liability Information as at the date of Bid Date or of any change in the Employee Liability Information (including a change in the identity of any transferring employees) between the date of Bid Date and the Relevant Transfer that results in any increase or decrease to the Further Competition TUPE Risk Premium (which could result in any unexpected or additional costs to be reasonably incurred, and/or any costs savings to be reasonably achieved, by the *Service Provider* in respect of the ongoing employment of any of the Transferring Former Service Provider Employees (or where the Former Service Provider becomes the *Service Provider* those Former Service Provider employees providing the Service at the Start Date) or Transferring Client Employees), an adjustment shall be made to the Further Competition TUPE Risk Premium, in respect of such unexpected or additional cost or cost savings in accordance with and subject to paragraph 2.2.1 and 2.3 below.

2.2.

2.2.1. Where a Relevant Transfer takes place, or will take place, the *Service Provider* shall, no later than 20 Working Days after the Relevant Transfer Date, submit to the *Service Manager*:

(a) notice that it considers no adjustment is required and the Further Competition TUPE Risk Premium submitted at Bid Date will be used together with a breakdown and supporting evidence as may be reasonably required for the *Service Manager* to corroborate and assess that no adjustment is required;

or

(b) notice that it considers an adjustment to the Further Competition TUPE Risk Premium is required and its updated calculation of the Further Competition TUPE Risk Premium (whether such calculation results in an expected increase or decrease to the Further Competition TUPE Risk Premium) together

with a breakdown and supporting evidence as may be reasonably required for the *Service Manager* to corroborate and assess the calculation of the Further Competition TUPE Risk Premium.

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

2.3.1. Where the *Service Provider* provides notice that it considers an adjustment to the Further Competition TUPE Risk Premium is required, the *Service Provider* shall provide:

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

(i) TUPE Count; and/or

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

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

2.3.2. On receipt of a notice under paragraph 2.2.1 above the *Service Provider's* calculation of the Further Competition TUPE Risk Premium and/or, if applicable, a request for a Further Competition TUPE Risk Premium adjustment, the *Service Manager* shall either:

(a) Notify the *Service Provider* 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 the *Service Provider* shall provide such information/evidence as the *Service Manager* may reasonably request); and/or

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

2.3.3. Where the Further Competition TUPE Risk Premium is agreed following the receipt of further information/evidence or following a meeting, the *Service Manager* shall notify the *Service Provider* in writing and confirm the Further Competition TUPE Risk Premium to apply.

2.3.4. Where a Further Competition TUPE Risk Premium adjustment is agreed by the *Service Manager*, the Further Competition TUPE Risk Premium shall be adjusted accordingly (whether increased or decreased).

2.3.5. 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 provisions of the contract.

2.3.6. On agreement of the Further Competition TUPE Risk Premium the TUPE Risk Premium Average shall be calculated and this will be used as the basis for the monthly review of the Further Competition TUPE Risk Premium.

2.4. Monthly review of Further Competition TUPE Risk Premium

2.4.1. The Further Competition TUPE Risk Premium shall be reviewed by the *Service Manager* on a monthly basis.

2.4.2. The *Service Provider* shall submit to the *Service Manager*, on a day to be agreed between the Parties each month, evidence of any change to the TUPE Count in the previous month or since it was last adjusted.

2.4.3. Where the TUPE Count is less than the TUPE Count in the previous month, the Further Competition TUPE Risk Premium shall be adjusted using the following calculation:

(a) Difference in TUPE Count (previous month less current month) x TUPE Risk Premium Average.

2.4.4. The *Client* shall cease to be liable to pay the TUPE Risk Premium Average in respect of a particular Transferring Former Service Provider Employee (or where the Former Service Provider becomes the *Service Provider* a particular Former Service Provider employee providing the Service at the Start Date) or a Transferring Client Employee from the date upon which he ceases to be employed by the *Service Provider* or engaged in the provision of *services* under this contract (whichever occurs the earliest).

(a) If an employee ceases to be employed part way through a month, the TUPE Risk Premium Average allocated to that employee will be deducted on a pro rata basis.

2.4.5. On receipt of the *Service Provider's* calculation of the Further Competition TUPE Risk Premium submitted pursuant to paragraph 2.4.2 the *Service Manager* shall either:

(a) Notify the *Service Provider* in writing of acceptance of the adjusted Further Competition TUPE Risk Premium; or

(b) Request further information/evidence (and the *Service Provider* shall provide such information/evidence as the *Service Manager* may reasonably request); and/or

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

2.4.6. Where the adjustment to the Further Competition TUPE Risk Premium is agreed following the receipt of further information/evidence or following a meeting, the *Service Manager* shall notify the *Service Provider* in writing and confirm the Further Competition TUPE Risk Premium that will apply.

- 2.4.7. In the event that the *Service Provider* and the *Service Manager* are unable to agree the adjustment to the Further Competition TUPE Risk Premium, they shall follow the dispute provisions of the contract.
- 2.4.8. The adjusted Further Competition TUPE Risk Premium shall be used as the benchmark in the subsequent monthly review of the Further Competition TUPE Risk Premium.
- 2.4.9. Where the adjusted Further Competition TUPE Risk Premium is more than the Further Competition TUPE Risk Premium in the previous month, the Further Competition TUPE Risk Premium shall not be adjusted.

2.5. Right of audit

- 2.5.1. The *Service Manager* reserves the right to review and audit the calculation of the Further Competition TUPE Risk Premium at any time.
- 2.5.2. 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 *Service Provider* shall repay to the *Client* any over payment of the Further Competition TUPE Risk Premium within 20 Working Days of being notified or becoming aware of the overpayment.

2.6. No double recovery

- 2.6.1. For the avoidance of doubt, in order to prevent double recovery, the *Service Provider* shall not recover any increased costs pursuant to this schedule, where any such costs are recoverable by the *Service Provider* under any other provision in the contract or any other agreement or arrangement with the *Client* or any other person; and
- 2.6.2. the *Service Provider* shall not recover any costs pursuant to this paragraph 2 in respect of the termination of employment of any employees by reason of redundancy or otherwise.

3. Option 3 – Further Competition - Fixed Fee TUPE Risk Premium – 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 *Service Provider* may request a pension adjustment to cover the additional cost. Such request for a pension adjustment must be submitted to the *Service Manager* on a day to be agreed between the parties each month.
 - 4.1.2. If the *Service Provider* requests a pension adjustment in accordance with the provisions of paragraph 4.1.1 above, they must provide

sufficient evidence to the *Service Manager* to justify the pension adjustment.

- 4.1.3. On receipt of the *Service Provider's* calculation of the pension adjustment the *Service Manager* shall either:
 - (a) Notify the *Service Provider* in writing of acceptance of the pension adjustment;
 - (b) Request further information/evidence (and the *Service Provider* shall provide such information/evidence as the *Service Manager* may reasonably request); 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 *Service Manager* shall notify the *Service Provider* in writing.
- 4.1.5. In the event that the *Service Provider* and the *Service Manager* are unable to agree the pension adjustment, they shall follow the dispute provisions of the contract.
- 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 *Service Manager* over the Employer Pension Contribution Cap or in respect of Other Pension Cost shall be paid within timescales as agreed between *Service Manager* and *Service Provider*.

5. Cost of Change

- 5.1. Option 1 and 2 Direct Award TUPE Risk Premium and Further Competition TUPE Risk Premium.
 - 5.1.1. The Cost of Change shall be priced for at Further Competition within the Price List. In the event of any inaccuracy or omission from the Employee Liability Information as at the date of Bid Date or of any change in the Employee Liability Information (including a change in the identity of any transferring employees) between the date of Bid Date and the Relevant Transfer that results in any increase or decrease to the Cost of Change (which could result in any unexpected or additional costs to be reasonably incurred, and/or any costs savings to be reasonably achieved, by the *Service Provider* in respect of the Cost of Change) an adjustment shall be made to the Cost of Change, in respect of such unexpected or additional cost or cost savings in accordance with and subject to the process described in paragraph 2.2.1 and/or 2.3 above, and the *Service Provider* shall provide such information/evidence as the *Service Manager* may reasonably request to assess whether any adjustment should be made to the Cost of Change.

5.2. Option 3 – Further Competition Fixed Fee TUPE Risk Premium - NOT USED