

**CONTRACT FOR PRISONER AND NON-PRISONER FOOD SUPPLY**

**SCHEDULE 19**

**FINANCIAL REPORTS AND AUDIT RIGHTS**

## Financial Reports and Audit Rights

### 1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

<b>“Assets”</b>	means all assets and rights used by the Supplier to provide the Services in accordance with this Contract but excluding the Authority Assets;
<b>“Audit Agents”</b>	means: <ul style="list-style-type: none"><li>(a) the Authority’s internal and external auditors;</li><li>(b) the Authority’s statutory or regulatory auditors;</li><li>(c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;</li><li>(d) HM Treasury or the Cabinet Office;</li><li>(e) any Authority Quality Assurance Provider;</li><li>(f) any party formally appointed by the Authority to carry out audit or similar review functions; and</li><li>(g) successors or assigns of any of the above;</li></ul>
<b>“Authority Assets”</b>	means the Authority infrastructure and any other data, software, assets, equipment or other property owned by and/or licensed or leased to the Authority and which is or may be used in connection with the provision or receipt of the Services and Products;
<b>“Authority Financial Year”</b>	means the period running from 1 April to 31 March in each year;
<b>“Contract Amendment Report”</b>	means the contract amendment report to be provided by the Supplier to the Authority pursuant to Paragraph 1 of Part B;
<b>“Costs”</b>	means the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Products and Services: <ul style="list-style-type: none"><li>(a) the cost to the Supplier or the Key Sub-contractor (as the context requires), calculated per Work Day, of engaging the Supplier Personnel, including:<ul style="list-style-type: none"><li>(i) base salary paid to the Supplier Personnel;</li><li>(ii) employer’s national insurance contributions;</li><li>(iii) employer pension contributions;</li><li>(iv) car allowances;</li><li>(v) any other contractual employment benefits;</li><li>(vi) staff training;</li></ul></li></ul>

- (vii) work place accommodation; and
- (viii) reasonable recruitment costs, as agreed with the Authority;
- (b) costs incurred in respect of those Assets which are detailed on the Registers and which would be treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Assets by the Supplier to the Authority or (to the extent that risk and title in any Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Assets;
- (c) operational costs which are not included within (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Supplier in the provision of the Products and Services;

but excluding:

- (i) Overhead;
- (ii) financing or similar costs;
- (iii) maintenance and support costs to the extent that these relate to maintenance and/or support services provided beyond the Term, whether in relation to Assets or otherwise;
- (iv) taxation;
- (v) fines and penalties;
- (vi) non-cash items (including depreciation, amortisation, impairments and movements in provisions);

**“Final Reconciliation Report”**

means the final reconciliation report to be provided by the Supplier to the Authority pursuant to Paragraph 1 of Part B;

**“Financial Model”**

means the financial response template submitted by the Supplier as part of the Supplier Tender (and known as the financial response template) and as updated from time to time through the Change Control Procedure or otherwise by agreement between the Parties;

**“Financial Reports”**

means the Financial Model and the reports listed in the table in Paragraph 1.1 of Part B;

**“Financial Representative”**

means a reasonably skilled and experienced member of the Supplier’s staff who has specific responsibility for preparing, maintaining, facilitating access to, discussing and explaining the Open Book Data, Charges and Financial Reports;

**“Financial Transparency Objectives”**

has the meaning given in Paragraph 1 of Part A;

<b>“Material Change”</b>	<p>means a Change which:</p> <ul style="list-style-type: none"> <li>(a) materially changes the profile of the Charges; or</li> <li>(b) varies the total Charges payable during the Term (as forecast in the latest Financial Model) by: <ul style="list-style-type: none"> <li>(i) 5% or more; or</li> <li>(ii) £1m or more;</li> </ul> </li> </ul>
<b>“Onerous Contract”</b>	<p>means a contract in which the unavoidable costs of meeting the obligations under the contract exceed the economic benefits expected to be received under it, as defined under International Accounting Standard 37;</p>
<b>“Onerous Contract Report”</b>	<p>means a report provided by the Supplier pursuant to Part A Paragraph 3.1 to this Schedule;</p>
<b>“Open Book Data”</b>	<p>means complete and accurate financial and non-financial information which is sufficient to enable the Authority to verify the Charges already paid or payable and Charges forecast to be paid during the remainder of the Term, including details and all assumptions relating to:</p> <ul style="list-style-type: none"> <li>(a) the Supplier’s Costs broken down against each of the Products and each element of the Services, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all hardware and component parts;</li> <li>(b) operating expenditure relating to the provision of the Products and Services including an analysis showing: <ul style="list-style-type: none"> <li>(i) the unit costs and quantity of consumables and bought-in services;</li> <li>(ii) manpower resources broken down into the number and grade/role of all Supplier Personnel (free of any contingency) together with a list of agreed rates against each manpower grade;</li> <li>(iii) a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier Profit Margin; and</li> <li>(iv) Reimbursable Expenses;</li> </ul> </li> <li>(c) Overheads;</li> <li>(d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Products and Services;</li> <li>(e) the Supplier Profit achieved over the Term and on an annual basis;</li> <li>(f) confirmation that all methods of Cost apportionment and Overhead allocation are consistent with and not</li> </ul>

more onerous than such methods applied generally by the Supplier;

- (g) an explanation of the type and value of risk and contingencies associated with the provision of the Products and Services, including the amount of money attributed to each risk and/or contingency; and
- (h) the actual Costs profile for each Month;
- (i) any rebate, volume discount or financial incentive received by the Supplier through its supply chain in relation to the Products or Services;

<b>“Overhead”</b>	means those amounts which are intended to recover a proportion of the Supplier’s or the Key Sub-contractor’s (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Personnel and accordingly included within limb (a) of the definition of “Costs”;
<b>“Reimbursable Expenses”</b>	means reasonable out of pocket expenses that are not covered by the Charges, properly and necessarily incurred in the delivery of the Products, calculated at the rates and in accordance with the Authority’s expenses policy current from time to time and agreed in advance;
<b>“Supplier Profit”</b>	means, for the purposes of this Schedule 19, in relation to a Month (as the context requires), the difference between the total Charges (in nominal cash flow terms but excluding any Deductions) and total Costs (in nominal cash flow terms) for the relevant Month;
<b>“Supplier Profit Margin”</b>	means, for the purposes of this Schedule 19, in relation to a Month (as the context requires), the Supplier Profit for the relevant Month divided by the total Charges over the same Month and expressed as a percentage;
<b>“Work Day”</b>	7.5 Work Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day; and
<b>“Work Hours”</b>	the hours spent by the Supplier Personnel properly working on the Services and supplying the Products including time spent travelling (other than to and from the Supplier’s offices, or to and from the Sites) but excluding lunch breaks.

## **PART A: FINANCIAL TRANSPARENCY OBJECTIVES AND OPEN BOOK DATA**

### **1 FINANCIAL TRANSPARENCY OBJECTIVES**

1.1 The Supplier acknowledges that the provisions of this Schedule are designed (inter alia) to facilitate, and the Supplier shall co-operate with the Authority in order to achieve, the following objectives:

(a) **Understanding the Charges**

- (i) for the Authority to understand any payment sought from it by the Supplier including an analysis of the Charges, Financial Reports and the Supplier Profit Margin and the Open Book Data;
- (ii) for both Parties to be able to understand the Financial Model and any Cost forecasts and to have confidence that these are based on justifiable numbers and appropriate forecasting techniques;

(b) **Agreeing the impact of Change**

- (i) for both Parties to agree the quantitative impact of any Changes that affect ongoing costs and to identify how these could be mitigated and/or reflected in the Supplier's Charges;
- (ii) for both Parties to be able to review, address issues with and re-forecast progress in relation to the provision of the Products and Services;

(c) **Continuous improvement**

- (i) for the Parties to challenge each other with ideas for efficiency and improvements;
- (ii) to enable the Authority to demonstrate that it is achieving Value for Money for the tax payer relative to current market prices; and
- (iii) for the Parties to identify cost efficiencies in the event that forecasted volumes of Products required by the Authority increase,

(together the "**Financial Transparency Objectives**").

### **2 OPEN BOOK DATA**

2.1 The Supplier acknowledges the importance to the Authority of the Financial Transparency Objectives and the Authority's need for complete transparency in the way in which the Charges are calculated.

2.2 During the Term, and for a period of seven (7) years following the end of the Term, the Supplier shall:

- (a) maintain and retain the Open Book Data; and
- (b) disclose and allow the Authority and/or the Audit Agents access to the Open Book Data.

### **3 ONEROUS CONTRACTS**

3.1 If the Supplier publicly designates the Agreement as an Onerous Contract (including where the Supplier has identified the Agreement as such in any published accounts or public reports and announcements), the Supplier shall promptly notify the Authority of the designation and shall prepare and deliver to the Authority within the timescales agreed by the Parties (an in any event, no later than two (2) months following the publication of the designation) a draft Onerous Contract Report which includes the following:

- 3.1.1 an initial root cause analysis of the issues and circumstances which may have contributed to the Agreement being designated as an Onerous Contract;
  - 3.1.2 an initial risk analysis and impact assessment on the provision of the Services as a result of the Supplier's designation of the Agreement as an Onerous Contract;
  - 3.1.3 the measures which the Supplier intends to put in place to minimise and mitigate any adverse impact on the provision on the Products and Services;
  - 3.1.4 details of any other options which could be put in place to remove the designation of the Agreement as an Onerous Contract and/or which could minimise and mitigate any adverse impact on the provision of the Products and Services.
- 3.2 Following receipt of the Onerous Contract Report, the Authority shall review and comment on the report as soon as reasonably practicable and the Parties shall cooperate in good faith to agree the final form of the report, which shall be submitted to the Performance Board, such final form report to be agreed no later than one (1) month following the Authority's receipt of the draft Onerous Contract Report.
- 3.3 The Performance Board shall meet within fourteen (14) Working Days of the final Onerous Contract Report being agreed by the Parties to discuss the contents of the report; and the Parties shall procure the attendance at the meeting of any key participants where reasonably required (including the Cabinet Office Markets and Suppliers team where the Supplier is a Strategic Supplier; representatives from any Key Sub-contractors/Monitored Suppliers (as defined in Schedule 18 (*Financial Distress*)); and the project's senior responsible officers (or equivalent) for each Party).
- 3.4 The Supplier acknowledges and agrees that the report is submitted to the Authority and Performance Board on an information only basis and the Authority and Performance Board's receipt of and comments in relation to the report shall not be deemed to be an acceptance or rejection of the report nor shall it relieve the Supplier of any liability under this Agreement. Any Changes to be agreed by the Parties pursuant to the report shall be subject to the Change Control Procedure.

## PART B: FINANCIAL REPORTS

### 1 PROVISION OF THE FINANCIAL REPORTS

1.1 The Supplier shall provide

- (a) the Financial Model provided with the Supplier's Tender on or before the Effective Date; and
- (b) during the Term the following Financial Reports to the Authority, in the frequency specified below:

Financial Report	When to be provided
<b>Contract Amendment Report</b>	Within one (1) month of a Material Change being agreed between the Supplier and the Authority
<b>Annual Financial Reconciliation Report</b>	Within one (1) month after the end of each Contract Year
<b>Final Reconciliation Report</b>	Within six (6) months after the end of the Term

1.2 The Supplier shall provide to the Authority the Financial Reports in an agreeable format to the Authority. The detail to be included in these Financial Reports shall be agreed between both parties prior to being issued.

1.3 A copy of each Financial Report shall be held by both the Authority and the Supplier. If there is a Dispute regarding a Financial Report, the Authority's copy of the relevant Financial Report shall be authoritative.

1.4 Each Financial Report shall:

- (a) be completed by the Supplier using reasonable skill and care;
- (b) incorporate and use the same defined terms as are used in this Agreement;
- (c) quote all monetary values in pounds sterling;
- (d) quote all Costs as exclusive of any VAT; and
- (e) quote all Costs and Charges exclusive of VAT and based on current prices.

1.5 Each Final Reconciliation Report shall be certified by the Supplier's Chief Financial Officer or Director of Finance (or equivalent as agreed in writing by the Authority in advance of issue of the relevant Financial Report), acting with express authority, as:

- (a) being accurate and not misleading;
- (b) having been prepared in conformity with generally accepted accounting principles within the United Kingdom;
- (c) being a true and fair reflection of the information included within the Supplier's management and statutory accounts; and
- (d) compliant with the requirements of Paragraph 1.6.

1.6 The Supplier shall:

- (a) prepare each Financial Report using the same methodology as that used for the Financial Model, where relevant;
  - (b) to the extent permitted by Law, ensure that each Contract Amendment Report (if any) is a true and fair reflection of the Costs and Supplier Profit Margin forecast by the Supplier;
  - (c) to the extent permitted by Law, ensure that the Final Reconciliation Report is a true and fair reflection of the Costs; and
  - (d) not have any other internal financial model in relation to the Products and Services inconsistent with the Financial Model.
- 1.7 During the Term, and for a period of eighteen (18) months following the end of the Term, the Supplier shall make available the Financial Representative at reasonable times and on reasonable notice to answer any queries that the Authority may have on any of the Financial Reports, Open Book Data and the Charges.
- 1.8 If the Supplier becomes aware of the occurrence, or the likelihood of the future occurrence, of an event which will or may have a material effect on the following:
- (a) the Costs incurred (or those forecast to be incurred) by the Supplier; and/or
  - (b) any other part of the Financial Model,
- the Supplier shall, as soon as practicable, notify the Authority in writing of the event in question detailing the actual or anticipated effect. For the avoidance of doubt, notifications provided in accordance with this Paragraph 1.8 shall not have the effect of amending any provisions of this Agreement.

## **2 FINANCIAL MODEL**

- 2.1 Following the delivery by the Supplier of any Contract Amendment Report:
- (a) the Parties shall meet to discuss its contents within ten (10) Working Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting;
  - (b) the Supplier shall make appropriate Supplier Personnel and advisers available to discuss any variations between the relevant Financial Report and the immediately preceding Financial Model (as the case may be) and to explain such variations (with reference to supporting evidence) to the satisfaction of the Authority; and
  - (c) the Authority shall either within ten (10) Working Days of the meeting referred to in Paragraph 2.1(a) notify the Supplier that:
    - (i) the relevant Financial Report contains errors or omissions or that further explanations or supporting information is required, in which event the Supplier shall make any necessary modifications to the Financial Report and/or supply the Authority with such supporting evidence as is required to address the Authority's concerns within ten (10) Working Days of such notification and the Authority shall following receipt of such amended Financial Report and/or supporting information, approve or reject such Financial Report; or
    - (ii) the Authority has approved the relevant Financial Report.
- 2.2 Following approval by the Authority of the relevant Financial Report in accordance with Paragraph 2.1(c), that version shall become, with effect from the date of such approval, the current approved version of the Financial Model for the purposes of this Agreement, a version of which shall be held by both the Authority and the Supplier. If there is a Dispute regarding a Financial Report, the Authority's copy of the relevant Financial Report shall be authoritative.

- 2.3 If the Parties are unable to reach agreement on any Financial Report within thirty (30) Working Days of its receipt by the Authority, the matter shall be referred for determination in accordance with Schedule 23 (*Dispute Resolution Procedure*).

### **3 DISCUSSION OF FINAL RECONCILIATION REPORT**

- 3.1 Following the delivery by the Supplier of the Final Reconciliation Report, the Parties shall meet to discuss its contents within ten (10) Working Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting.

### **4 KEY SUB CONTRACTORS**

- 4.1 The Supplier shall, if requested by the Authority, provide (or procure the provision of) a report or reports including the level of information set out in the Financial Reports in relation to the costs and expenses to be incurred by any of its Key Sub-contractors.
- 4.2 Without prejudice to Paragraph 1.1 of Part C, the Supplier shall:
- (a) be responsible for auditing the financial models/reports of its Key Sub-contractors and for any associated costs and expenses incurred or forecast to be incurred; and
  - (b) on written request by the Authority, provide the Authority or procure that the Authority is provided with:
    - (i) full copies of audit reports for the Key Sub-contractors. The Authority shall be entitled to rely on such audit reports; and
    - (ii) further explanation of, and supporting information in relation to, any audit reports provided.

## **PART C: AUDIT RIGHTS**

### **1 AUDIT RIGHTS**

1.1 The Authority, acting by itself or through its Audit Agents, shall have the right during the Term and for a period of eighteen (18) months thereafter, to assess compliance by the Supplier and/or its Key Sub-contractors of the Supplier's obligations under this Agreement, including for the following purposes:

- (a) to verify the integrity and content of any Financial Report;
- (b) to verify the accuracy of the Charges and any other amounts payable by the Authority under this Agreement (and proposed or actual variations to such Charges and payments);
- (c) to verify the Costs (including the amounts paid to all Sub-contractors and any third party suppliers);
- (d) to verify the Open Book Data;
- (e) to verify the Supplier's and each Key Sub-contractor's compliance with this Agreement and applicable Law;
- (f) to identify or investigate actual or suspected fraud, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Authority shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
- (g) to identify or investigate any circumstances which may impact upon the financial stability of the Supplier and/or any Key Sub-contractors or their ability to perform the Products and Services;
- (h) to obtain such information as is necessary to fulfil the Authority's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
- (i) to review any books of account and the internal contract management accounts kept by the Supplier in connection with this Agreement;
- (j) to carry out the Authority's internal and statutory audits and to prepare, examine and/or certify the Authority's annual and interim reports and accounts;
- (k) to enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
- (l) to verify the accuracy and completeness of any Management Information delivered or required by this Agreement;
- (m) to review any Performance Monitoring Reports and/or other records relating to the Supplier's performance of the Products and Services and to verify that these reflect the Supplier's own internal reports and records;
- (n) to review the accuracy and completeness of the Registers;
- (o) to review the Supplier's quality management systems (including any quality manuals and procedures);
- (p) to review the Supplier's compliance with the Standards;
- (q) to review the integrity, confidentiality and security of the Authority Data.

- 1.2 Except where an audit is imposed on the Authority by a regulatory body or where the Authority has reasonable grounds for believing that the Supplier has not complied with its obligations under this Agreement, the Authority may not conduct an audit of the Supplier or of the same Key Sub-contractor more than twice in any Contract Year.
- 1.3 Nothing in this Agreement shall prevent or restrict the rights of the Comptroller and/or Auditor General and/or their representatives from carrying out an audit, examination or investigation of the Supplier and/or any of the Key Sub-contractors for the purposes of and pursuant to applicable Law.

## **2 CONDUCT OF AUDITS**

- 2.1 The Authority shall during each audit comply with those security, sites, systems and facilities operating procedures of the Supplier that the Authority deems reasonable and use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Products and Services.
- 2.2 Subject to the Authority's obligations of confidentiality, the Supplier shall on demand provide the Authority and the Audit Agents with all reasonable co-operation and assistance (and shall procure such co-operation and assistance from its Sub-contractors) in relation to each audit, including:
- (a) all information requested by the Authority within the permitted scope of the audit;
  - (b) reasonable access to any sites and to any systems, equipment used (whether exclusively or non-exclusively) in the performance of the Products and Services;
  - (c) access to Supplier Personnel.
- 2.3 The Supplier shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Supplier's provision of the Products and Services against the applicable Performance Indicators at a level of detail sufficient to verify compliance with the Performance Indicators.
- 2.4 The Authority shall endeavour to (but is not obliged to) provide at least fifteen (15) Working Days' notice of its intention to conduct an audit.
- 2.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Paragraph 2, unless the audit identifies a material Default by the Supplier in which case the Supplier shall reimburse the Authority for all the Authority's reasonable costs incurred in connection with the audit.

## **3 USE OF SUPPLIER'S INTERNAL AUDIT TEAM**

- 3.1 As an alternative to the Authority's right pursuant to Paragraph 1.1 to exercise an audit either itself or through its Audit Agents, the Authority may require in writing that an audit is undertaken by the Supplier's own internal audit function for any of the purposes set out in Paragraph 1.1.
- 3.2 Following the receipt of a request from the Authority under Paragraph 3.1 above, the Supplier shall procure that the relevant audit is undertaken as soon as reasonably practicable and that the Authority has unfettered access to:
- (a) the resultant audit reports; and
  - (b) all relevant members of the Supplier's internal audit team for the purpose of understanding such audit reports.

## **4 RESPONSE TO AUDITS**

- 4.1 If an audit undertaken pursuant to Paragraphs 1 or 3 identifies that:

- (a) the Supplier has committed a Default, the Authority may (without prejudice to any rights and remedies the Authority may have) require the Supplier to correct such Default as soon as reasonably practicable and, if such Default constitutes a Notifiable Default, to comply with the Rectification Plan Process;
- (b) there is an error in a Financial Report, the Supplier shall promptly rectify the error;
- (c) the Authority has overpaid any Charges, the Supplier shall pay to the Authority:
  - (i) the amount overpaid;
  - (ii) interest on the amount overpaid at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the date of overpayment by the Authority up to the date of repayment by the Supplier; and
  - (iii) the reasonable costs incurred by the Authority in undertaking the audit,the Authority may exercise its right to deduct such amount from the Charges if it prefers; and
- (d) the Authority has underpaid any Charges, the Supplier shall not be entitled to increase the Charges paid or payable by the Authority.