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**COMMUNITY HEALTH PARTNERSHIPS**

**and**

**SUPPLIER**

**Provision of Soft FM Building Services**

**REF: RM6232**

**Lot 3C**

**Call-Off Schedule 29 (Redundancy Surcharge)**

**Definitions**

* 1. For the purposes of this Call-Off Schedule 29, the following terms shall have the following meanings:

|  |  |
| --- | --- |
| **“Affected Employee”** | 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; |
| **"Early Retirement Right"** | 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; |
| **“Redundancy Payment”** | 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:  a) statutory redundancy payments made in accordance with section 162 of the Employment Rights Act 1996;  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);  c) where it is not reasonably practicable to require the Affected Employee to work their notice period, in respect of each Affected Employee, either:  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  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 in respect of any period of continuing employment (whether during a notice period or otherwise);  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; |
| **“Redundancy Surcharge”** | means a surcharge on the Charges comprising the following:  i) Redundancy Payment  ii) any tribunal awards; |
| **“Reference Date”** | means either:  a) the date of commencement of employment, if the Affected Employee became employed by the Supplier (or, if relevant, notified Sub-contractor) after the Relevant Transfer Date; or  b) the Relevant Transfer Date,  save that where the Supplier (or, if relevant, notified Sub-contractor) 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 Sub-contractor) after such date, the date of commencement of employment; |
| **“Redundancy Surcharge”** | means a surcharge on the Charges equal in amount to each relevant Redundancy Payment; |
| **“Service Change Redundancy Surcharge”** | means in relation to a redundancy as described in Paragraph 4.1, a surcharge on the Charges equal in amount to the Redundancy Payment. |

1. **Introduction**

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

## 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; and

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

1. **Redundancy Surcharge**

## Where a Relevant Transfer takes place, or will take place, the Supplier shall not make any Transferring Former Supplier Employee(s) and/or Transferring Buyer Employee(s) redundant without consulting the Buyer.

## The Supplier shall mitigate the effects of any Redundancy Surcharge by:

### redeploying such people where it is practicable for the Supplier to do so; or

### where redeployment is not practicable, taking such reasonable mitigation steps to minimise the costs of redundancy where practicable; and

### complying with the Law and any reasonable instructions from the Buyer.

### The Redundancy Surcharge shall be zero unless the Supplier has consulted with the Buyer, pursuant to paragraph 3.1 of this Call-Off Schedule 29 about the particular Transferring Former Supplier Employee(s) and/or Transferring Buyer Employee(s) within 12 months of the starting date.

### Where redundancy is unavoidable, the Supplier shall provide the Buyer with its estimate of the Redundancy Surcharge together with a breakdown and supporting evidence as may be reasonably necessary for the Buyer to corroborate and assess the calculation of the Redundancy Surcharge.

### On receipt of the Supplier’s calculation of the Redundancy Surcharge the Buyer shall either:

### notify the Supplier in writing of acceptance of the Redundancy Surcharge relating to the Relevant Transfer; and/or

### request further information/evidence; and/ or

### request a meeting to discuss/clarify the evidence provided.

* 1. 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.
  2. In the event that the Supplier and the Buyer are unable to agree the Redundancy Surcharge, they shall follow the Dispute Resolution Procedure.

1. **Building closures/removal of Service(s)**
   1. Subject to Paragraph 4.2, Paragraph 4.3 and Paragraph 4.4 where the Supplier or any notified Sub-Contractor 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), the Supplier may be entitled to a Service Change Redundancy Surcharge.
   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:
      1. consulted the Buyer about the proposal to make any such termination for redundancy;
      2. 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. 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
   3. The Supplier shall not be entitled to a Service Change Redundancy Surcharge under paragraph 4.1 unless it, or the notified Sub-Contractor (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 Service Change Redundancy Surcharge relates.
   4. The Supplier shall (or, where relevant, shall procure that the notified Sub-Contractor shall) avoid having to make, or mitigate the extent of, any Redundancy Payment by:
      1. redeploying any relevant person where it is practicable to do so;
      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;
      3. complying with the law and any reasonable instructions.
   5. The Supplier shall not be entitled to a Service Change Redundancy Surcharge under paragraph 4.1 unless:
      1. the Supplier (or, where relevant, notified Sub-Contractor) has consulted with the Buyer, pursuant to paragraph 4.1, within one month of receiving notice by the Supplier of the building closure or removal of service(s); and
      2. the employment of any employee to whom the Redundancy Payment relates is terminated for redundancy no later than one month after the relevant building closure or removal of service(s).
2. **On receipt of the Supplier’s calculation of the Redundancy Payments in accordance with paragraph 4.2 the Buyer shall either:**
   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
   2. request further information/evidence; and/ or
   3. request a meeting to discuss/clarify the evidence provided.
3. 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. 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.