

Joint Schedule 2 (Variation Form)

Variation Control Procedure

1 General principles of Variation Control Procedure

- 1.1 This Schedule sets out the procedure for dealing with Variations, Variations to Buyer Premises and Variations as a result of a Change in Law and such procedure is without prejudice to Clause 3 (*How the Contract Works*). The Parties agree that this Schedule shall not apply to Works Orders.
- 1.2 The Parties shall deal with Variations as follows:
 - 1.2.1 either Party may request a Variation which they shall initiate by issuing a Variation Request in accordance with Paragraph 3;
 - 1.2.2 unless this Contract otherwise requires, the Supplier shall assess and document the potential impact of a proposed Variation in accordance with Paragraph 4 before the Variation can be either approved or implemented;
 - 1.2.3 the Buyer shall have the right to request amendments to a Variation Request, approve it or reject it in the manner set out in Paragraph 5;
 - 1.2.4 the Supplier shall have the right to reject a Variation Request solely in the manner set out in Paragraph 6;
 - 1.2.5 save as otherwise provided in this Contract, no proposed Variation shall be implemented by the Supplier until a Variation Authorisation Note has been signed and issued by the Buyer in accordance with Paragraph 5.2;
 - 1.2.6 if a proposed Variation is a Fast-track Variation, it shall be processed in accordance with Paragraph 7; and
 - 1.2.7 if a proposed Variation is a Variation to Buyer Premises, it shall be processed in accordance with Paragraph 8.
- 1.3 Until a Variation Authorisation Note has been signed and issued by the Buyer in accordance with Paragraph 5.2, then:
 - 1.3.1 unless the Buyer expressly agrees (or requires) otherwise in writing, the Supplier shall continue to provide the Deliverables in accordance with the existing terms of this Contract as if the proposed Variation did not apply; and
 - 1.3.2 any discussions, negotiations or other communications which may take place between the Buyer and the Supplier in connection with any proposed Variation, including the submission of any Variation

Communications, shall be without prejudice to each Party's other rights under this Contract.

1.4 The Supplier shall:

1.4.1 within ten (10) Working Days of the Buyer's signature and issue of a Variation Authorisation Note, deliver to the Buyer a copy of this Contract updated to reflect all Variations agreed in the relevant Variation Authorisation Note and annotated with a reference to the Variation Authorisation Note pursuant to which the relevant Variations were agreed; and

1.4.2 thereafter provide to the Buyer such further copies of the updated Contract as the Buyer may from time to time request.

1.5 In the event that the Supplier is unable to provide the Variation to the Deliverables or where the Parties are unable to agree a change to the Charges, the Buyer may:

1.5.1 agree to allow the Supplier continue to perform its obligations under the Contract without the Variation;

1.5.2 refer the matter to dispute resolution in accordance with Clause 36 (*Disputes and Law*); or

1.5.3 terminate the Contract within immediate effect, except where the Supplier has already delivered part or all of the order in accordance with the Order Form or where the Supplier can show evidence of substantial work being carried out to fulfil the Order Form, and in such a case the Parties shall agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under Clause 36 (*Disputes and Law*).

1.6 For 101(5) of the Regulations, if the Court declares any Variation ineffective, the Parties agree that their mutual rights and obligations will be regulated by the terms of the Contract as they existed immediately prior to that Variation and as if the Parties had never entered into that Variation.

2 Costs

2.1 The costs of preparing each Variation Request shall be borne by the Party making the Variation Request.

2.2 The costs incurred by the Supplier in undertaking an Impact Assessment shall:

2.2.1 where the Variation Request has been made by the Supplier, be borne by the Supplier; and

2.2.2 where the Variation Request has been made by the Buyer, the Supplier will provide an estimate of the costs of preparing the Impact Assessment in accordance with Paragraph 3.3 and will only be

obliged to prepare such Impact Assessment upon approval of the Impact Assessment Estimate pursuant to Paragraph 3.4, provided that:

- (a) the Supplier shall use reasonable endeavours to use resource already deployed in the provision of the Deliverables except where to do so would prevent the Supplier from delivering the Deliverables; and
- (b) the Buyer shall not be required to pay any such costs to the extent that such costs exceed those in the accepted Impact Assessment Estimate.

- 2.3 The cost of any Variation shall be calculated and charged in accordance with Call-Off Schedule 5 (*Pricing Details*). The Supplier shall be entitled to increase the Charges only if it can demonstrate in the Impact Assessment that the proposed Variation requires additional resources and, in any event, any change to the Charges resulting from a Variation (whether the change will cause an increase or a decrease in the Charges) shall be strictly proportionate to the increase or decrease in the level of resources required for the provision of the Deliverables as amended by the Variation as described in the Pricing Matrix.
- 2.4 Both Parties reasonable costs incurred in respect of any use of this Variation Control Procedure as a result of any error or Default by the Supplier shall be paid for by the Supplier.

3 Variation Request

- 3.1 Either Party may issue a Variation Request to the other Party at any time during the Contract Period. A Variation Request shall be substantially in the form of Joint Schedule 2, Annex 1 and state whether the Party issuing the Variation Request considers the proposed Variation to be a Fast-track Variation or a Variation to Buyer Premises.
- 3.2 If the Supplier issues the Variation Request, then it shall also provide an Impact Assessment to the Buyer as soon as is reasonably practicable but in any event within ten (10) Working Days of the date of issuing the Variation Request.
- 3.3 If the Buyer issues the Variation Request, then the Supplier shall provide as soon as reasonably practical and in any event within ten (10) Working Days of the date of receiving the Variation Request an estimate ("Impact Assessment Estimate") of the cost of preparing an Impact Assessment and the timetable for preparing it. The timetable shall provide for the completed Impact Assessment to be received by the Buyer within ten (10) working days of acceptance of the Impact Assessment Estimate or within any longer time period agreed by the Buyer.
- 3.4 If the Buyer accepts an Impact Assessment Estimate then following receipt of notice of such acceptance the Supplier shall provide the completed Impact Assessment to the Buyer as soon as is reasonably practicable and in any event

within the period agreed in the Impact Assessment Estimate. If the Supplier requires any clarification in relation to the Variation Request before it can deliver the Impact Assessment, then it shall promptly make a request for clarification to the Buyer and provided that sufficient information is received by the Buyer to fully understand:

3.4.1 the nature of the request for clarification; and

3.4.2 the reasonable justification for the request,

and the time period to complete the Impact Assessment shall be extended by the time taken by the Buyer to provide that clarification. The Buyer shall respond to the request for clarification as soon as is reasonably practicable.

4 Impact Assessment

4.1 Each Impact Assessment shall be completed in good faith and shall include:

4.1.1 details of the proposed Variation including the reason for the Variation;

4.1.2 details of the impact of the proposed Variation on the provision of the Deliverables, including without limitation, any impact on the Buyer CAFM System and the Supplier's ability to meet its other obligations under this Contract;

4.1.3 any variation to the terms of this Contract that will be required as a result of that impact, including changes to:

- (a) the Deliverables;
- (b) the Implementation Plan;
- (c) the Property Data;
- (d) the Pricing Matrix;
- (e) the Exit Plan;
- (f) the Supplier's Supply Chain; and/or
- (g) other services provided by the Buyer Supply Chain Members to the Buyer, including any changes required by the proposed Variation to the Buyer CAFM System;

4.1.4 details of the cost of implementing the proposed Variation;

4.1.5 details of the ongoing costs required by the proposed Variation when implemented, including any increase or decrease in the:

- (a) Charges;

- (b) Fixed Monthly Fee, such amendments to be determined by reference to Paragraph 2.3; and/or
 - (c) Unit Rates;
- 4.1.6 details of any alteration in the resources and/or expenditure required by either Party;
- 4.1.7 details of any alteration to the working practices of either Party;
- 4.1.8 such other information as the Buyer may reasonably request in (or in response to) the Variation Request; and
- 4.1.9 where the proposed Variation relates to the omission of part or parts of the Deliverables during an Extension Period, the relevant Charges set out in Call-Off Schedule 5 (*Pricing Details*) and the Pricing Matrix shall be used as the basis for reducing the Charges and the Supplier shall not be entitled to its loss of profit in relation to the Deliverables that the Supplier is no longer required to provide.
- 4.2 If the Variation involves the processing or transfer of any Personal Data outside the United Kingdom, the preparation of the Impact Assessment shall also be subject to Clause 16 (*Confidentiality*).
- 4.3 Subject to the provisions of Paragraph 4.5, the Buyer shall review the Impact Assessment and respond to the Supplier in accordance with Paragraph 5 within fifteen (15) Working Days of receiving the Impact Assessment.
- 4.4 If the Buyer is the receiving Party and the Buyer reasonably considers that it requires further information regarding the proposed Variation so that it may properly evaluate the Variation Request and the Impact Assessment, then within five (5) Working Days of receiving the Impact Assessment, it shall notify the Supplier of this fact and detail the further information that it requires. The Supplier shall then re- issue the relevant Impact Assessment to the Buyer within ten (10) Working Days of receiving such notification. At the Buyer's discretion, the Parties may repeat the process described in this Paragraph 4.4 until the Buyer is satisfied that it has sufficient information to properly evaluate the Variation Request and Impact Assessment.
- 4.5 Subject to the proposed Variation being a change to the Core Services, the calculation of costs for the purposes of Paragraphs 4.1.4 and 4.1.5 shall:
 - 4.5.1 be calculated as follows:
 - (a) where the additional or substituted work is of a similar character to and is executed under similar conditions as the work set out in the Specification, in accordance with Call-Off Schedule 5 (*Pricing Details*) where the Pricing Matrix and Unit Rates are applicable and Paragraph 2.3;

- (b) where the additional or substituted work is of similar character to work set out in the Specification but is not executed under similar conditions, the Unit Rates for the work set out in the Pricing Matrix are the basis for determining the valuation and the valuation includes a fair allowance for such difference in conditions; and
 - (c) where additional or substantial work is not of similar character to work set out in the Specification the work is valued at fair rates and prices;
- 4.5.2 include estimated volumes of each type of resource to be employed;
- 4.5.3 include full disclosure of any assumptions underlying such Impact Assessment;
- 4.5.4 include evidence of the cost of any assets required for the Variation; and
- 4.5.5 include details of any new Sub-contracts necessary to accomplish the Variation.¹

5 Buyer's Right of Approval

- 5.1 Within fifteen (15) Working Days of receiving the Impact Assessment from the Supplier or within ten (10) Working Days of receiving the further information that it may request pursuant to Paragraph 4.4, the Buyer shall evaluate the Variation Request and the Impact Assessment and shall do one of the following:
 - 5.1.1 approve the proposed Variation, in which case the Parties shall follow the procedure set out in Paragraph 5.2;
 - 5.1.2 in its absolute discretion reject the Variation, in which case it shall notify the Supplier of the rejection. Without prejudice to Paragraph 9, the Buyer shall not reject any Variation to the extent that the Variation is necessary for the Supplier or the Services to comply with any Changes in Law. If the Buyer does reject a Variation, then it shall explain its reasons in writing to the Supplier as soon as is reasonably practicable following such rejection; or
 - 5.1.3 in the event that it reasonably believes that a Variation Request or Impact Assessment contains errors or omissions, require the Supplier to modify the relevant document accordingly, in which event the Supplier shall make such modifications within five (5) Working Days of such request. Subject to Paragraph 4.4, on receiving the modified Variation Request and/or Impact Assessment, the Buyer shall approve or reject the proposed Variation within ten (10) Working Days.

¹ Mechanism for assessing costs will be agreed at a later date following approval of pricing schedule.

- 5.2 If the Buyer approves the proposed Variation pursuant to Paragraph 5.1 and it has not been rejected by the Supplier in accordance with Paragraph 6, then it shall inform the Supplier and the Supplier shall prepare two (2) copies of a Variation Authorisation Note which it shall sign and deliver to the Buyer for its signature. Following receipt by the Buyer of the Variation Authorisation Note, it shall sign both copies and return one copy to the Supplier. On the Buyer's signature the Variation Authorisation Note shall constitute (or, where the Buyer has agreed to or required the implementation of a Variation prior to signature of a Variation Authorisation Note, shall constitute confirmation of) a binding variation to this Contract.
- 5.3 If the Buyer does not sign the Variation Authorisation Note within ten (10) Working Days, then the Supplier shall have the right to notify the Buyer and if the Buyer does not sign the Variation Authorisation Note within five (5) Working Days of such notification, then the Supplier may refer the matter to the Dispute Resolution Procedure.
- 5.4 If a dispute arises regarding any Variation, including, without limitation, any dispute as to the price of a Variation, or as to whether any service or item required by the Buyer or requested by Supplier constitutes a Variation, Supplier will nevertheless promptly proceed with performance as directed by the Buyer in writing, without delay or interruption. Neither the Buyer's request, Supplier's performance, nor the acceptance of any disputed services by the Buyer will constitute or be deemed to be a waiver on the part of the Buyer or Supplier of its rights to seek a determination of the appropriate compensation for a Variation, or classification of a service as a Variation.

6 Supplier's Right of Approval

- 6.1 Following an Impact Assessment, if:
- 6.1.1 the Supplier reasonably believes that any proposed Variation which is requested by the Buyer would:
- (a) materially and adversely affect the risks to the health and safety of any person; and/or
 - (b) require the Deliverables to be performed in a way that infringes any Law; and/or
 - (c) the Supplier demonstrates to the Buyer's reasonable satisfaction that the proposed Variation is technically impossible to implement,
- then the Supplier shall be entitled to reject the proposed Variation and shall notify the Buyer of its reasons for doing so within five (5) Working Days after the date on which it is obliged to deliver the Impact Assessment pursuant to Paragraph 3.3.

7 Fast-track Variations

- 7.1 The Parties acknowledge that to ensure operational efficiency there may be circumstances where it is desirable to expedite the processes set out above.
- 7.2 If both Parties agree that the proposed Variation is not significant then the Parties shall confirm to each other in writing that they shall use the process set out in Paragraphs 3, 4, 5 and 6 but with reduced timescales, such that any period of fifteen (15) Working Days is reduced to five (5) Working Days, any period of ten (10) Working Days is reduced to two (2) Working Days and any period of five (5) Working Days is reduced to one (1) Working Day.
- 7.3 The Parties may agree in writing that the Fast-track Variation procedure shall be used in relation to a particular Variation.

8 Variations to Buyer Premises

- 8.1 The Buyer shall be entitled to issue a Variation Request to vary the Buyer Premises by written notice to the Supplier at any time.
- 8.2 The Parties agree that where a Variation to Buyer Premises or the cumulative effect of Variations to Buyer Premises to the Estate is within the Tolerance, there shall be no change to the Charges for the Core Services or any Performance Indicator.
- 8.3 Where a Variation to Buyer Premises or the cumulative effect of Variations to Buyer Premises to the Estate is equal to or exceeds the Tolerance, the following provisions shall apply:
- 8.3.1 the changes made to the Charges for the Core Services shall be assessed by
- (a) multiplying the changed quantities of properties with the appropriate rates in the Pricing Matrix; or
 - (b) where the addition or omission of Buyer Premises is not of similar character to that set out in the Pricing Matrix the Variation to Buyer Premises is valued at fair rates and prices;
- 8.3.2 if the Parties fail to agree, the matter shall be referred to dispute resolution in accordance with Clause 36 (*Disputes and Law*); and
- 8.3.3 the revised Charges shall take effect from the Charges change date. Until such time as the revised Charges are agreed, the Charges set out in Annex 2: shall continue to be payable and any adjustment to the Changes shall be backdated to the Charges change date and reconciled in the month following agreement to any such changes.
- 8.4 Where a part of the Buyer's Premises is removed during the Contract Period, the Supplier shall cease to provide the Services or the Deliverables at the relevant Buyer's Premises from the date specified in the Buyer's notice and the

relevant provisions set out in Call-Off Schedule 5 (*Pricing Details*) and the Pricing Matrix shall be used as the basis for reducing the Charges and the Supplier shall not be entitled to its loss of profit in relation to the Deliverables that the Supplier is no longer required to provide.

9 Variation as a result of a Change in Law

- 9.1 If there is General Change in Law, the Supplier must bear the risk of the change and is not entitled to ask for an increase to the Framework Prices or the Charges.
- 9.2 If there is a Specific Change in Law or one is likely to happen during the Contract Period the Supplier must give the Buyer notice of the likely effects of the changes as soon as reasonably practical. They must also say if they think any Variation is needed either to the Deliverables, Framework Prices or a Contract and provide evidence:
- 9.2.1 that the Supplier has kept costs as low as possible, including in Subcontractor costs; and
- 9.2.2 of how it has affected the Supplier's Costs.
- 9.3 Any change in the Charges or relief from the Supplier's obligations because of a Specific Change in Law must be implemented using Paragraphs 1 to 4 of this Schedule.

10 Communications

- 10.1 For any Variation Communication to be valid under this Schedule, it must be sent to the Buyer's Authorised Representative or the Supplier's Authorised Representative, as applicable. The provisions of Clause 35 (*Notices*) shall apply to a Variation Communication as if it were a notice.

Annex 1: Variation Request Form

| | | | | |
|-----------|---------------------------------------------------------------------------------------------------------|--------------------|-------------------|-------|
| CR NO.: | TITLE | TYPE OF VARIATION: | | |
| CONTRACT: | | | REQUIRED BY DATE: | |
| ACTION: | NAME: | | | DATE: |
| | RAISED BY: | | | |
| | AREA(S) IMPACTED (OPTIONAL FIELD): | | | |
| | ASSIGNED FOR IMPACT ASSESSMENT BY: | | | |
| | ASSIGNED FOR IMPACT ASSESSMENT TO: | | | |
| | SUPPLIER REFERENCE NO.: | | | |
| | FULL DESCRIPTION OF REQUESTED VARIATION (INCLUDING PROPOSED VARIATIONS TO THE WORDING OF THE CONTRACT): | | | |
| | DETAILS OF ANY PROPOSED CHANGES TO THE BUYER PREMISES: | | | |
| | DETAILS OF ANY PROPOSED ALTERNATIVE SCENARIOS: | | | |
| | REASONS FOR AND BENEFITS AND DISADVANTAGES OF REQUESTED VARIATION: | | | |
| | SIGNATURE OF REQUESTING VARIATION OWNER: | | | |
| | DATE OF REQUEST: | | | |

Joint Schedule 2 (Variation Form)

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Annex 2: Variation Authorisation Note

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|------------------------------------------------------------------------------------------------------------------------------------|---------------------|-------------------|
| CR NO.: | TITLE: | DATE RAISED: |
| CONTRACT: | TYPE OF VARIATION: | REQUIRED BY DATE: |
| [KEY MILESTONE DATE: [if any]] | | |
| DETAILED DESCRIPTION OF VARIATION FOR WHICH IMPACT ASSESSMENT IS BEING PREPARED AND WORDING OF RELATED VARIATIONS TO THE CONTRACT: | | |
| PROPOSED ADJUSTMENT TO THE CHARGES RESULTING FROM THE VARIATION (IF ANY): | | |
| DETAILS OF PROPOSED ONE-OFF ADDITIONAL CHARGES AND MEANS FOR DETERMINING THESE (E.G. FIXED PRICE BASIS): | | |
| SIGNED ON BEHALF OF THE BUYER | | |
| Signature: _____ | Signature: _____ | |
| Name: _____ | Name: _____ | |
| Position: _____ | Position: _____ | |
| Date: _____ | Date: _____ | |