



JOINT OPERATIONS

CONTRACT CB/PJHQ/349

Provision of Data Connections For Mogadishu International Airport (MIA)

| | |
|--|--|
| <p><i>Between the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland</i></p> <p>Team Name and address:</p> <p>PJHQ COMMERCIAL, JFC, BLDG 410, NORTHWOOD HQ, SANDY LANE, HA6 3HP, UK</p> <p>Telephone Number: [Redacted – Personal Information]</p> <p>Email Address: [Redacted – Personal Information]</p> | <p>AND</p> <p>Contractor Name and address:</p> <p>SOMCAST NETWORKS LIMITED, HALANE MIA MOGADISHU BANADIR SOMALIA 1531</p> <p>Telephone Number: +25261733-8233</p> <p>Email Address: omar@somcast.so</p> |
|--|--|

SCHEDULE 1 – SCHEDULE OF REQUIREMENTS

SCHEDULE 2 – TERMS AND CONDITIONS OF CONTRACT

1. Definitions
2. Requirement
3. Period of Contract
4. Amendments to Contract
5. Price
6. Payment
7. Corrupt Gifts and Payments of Commission
8. Recovery of Sums Due
9. Capacity to Contract
10. Law and Jurisdiction
11. Designated Officer
12. Default
13. Termination
14. Disclosure of Information
15. Dispute Resolution
16. Sub-Contractors
17. Contractors Liability
18. Losses, Damage or Personal Injury
19. Transfer
20. Security
21. Contractor's Personnel at Government Establishments
22. Transparency
23. Cyber

SCHEDULE 3 – SERVICE LEVELS

ANNEX A – Contractor's Commercially Sensitive Information Form

SCHEDULE 1 – SCHEDULE OF REQUIREMENTS

| | | |
|---|--|--|
| Contractor: SOMCAST NETWORKS LIMITED | <u>DATA CONNECTIONS FOR MOGADISHU INTERNATIONAL AIRPORT (MIA)</u> | Contract No: CB/PJHQ/349 Issued on: 14 Sep 2017 |
|---|--|--|

[REDACTED - PRICING INFORMATION]

SCHEDULE 2 - TERMS AND CONDITIONS OF CONTRACT**1. DEFINITIONS**

1.1 In this contract, unless the context otherwise requires:

- 1.1.1 In these Conditions "**the Contract**" means the agreement concluded between the Authority and the Contractor, including all specifications, plans, drawings and other documents which are relevant to the Contract and also the terms and conditions contained within these Schedules;
- 1.1.2 "**The Authority**" shall mean the Secretary of State for Defence of Her Britannic Majesty's Government or his authorised representative, Commander British Forces;
- 1.1.3 "**The Contractor**" mean the person who, by the Contract, undertakes to provide the service for the Authority required under the Contract;
- 1.1.4 "**Firm Price**" means a price, agreed for the Articles or Services, or both, which is not subject to any change or variation;
- 1.1.5 The "**Commercial Branch**" means the UK Ministry of Defence, or their authorised representatives, for the purposes of this Contract the commercial branch shall be PJHQ J8 Commercial or their authorised representative;
- 1.1.6 "**Representatives of the Authority**" in the provision of the Contract means the person duly authorised by the Authority to act for the purpose of the provision and identified in the Contract or in any subsequent notice to act for the purpose of the provision;
- 1.1.7 "**The services**" means the services which the Contractor is required under the Contract to provide.

2. REQUIREMENT

The services required are set out in the Schedule 1 – Schedule of Requirements and are to be delivered in accordance with the terms and conditions of Contract contained herein and with the Service Levels in Schedule 3. Any other terms and conditions of the Contract, or any general reservations which may be printed on any correspondence emanating from the Contractor, are not applicable to the Contract.

3. PERIOD OF CONTRACT

- 3.1 The Contract shall commence on 15th September 2017 and shall remain in force until 14th September 2018 unless otherwise terminated in accordance with the conditions of clause 13.

4. AMENDMENTS TO CONTRACT

- 4.1 The provisions of the Contract may be amended only with the written agreement between both parties. Such written amendments shall be issued by the Authority's Commercial Branch.
- 4.2 The Authority reserves the right to vary the requirement as necessary within the current provision of the Contract. In such an event, a reasonable period of notice will be given to the Contractor.

5. PRICE

- 5.1 All prices shall be Firm (i.e. not subject to variation in any respect) and valid for the duration of the Contract period. The Firm Prices stated at Schedule 1 shall include all expenses relating to the provision of the service.

5.2 All prices are in US Dollars (US\$) and exclusive of local taxes and duties.

6. PAYMENT

6.1 Payment for Contractor Deliverables under the Contract shall be made via the Contracting, Purchasing & Finance (CP&F) electronic procurement tool.

6.2 The Contractor shall be entitled to payment, in accordance with Schedule 1, upon acceptance by the Authority that services have been delivered in accordance with the terms and conditions of Contract. It shall be the responsibility of the Contractor to raise invoices for claims of payment. The Contractor shall submit invoices monthly in arrears.

6.3 The Authority shall pay all valid and undisputed claims for payment submitted by the Contractor to DBS Finance on or before the day which is thirty (30) days after the later of:

- (1) the day upon which a valid request for approval of payment is received by the Authority; and
- (2) the date of completion of the part of the Contract to which the request for approval of payment relates.

6.4 The approval for payment of a valid and undisputed invoice by the Authority shall not be construed as acceptance by the Authority of the performance of the Contractor's obligations nor as a waiver of its rights and remedies under this Contract.

6.5 Without prejudice to any other right or remedy, the Authority reserves the right to set off any amount owing at any time from the Contractor to the Authority against any amount payable by the Authority to the Contractor under the Contract or under any other contract with the Authority, or with any other Government Department.

7. CORRUPT GIFTS AND PAYMENTS OF COMMISSION

The Contractor shall not offer or give any gift or offer or pay any commission to any representative of the Authority with regard to the award of this, or any other contract awarded by the Authority.

8. RECOVERY OF SUMS DUE

Any sum which is recoverable from or payable by the Contractor under the Contract, the same may be deducted from any sum(s) then due, or which may become due to the Contractor under or in respect of the Contract or any other Contract with the Authority.

9. CAPACITY TO CONTRACT

The Contractor guarantees that he is lawfully entitled and authorised to enter into the Contract, to grant to the Authority the rights set out in the Contract. The Contractor also guarantees that he is fully qualified and authorised to operate and do business in Mogadishu, Somalia and that he will obtain all the necessary licences and permits required in connection with this Contract.

10. LAW AND JURISDICTION

10.1 The Contract shall be governed by and interpreted in accordance with English law. The English Language version of the Contract document shall take precedence over any translated version.

10.2 Any dispute arising out of or in connection with the Contract shall be determined within the English jurisdiction may apply solely for the purpose of giving full effect to this Condition and for the enforcement of any judgement order or award given under the English jurisdiction. Each party to the Contract irrevocably submit to the jurisdiction provided under this condition.

- 10.3 Each party hereby warrants to each other that entry into the Contract does not and performance thereof will not in any way violate or conflict with any provision of law, statute, rule, regulation, judgement, writ, injunction, decree or breach or termination of any provision of, or constitute a default under any mortgage, contract or other liability, charge or encumbrance upon any of its properties or other assets.
- 10.4 Both parties shall comply with all national laws, directives, rules and regulations which relate to the performance of the Contract including but not limited to environmental regulations.

11. DESIGNATED OFFICER

- 11.1 The Designated Officer (DO) for this Contract is appointed by the Authority and is responsible for liaison between the Contractor and the Authority. The DO will also provide advice with regard to the Contractor's performance under the Contract for the purpose of bill certification. For the purposes of this Contract, the DO shall be PJHQ-J6-Ops-AFRICA-SO2. The Contractor and the DO shall liaise regularly to discuss the performance of the Contract to highlight and resolve all issues that fall within their delegated sphere of authority.
- 11.2 In the event that the DO has cause to raise a complaint with respect to the quality of service, he/she shall record such a complaint and bring it immediately to the attention of the Contractor's representative for satisfactory resolution. Service levels are detailed at Schedule 3.

12. DEFAULT

- 12.1 Should the Contractor fail to provide a satisfactory service as required under the Contract, the Contractor will be notified of the deficiency in writing by the Commercial Branch. The Contractor will be allowed a reasonable opportunity to remedy the situation, after which the Authority shall have the right to make alternative arrangements, if the standard of service does not meet the Contract requirements. In the event that the cost of alternative arrangements exceeds that which would have been payable had the Contractor continued to provide the Service required under the Contract, the Authority shall recover the additional amount from the Contractor.
- 12.2 Alternately, the Authority shall have the right to withhold payments from the Contractor until such time the Contractor's performance under the contract is acceptable to the Authority.
- 12.3 Should the Contractor continue to provide unsatisfactory provision of services the Authority, via the Commercial Branch, shall have the right to terminate the Contract immediately and to recover from the Contractor the additional cost (if any) of alternative arrangements in accordance with Clause 12.1 above.

13. TERMINATION

The Contract may be terminated at any time by the Authority subject to fourteen days written notice being given to the Contractor, via the Commercial Branch. The Contractor shall be entitled to the costs of performing work to the date of termination at the agreed prices as detailed at Schedule 1 but shall not be entitled to any other costs as a result of the termination.

14. DISCLOSURE OF INFORMATION

- 14.1 "Information" means any information in any written or other tangible form disclosed to one party by or on behalf of the other party under or in connection with the Contract.
- 14.2 Each party shall treat in confidence all Information it receives from the other and;
- 14.3 Shall not disclose any Information to any third party without the prior written consent of the other party, which consent shall not unreasonably be withheld, except that the Contractor may disclose

Information in confidence, without prior consent, to such persons and to such extent as may be necessary for the performance of the Contract;

- 14.4 Shall not use any of that Information otherwise than for the purpose of the Contract; and
- 14.5 Shall not copy any of that Information except to the extent necessary for the purpose of exercising its rights of use and disclosure under the Contract.
- 14.6 The Contractor shall take all reasonable precautions necessary to ensure that all Information disclosed to the Contractor by or on behalf of the Authority under or in connection with the Contract:
 - 14.6.1 Is disclosed to its employees and sub-contractors, only to the extent necessary for the performance of the Contract; and
 - 14.6.2 Is treated in confidence by them and not disclosed except with prior written consent or used otherwise than for the purpose of performing work or having work performed for the Authority under the Contract or any sub-contract.
- 14.7 Neither party shall be in breach of this Condition where it can show that any disclosure of Information was made solely and to the extent necessary to comply with a statutory, judicial regulatory requirement of any Stock Exchange on which the Contractor is registered, or parliamentary obligation. Where such a disclosure is made, the party making the disclosure shall ensure that the recipient of the Information is made aware of and asked to respect its confidentiality. Such disclosure shall in no way diminish the obligations of the parties under this condition.
- 14.8 The Authority shall not be in breach of the contract where it can show that any disclosure of Information is made solely and to the extent necessary to comply with the Freedom of Information Act 2000 ("the Act") or the Environmental Information Regulations 2004 ("the Regulations"). To the extent permitted by the time for compliance under the Act or the Regulations, the Authority shall consult the Contractor where the Authority is considering the disclosure of Information under the Act or the Regulations and, in any event shall provide prior notification to the Contractor of any decision to disclose the Information. The Contractor acknowledges and accepts that its representatives on disclosure during consultation may not be determinative and the decision whether to disclose Information in order to comply with the Act or Regulations is a matter in which the Authority shall exercise its own discretions, subject always to the provision of the Act or the Regulations. For the avoidance of doubt, nothing in the Condition shall affect the Contractor's right at law.

15. DISPUTE RESOLUTION

- 15.1 It is understood that both parties will attempt in good faith to resolve any dispute or claim arising out of or relating to this contract through direct negotiations.
- 15.2 In the event that the dispute or claim is not resolved by negotiation then the use of Alternative Dispute Resolution (ADR) procedures shall be agreed by both parties. These may include the use of mediation, reconciliation, neutral evaluation and arbitration.

16. SUB-CONTRACTORS

- 16.1 The Contractor shall be responsible for all sub-contractors employed under this Contract and all sub-contracted tasks must be completed to the satisfaction of the DO.
- 16.2 The Authority reserves the right at any time by written notice to the Contractor to require termination of the engagement of any sub contractor insofar as it relates to this Contract on the grounds that:

16.2.1 the sub contractor is, in the Authority's absolute discretion, an unsuitable Third Party; or

16.2.2 the sub contractor has committed a Prohibited Act.

17. CONTRACTOR'S LIABILITY

17.1 The Contractor shall bear full responsibility for the services provided under the Contract and make such insurance provision as necessary to cover all risks of damage caused as a result of carrying out such a service. Cover shall include all risk of damage to the Authority's Equipment including, but not limited to, accidental damage and third party liabilities.

17.2 Any defects arising due to the acts or omissions of the Contractor that are notified to the Contractor by the DO will be rectified by the Contractor at his sole expense. If, in the reasonable opinion of the DO, such defects have not been repaired either satisfactorily or in a reasonable timescale then the Authority may arrange to have such defects rectified and any costs over and above that which the Authority would have to pay in any event shall be charged to the Contractors account.

18. LOSSES, DAMAGE OR PERSONAL INJURY

18.1 The Contractor shall compensate the Authority for any loss or damage to the Authority's property caused by negligence of the Contractor, or his representatives, during the performance of the Contract.

18.2 The Contractor shall indemnify the Authority in respect of injury or damage to persons or property, which in any way arise from negligence of the Contractor, or his representatives.

19. TRANSFER

Neither party to the Contract shall give, bargain, sell, assign, or otherwise dispose of the Contract or any part thereof, or the benefit or advantage of the Contract or any part thereof, without consent in writing from the other party.

20. SECURITY

20.1 Unless otherwise agreed with the Authority the contractor shall take all reasonable steps to ensure that his personnel are cleared to the appropriate security level.

20.2 The Authority reserves the right to insist on increased levels of security clearance for specific duties or specific operations and to refuse or withdraw security clearance under specific circumstances.

20.3 The Contractor shall ensure that, whilst in the Joint Operations Area, or in training, his personnel are aware that they shall have a liability to a search of their person, belongings or transport by the Authority. The contractor shall accept (without prejudice to any remedies the Authority may have) full responsibility for any loss or delay in performance of the Contract caused directly or indirectly by the expulsion of or refusal to allow entry to any employees of the Contractor, or of his sub-contractors or suppliers of any tier, or agents of the contractor who do not consent to being searched.

21. CONTRACTOR'S PERSONNEL AT GOVERNMENT ESTABLISHMENTS

21.1 The Contractor shall ensure that he or any of his Representatives entering any Government Establishment have, or obtain, the correct passes to access camp in order to carry out the requirements of the Contract as necessary.

21.2 The Authority shall issue passes for those Representatives who are approved for admission to Government Establishment and a Representative shall not be admitted unless in possession of

such a pass. Passes shall remain the property of the Authority and shall be surrendered on demand or on completion of the work.

- 21.3 The Contractor shall submit in writing to the Authority for approval, initially and as necessary from time to time, a list of those of his Representatives who may need to enter a Government Establishment for the purpose of, or in connection with, work under the Contract.
- 21.4 The Contractor shall, except as otherwise provided for in the Contract, make good or, at the option of the Authority, pay compensation for all damage occurring to the Government Property, which includes land or building, occasioned by the Contractor, or by any of his Representatives, arising from his or their presence on the Government Establishment in connection with the Contract, provided that this Condition shall not apply to the extent that the Contractor is able to show that any such damage was not caused or contributed to by any circumstances within his or their reasonable control.
- 21.5 All property of the Contractor and his Representatives shall be at the risk of the Contractor whilst on any Government Establishment, and the Authority shall accept no liability for any loss or damage however occurring thereto or accrued thereby, except as follows:
- 21.5.1 where any such loss or damage was caused or contributed to by any act, neglect or default of any Government Servant, agent or contractor then the Authority shall accept liability therefore to the extent to which such loss or damage is so caused or contributed to as aforesaid; and
- 21.5.2 where any property of the contract has been taken on charge by the Officer in Charge, and a proper receipt has been given therefore, then the Authority shall be liable for any loss or damage occurring to that property while held on such charges as aforesaid.
- 21.6 Notwithstanding any other provision under this contract if, in the opinion of the Authority, any Representative of the Contractor shall misconduct himself, or it shall not be in the public interest for any person to be employed or engaged by the Contractor, the Contractor shall remove such person without delay on being requested to do so and shall cause the work to be performance by such other person as may be necessary.
- 21.7 The decision of the Authority upon any matter arising under this clause shall be final and conclusive.

22. TRANSPARENCY

- 22.1 For the purpose of this Condition the expressions:
- a. "Transparency Information" shall mean the content of this Contract in its entirety, including from time to time agreed changes to the Contract, and details of any payments made by the Authority to the Contractor under the Contract;
- b. "Contractor Commercially Sensitive Information" shall mean the information listed in the Annex A to the Contract, being information notified by the Contractor to the Authority which is acknowledged by the Authority as being commercially sensitive information.
- 22.2 Notwithstanding any other term of this Contract, including Condition 14, 'Disclosure of Information' where applicable, the Contractor understands that the Authority may publish the Transparency Information to the general public. The Contractor shall assist and cooperate with the Authority to enable the Authority to publish the Transparency Information.
- 22.3 Before publishing the Transparency Information to the general public in accordance with clause 22.2 above, the Authority shall redact any information that would be exempt from disclosure if it was the subject of a request for information under the Freedom of Information Act 2000 ("the Act")

or the Environmental Information Regulations 2004 (“the Regulations”), including the Contractor Commercially Sensitive Information.

22.4 The Authority may consult with the Contractor before redacting any information from the Transparency Information in accordance with clause 22.3 above. The Contractor acknowledges and accepts that its representations on redactions during consultation may not be determinative and that the decision whether to redact information is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the Act or the Regulations.

22.5 For the avoidance of doubt, nothing in this Condition shall affect the Contractor’s rights at law.

23. **CYBER**

23.1 **Definitions**

In this Condition the following words and expressions shall have the meanings given to them, except where the context requires a different meaning:

“Associated Company” means:

- (a) any associated company of the Contractor from time to time within the meaning of Section 449 of the Corporate Tax Act 2010 or any subordinate legislation; and
- (b) any parent undertaking or subsidiary undertaking of the Contractor from time to time within the meaning of section 1162 Companies Act 2006 and it is further agreed that where the ownership of shares in any such undertaking have been pledged or transferred to a third party by way of security, the original parent shall still be considered a member of the subsidiary undertaking;

“Contractor Deliverables” shall have the meaning set out in Condition 1 ‘Definitions’ for ‘The Services’;

“Cyber Risk Level” means the level of Cyber Risk relating to this Contract or any Sub-contract assessed in accordance with the Cyber Security Model;

“Cyber Security Implementation Plan” means the plan referred to in Clause 23.3 of this Condition including but not limited to any risk-balance case and mitigation measures required by the Authority;

“Cyber Security Incident” means an event, act or omission which gives rise or may give rise to:

- (a) unauthorized access to an information system or electronic communications network;
- (b) disruption or change of the operation (including but not limited to takeover of control) of an information system or electronic communications network;
- (c) destruction, damage, deletion or the change of MOD Identifiable Information residing in an information system or electronic communications network;
- (d) removal or limiting the possibility to use MOD Identifiable Information residing in an information system or electronic communications network; or
- (e) the appropriation, publication, dissemination or any other use of non-public MOD Identifiable Information by persons unauthorised to do so.

“Cyber Security Instructions” means DEFSTAN 05-138, together with any relevant ISN and specific security instructions relating to this Contract issued by the Authority to the Contractor;

“Cyber Security Model” and **“CSM”** mean the process by which the Authority ensures that MOD Identifiable Information is adequately protected from Cyber Incident and includes the CSM Risk Assessment Process, DEFSTAN 05-138 and the CSM Supplier Assurance Questionnaire;

“CSM Risk Assessment Process” means the risk assessment process which forms part of the Cyber Security Model and is used to measure the Cyber Risk Level for this Contract and any Sub-contract;

“CSM Supplier Assurance Questionnaire” means the supplier assessment questionnaire which forms part of the Cyber Security Model and is to be used by the Contractor to demonstrate compliance with this Condition;

“Data” means any data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media.

“DEFSTAN 05-138” means the Defence Standard 05-138 as amended or replaced from time to time;

“Electronic Information” means all information generated, processed, transferred or otherwise dealt with under or in connection with the Contract, including but not limited to Data, recorded or preserved on any information system or electronic communications network;

“Good Industry Practice” means in relation to any undertaking and any circumstances, the exercise of skill, diligence, prudence, foresight and judgment and the making of any expenditure that would reasonably be expected from a skilled person in the same type of undertaking under the same or similar circumstances;

“ISN” means Industry Security Notices issued by the Authority to the Contractor whether directly or by issue on the gov.uk website at: <https://www.gov.uk/government/publications/industry-security-notices-isns>;

“JSyCC WARP” means the Joint Security Co-ordination Centre MOD Defence Industry Warning, Advice and Reporting Point or any successor body notified by way of ISN;

“MOD Identifiable Information” means all Electronic Information which is attributed to or could identify an existing or proposed MOD capability, defence activities or personnel and which the MOD requires to be protected against loss, misuse, corruption, alteration and unauthorised disclosure.

“NSA/DSA” means, as appropriate, the National or Designated Security Authority of the Contractor that is responsible for the oversight of the security requirements to be applied by the Contractor and for ensuring compliance with applicable national security regulations;

“Sites” means any premises from which Contractor Deliverables are provided in connection with this Contract or from which the Contractor or any relevant Sub-contractor manages, organises or otherwise directs the provision or the use of the Contractor Deliverables and/or any sites from which the Contractor or any relevant Sub-contractor generates, processes, stores or transmits MOD Identifiable Information in relation to this Contract;

“Sub-contract” means any sub-contract at any level of the supply chain, whether awarded directly by the Contractor or indirectly by any lower tier Sub-contractor or Associated Company, which is entered into as a consequence of or in connection with this Contract;

“Sub-contractor” means a sub-contractor of the Contractor or any Associated Company whether a direct Sub-contractor or at any lower level of the supply chain who provides any Contractor Deliverables in connection with this Contract;

“Supplier Cyber Protection Service” means the CSM Risk Assessment Process and CSM Supplier Assurance Questionnaire.

23.2 Authority Obligations

23.2.1 The Authority shall:

- 23.2.1.1 determine the Cyber Risk Level appropriate to this Contract and, where the Contractor has not already been notified of the Cyber Risk level prior to the date of this Contract, shall provide notification of the relevant Cyber Risk level and the appropriate Cyber Security Instructions to the Contractor as soon as is reasonably practicable; and
- 23.2.1.2 notify the Contractor as soon as reasonably practicable where the Authority reassesses the Cyber Risk Level relating to this Contract .

23.3 Contractor Obligations

23.3.1 The Contractor shall, and shall procure that its Sub-contractors shall:

- 23.3.1.1 comply with DEFSTAN 05-138;
- 23.3.1.2. complete the CSM Risk Assessment Process in accordance with the Authority's instructions, ensuring that any change in the Cyber Risk Level is notified to any affected Sub-contractor, and complete a further CSM Risk Assessment or CSM Supplier Assurance Questionnaire where a change is proposed to the Contractor's supply chain which has or may have an impact on the Cyber Risk Level of this Contract or on receipt of any reasonable request by the Authority;
- 23.3.1.3 carry out the CSM Supplier Assurance Questionnaire no less than once in each year of this Contract commencing on the first anniversary of completion of the CSM Supplier Assurance Questionnaire;
- 23.3.1.4 having regard to the state of technological development, implement and maintain all appropriate technical and organisational security measures to discharge its obligations under this Condition in accordance with Good Industry Practice *provided always that* where there is a conflict between the Contractor's obligations under 23.3.1.1 above and this 23.3.1.4 the Contractor shall notify the Authority in accordance with the notification provisions in DEFSTAN 05-138 as soon as it becomes aware of the conflict and the Authority shall determine which standard or measure shall take precedence;
- 23.3.1.5 comply with all Cyber Security Instructions notified to it by the Authority as soon as reasonably practicable;
- 23.3.1.6 notify the JSyCC WARP in accordance with ISN 2014/02 as amended or updated from time to time and the Contractors NSA/DSA, and in the case of a Sub-contractor also notify the Contractor, immediately in writing as soon as they know or believe that a Cyber Security Incident has or may have taken place providing full details of the circumstances of the incident and any mitigation measures already taken or intended to be taken;
- 23.3.1.7 in coordination with its NSA/DSA, investigate any Cyber Security Incidents fully and promptly and co-operate with the Authority and its agents and representatives and its NSA/DSA to take all steps to mitigate the impact of the Cyber Security Incident and minimise the likelihood of any further similar Cyber Security Incidents. For the avoidance of doubt, this shall include complying with any reasonable technical or organisational security measures deemed appropriate by the Contractors NSA/DSA in the circumstances and taking into account the Cyber Risk Level; and
- 23.3.1.8 consent to the Authority recording and using information obtained in relation to the Contract for the purposes of the Cyber Security Model whether on the Supplier Cyber Protection Service or elsewhere. For the avoidance of doubt such information shall include the cyber security accreditation of the Contractor and / or Sub-contractor as appropriate; and

23.3.1.9 include provisions equivalent to 23.7.1 of this Condition in all Sub-contracts imposing provisions equivalent to this Condition 3 (the “equivalent provisions”) and, where a Sub-contractor breaches terms implementing this Condition in a Sub-contract, the Contractor shall, and shall procure that its Sub-contractors shall, in exercising their rights or remedies under the relevant Sub-contract:

23.3.1.9.1 notify the Authority of any such breach and consult with the Authority regarding any remedial or other measures which are proposed as a consequence of such breach, taking the Authority’s views into consideration; and

23.3.1.9.2 have regard to the equivalent provisions.

PROVIDED ALWAYS THAT where the Contractor has notified the Authority that it or one or more of its Sub-contractors cannot comply with 23.3.1.1 to 23.3.1.9 above the Authority and Contractor will seek to agree a Cyber Security Implementation Plan and where the Authority has agreed a Cyber Security Implementation Plan with the Contractor, the Contractor shall, and shall procure that its Sub-contractors shall, comply with such Cyber Security Implementation Plan until implementation is agreed to have been achieved whereupon 23.3.1.1 to 23.3.1.9 above shall apply in full. In the event that a Cyber Security Implementation Plan cannot be agreed the provisions of Condition 15 ‘Dispute Resolution’ or any agreed alternative dispute resolution procedure shall apply.

23.4. Management Of Sub-Contractors

23.4.1 The Authority agrees that the Contractor shall be entitled to rely upon the self-certification by a Sub-contractor of its compliance with its obligations pursuant to Condition 23.3.1. In the event that a Sub-contractor is found to be in breach of its obligations in Condition 23.3.1, and where the Contractor has relied upon the Sub-contractor’s self-certification, the Contractor shall not be held to be in breach of this Condition.

23.4.2. Where the Contractor becomes aware that a Sub-contractor is not complying with its obligations, the Contractor shall notify the Authority and provide full details of the Sub-contractor’s non-compliance as soon as reasonably practicable and shall consult with the Authority as to the appropriate course of action which may include but not be limited to the agreement of a remedial plan or termination of the Sub-contract having regard to Condition 23.3.1.9.

23.4.3 Having regard to the Authority’s views, the Contractor shall take all reasonable measures to address any non-compliance of a Sub-contractor in accordance with the reasonable timescales required by the Authority. Where the Contractor fails to do so, this shall amount to a breach of this Condition and the provisions of 23.7.2 or 23.7.3 as appropriate shall apply.

23.4.4 The Contractor shall, and shall procure that its Sub-contractors shall, include provisions equivalent to this Condition 23.4 in all Sub-contracts which flow down the obligations set out in Condition 23.3.1 of this Contract.

23.5 Records

23.5.1 The Contractor shall keep and maintain, and shall ensure that any Sub-contractor shall keep and maintain, until 6 years after termination or expiry of this Contract, or as long a period as may be agreed between the Parties, full and accurate records including but not limited to:

23.5.1.1 details of all MOD Identifiable Information relating to the Contractor Deliverables provided under this Contract; and

23.5.1.2 copies of all documents required to demonstrate compliance with DEFSTAN 05-138 and this Condition, including but not limited to any information used to inform the CSM Risk Assessment Process and to carry out the CSM Supplier Assurance Questionnaire, together with any certificates issued to the Contractor and/or Sub-contractor.

23.5.2 The Contractor shall, and shall ensure that any Sub-contractor shall on request provide the Authority, the Authority's representatives and/or the Contractors NSA/DSA such access to those records as may be required in connection with this Contract.

23.6 Audit

23.6.1 Except where an audit is imposed on the Authority by a regulatory body or there is a Cyber Security Incident in which case the Contractor agrees, and shall procure that its Sub-contractors agree, that the Authority and its representatives, in coordination with the Contractors NSA/DSA or the NSA/DSA on behalf of the Authority, may conduct such audits as it considers in its absolute opinion necessary, the Authority, its representatives and/or the Contractors NSA/DSA may, not more than twice in any calendar year and for a period of 6 years following the termination or expiry of this Contract, whichever is the later, conduct an audit for the following purposes:

23.6.1.1 to review and verify the integrity, confidentiality and security of any MOD Identifiable Information;

23.6.1.2 to review the Contractor's and/or any Sub-contractor's compliance with its obligations under this Condition; and

23.6.1.3 to review any records created during the provision of the Contractor Deliverables, including but not limited to any documents, reports and minutes which refer or relate to the Contractor Deliverables for the purposes of 23.6.1.1 and 23.6.1.2 above.

23.6.2 The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor and/or Sub-contractor or delay the provision of the Contractor Deliverables and supplier information received by the Authority in connection with the audit shall be treated as confidential information.

23.6.3 The Contractor shall, and shall ensure that any Sub-contractor shall on demand provide the Authority and any relevant regulatory body, including the Contractor's NSA/DSA, (and/or their agents or representatives), together "the Auditors", with all reasonable co-operation and assistance in relation to each audit, including but not limited to:

23.6.3.1 all information requested by the Authority within the permitted scope of the audit;

23.6.3.2 reasonable access to any Sites controlled by the Contractor or any Associated Company and any Sub-contractor and to any equipment used (whether exclusively or non-exclusively) in the performance of the Contract and, where such Sites and/or equipment are outwith the control of the Contractor, shall secure sufficient rights of access for the Auditors as shall be necessary to allow audits to take place; and

23.6.3.3 access to any relevant staff.

23.6.4 The Authority shall endeavour to (but is not obliged to) provide at least 15 calendar days notice of its intention to conduct an audit.

23.6.5. The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Condition, unless the audit identifies a material breach of the terms of this Condition by the Contractor and/or Sub-contractor in which case the Contractor shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of the audit.

23.7 Breach of Obligations

23.7.1 In exercising its rights or remedies under this Condition, the Authority shall:

23.7.1.1 act in a reasonable and proportionate manner having regard to such matters as the gravity of any breach or potential breach and the Cyber Risk Level of this Contract; and

23.7.1.2 give all due consideration, where appropriate, to action other than termination of the Contract, including but not limited to a remedial period if this is appropriate in all the circumstances.

23.7.2 Where the Cyber Risk Level of this Contract is assessed to be a **moderate or high**, and the Contractor breaches the terms of this Condition, the Authority shall be entitled:

23.7.2.1 to terminate the Contract (whether in whole or in part) and to claim damages in accordance with Condition 12 'Default'; and

23.7.2.2 where the Contract has not been terminated, to recover from the Contractor any other loss sustained in consequence of any breach of this Condition, subject to any provision which is agreed elsewhere in this Contract.

23.7.3 Where the Cyber Risk Level of this Contract is assessed to be **very low or low**, and the Contractor breaches the terms of this Condition, the Authority shall be entitled:

23.7.3.1 to recover from the Contractor the amount of any loss sustained in consequence of any breach of this Condition, subject to any provision which is agreed elsewhere in this Contract; and

23.7.3.2 where the Contractor does not comply with any reasonable instructions issued by the Authority or the Contractors NSA/DSA within the time period specified to remedy such breach or prevent further breaches, the Authority shall be entitled to terminate this Contract (whether in whole or in part) and to claim damages in accordance with Condition 12 'Default'.

23.7.4 Where the Contractor commits an act of fraud, negligence or wilful misconduct in respect of its obligations under this Condition the Authority shall be entitled to terminate this Contract (whether in whole or in part) and to claim damages in accordance with Condition 12 'Default'.

23.8 General

23.8.1. On termination or expiry of this Contract the provisions of this Condition excepting 23.3.1.2 and 23.3.1.3 above shall continue in force so long as the Contractor and/or Sub-contractor holds any MOD Identifiable Information relating to this Contract.

23.8.2 Termination or expiry of this Contract shall not affect any rights, remedies, obligations or liabilities of the Parties under this Condition that have accrued up to the date of termination or expiry, including but not limited to the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

23.8.3

23.8.3.1 The Contractor agrees that the Authority has absolute discretion to determine changes to DEFSTAN 05-138 and/or the Cyber Risk Level. In the event that there is such a change to DEFSTAN 05-138 or the Cyber Risk Level, then either Party may seek an adjustment to the Contract Price for any associated increase or decrease in costs and the Contractor may request an extension of time for compliance with such revised or amended DEFSTAN 05-138 or Cyber Risk Level *provided always that* the Contractor shall seek to mitigate the impact on time and cost to the extent which it is reasonably practicable to do so and *further provided that* such costs shall not be allowed unless they are considered to be appropriate, attributable to the Contract and reasonable in all the circumstances.

23.8.3.2 Subject to 23.8.3.1 above, where the Contractor seeks such adjustment or extension, the Authority will proceed in accordance with Condition 15 or any agreed alternative change control procedure to determine the request for adjustment or extension. The Contractor must deliver a Contractor Change Proposal to the Authority within 8 weeks of the occurrence of the change in DEFSTAN 05-138 or Cyber Risk Level or such longer period as may be agreed by the Parties, identifying the impact of that change and accompanied by full details of the request for adjustment. For the avoidance of doubt, the Authority shall not be required to withdraw any Authority Notice of Change which may have been issued insofar as it relates to DEFSTAN 05-138 or the Cyber Risk Level whether or not the Contractor Change Proposal is rejected. In the event that the Contractor does not agree with the Authority's determination, then the provisions of Condition 15 'Dispute Resolution' or any agreed alternative dispute resolution procedure shall apply.

23.8.4 The Contractor shall not recover any costs and/or other losses under or in connection with this Condition where such costs and/or other losses are recoverable or have been recovered by the Contractor elsewhere in this Contract or otherwise. For the avoidance of doubt this shall include but not be limited to the cost of implementing any upgrades or changes to any information system or electronic communications network whether in response to a Cyber Security Incident or otherwise, where the Contractor is able to or has recovered such sums in any other provision of this Contract or has recovered such costs and/or losses in other contracts between the Contractor and the Authority or with other bodies.

SCHEDULE 3 – SERVICE LEVELS

1. **DEFINITIONS** Except as otherwise defined in this Schedule or unless the context otherwise requires, all defined terms in this Schedule shall have the same meanings as defined in the Agreement.
 - 1.1 “**Billing Month**” means billing period of a related monthly invoice.
 - 1.2 “**Business Day**” means a day other than Saturday or Sunday or a public holiday in the country of the Authority’s principal office.
 - 1.3 “**Excluded Fault**” means any fault listed in clause 9.
 - 1.4 “**Fault**” means failure to meet the applicable service level set out in this Schedule.
 - 1.5 “**Planned Outage**” is a temporary and unavoidable interruption in service, which is necessary for The Contractor to carry out essential maintenance or network upgrades.
 - 1.6 “**Planned Works**” means planned engineering works, maintenance, service configuration, migration or upgrading of any of the services scheduled by The Contractor or its Affiliates.
 - 1.7 “**Rebates**” means the compensation paid to the Authority by The Contractor for failing to meet conditions stated within this agreement.
 - 1.8 “**Recurring Charges**” means the charges payable by the Authority to The Contractor for the Services under the relevant Service Order that are recurring on a periodical basis and excluding any initial payment or any other lump sum payments payable under this Agreement or the relevant Service Order.
 - 1.9 “**Service Availability**” means the percentage of time, calculated using the formula provided in clause 4.1 of this agreement and taking into consideration all the relevant clauses of this agreement, during which the contracted service at the On-Net sites is available and the Authority has the ability to use the service as specified in the Service Order.
 - 1.10 “**Off-Net**” means services provided by the Fiber landing site. For the avoidance of doubt, if services have an Off-Net component the entire service shall be deemed Off Net for the purposes of calculating Rebates under this Schedule.
 - 1.11 “**On-Net**” means the services or any part of them supplied over infrastructure owned by or controlled by The Contractor or its Affiliates.

2. SERVICE LEVEL AGREEMENT

This Schedule sets out the Service Levels for all telecommunications services supplied by The Contractor and/or its Affiliates under the Agreement and any Service Orders and measures of The Contractor’s performance of the Services to the Authority.

3. **SERVICE LEVELS**

The Contractor shall supply the Services in compliance with the level of performance set out in this Schedule. The Service Levels are categorized as Service Availability, as described in Section 4.

4. **SERVICE AVAILABILITY**

4.1 **SERVICE AVAILABILITY DEFINITIONS AND CALCULATION**

Service Availability is calculated as follows:

“Service Availability” = $\frac{((\text{Total time in a calendar month}) - (\text{Total Service Unavailability during a calendar month}))}{\text{Total time in a calendar month}} \times 100$ (Total time in a calendar month)
Total time is measured in minutes.

(a) In respect of The Contractor’s Connectivity Services:

“Service Unavailability” means ‘a break in transmission’ in accordance with the ITU-T Standard G.828 which is defined as follows:

“A break in transmission is considered to be a period of unavailable time or where 10 consecutive severely errored seconds have been observed. These 10 seconds are considered to be part of unavailable time. The end of an unavailable time period is declared when 10 consecutive seconds without any severely errored seconds has been observed. These 10 seconds are deemed to be available time.”

A severely errored second is defined as a full second with a bit error ratio greater or equal to 1 in 1000.

A “break in transmission” caused by an Excluded Fault will not be included in the calculation of Service Unavailability.

(b) In respect of the Internet Fibre Landing Site:

The service level for the “Port” shall be passed-through from the terms of any service level agreement provided to The Contractor by the Fibre landing site, used by The Contractor for that component of the Service. The Contractor will pass through all rebates received from the landing site supplier related to the Authority’s relevant service(s).

4.2 **SERVICE AVAILABILITY AND REBATES**

The following Rebates will be payable to the Authority in accordance with the terms of this agreement if the Service Availability falls below the value set out below in any one calendar month following the Ready for Service Date:

| Service Availability in each calendar month measured as a Percentage | On-Net services Percentage of Monthly Recurring Charges, as apportioned to the ‘On-Net’ section of the Service, as Rebate |
|---|--|
| 99.95% or greater | 0% |
| For each 0.5% of service unavailability below 99.95% | 2% |
| Maximum rebate in a calendar month | 30% |

5. TARGET TIMES AND REPAIRS

The Contractor and the Fibre Landing Site will use their reasonable endeavour's to repair the following types of faults within the following times:

| Fault Type | Target Repair Time |
|--------------------------------------|---------------------------|
| Terrestrial equipment related faults | 5 hours |
| Terrestrial cable cuts | 12 hours |
| Submarine cable cuts or Faults | 21 calendar days |

6. PLANNED WORKS

The Contractor will, where possible, give the Authority not less than 4 Business Days' notice of any Planned Works for any On-Net part of the service. For Off-Net, The Contractor will pass through information regarding the Planned Works within a reasonable time of receiving this information from the Off-Net supplier. Notwithstanding any notice clause in the Agreement, such notices may be given via email or fax or such other means in writing as The Contractor deems appropriate.

7. FAULT REPORTING PROCESS

Any Faults should be reported to the Contractor's service desk, which is open 24 hours a day, 7 days a week. SOMCAST's service desk can be contacted on:

- Tel : + 252 617338233
- E-mail: noc@somcast.so

Upon receiving such report, SOMCAST's Service Desk will log the details of the call in SOMCAST's service management system and will provide the Authority with a trouble ticket number ("**Trouble Ticket**"). Such number must be given for any subsequent enquiries made by the Authority on the reported Fault.

8. ELIGIBILITY FOR REBATES

Rebates will only be applied to a Fault for which a Trouble Ticket is logged. The Authority must request Rebates in writing giving details of the Fault to which the Rebates relate. If the Authority fails to make such request within 30 days of the end of the calendar month for which such Rebates are due, the Authority shall be deemed to have waived:

- (a) the Rebates for that calendar month and the Contractor will not be liable for such Rebates; and
- (b) any claims that it may have in relation to such Faults.

Following the calculation and validation of the Rebates, they will be applied to the next invoice issued to the Authority under the Agreement. If there is no further invoice to be issued to the Authority, the Contractor will pay the Authority the amount equivalent to the Rebates.

Where monthly Recurring Charges are used as the basis for calculating Rebates for services provided during any period of less than a full calendar month, such Rebates shall be calculated on a pro-rata basis.

9. EXCLUDED FAULTS

The Contractor shall not be responsible for any Fault to the extent that such Fault results from any of the following events:

- (a) the services being modified or altered in any way at the Authority's request;
- (b) any force majeure event as described in the Agreement;
- (c) any interruptions resulting from defects or failures in or use of the Authority's provided apparatus, Authority's co-location equipment or any services or any facilities provided or operated by or on behalf of the Authority;
- (d) incomplete, inaccurate information provided by the Authority to The Contractor;
- (e) any outage caused by the actions or inaction of a third party;
- (f) any delay or failure in complying with any of the Authority's obligations under the Agreement;
- (g) any Planned Works;

Therefore, no Rebates shall be payable for such Faults, whether a Trouble Ticket is logged or not.

10. FAULT PERIOD AND SERVICE RESTORATION

The period of any Fault commences from the time the Trouble Ticket is logged by the SOMCAST's Service Desk until the time that The Contractor notifies the Authority that the Fault is remedied.

11. COMPANY ACCEPTABLE USE POLICY (AUP)

The Authority is responsible for the activities of its users and by accepting the Service agrees to ensure that its users fully comply with The Contractor's Acceptable Use policy and shall not permit or assist others to abuse or fraudulently use the Internet Connectivity, including but not limited to the following:

- a) Send unsolicited e-mail or mail bombs (or large quantities of unwanted or unsolicited e-mail) to individual e-mail accounts that may result in complaints by end-users that receive such unsolicited e-mails;
- b) Make unauthorized attempts, whether successful or not, to gain access to any account or computer resource not belonging to it;
- c) Obtain or attempt to obtain service by any means or device with intent to avoid payment;
- d) Gain or attempt to gain unauthorized access, alter or destroy information of any of Company's customers or its end-users;
- e) Knowingly engage in any activities that will or are likely to cause a denial of service (e.g. unsynchronized number sequence "syn" attacks) to any of The Contractor's customers or their end-users;
- f) Spam (send unsolicited advertisements to individual e-mail accounts);
- g) Use the Service to interfere with the use of the Internet backbone service by any other customers or authorized users;
- h) Use the Service in violation of applicable laws, in particular but not limited to laws regarding pornography and copyright on in aid of any unlawful acts;

In case of improper use as set out above or illegal activity by either the Authority or its end users, The Contractor may terminate the Service Agreement.

The Contractor reserves the right to action in order to restrict access, such as address filtering, as it may deem appropriate without notice and The Contractor acknowledges and agrees that The Contractor's upstream providers also have the right to do so. The Contractor reserves the right to modify this policy at any time.

ANNEX A, Contractor's Commercially Sensitive Information Form

| |
|---|
| Contract No: CB/PJHQ/349 |
| Description of Contractor's Commercially Sensitive Information: |
| Cross Reference(s) to location of sensitive information: |
| Explanation of Sensitivity: |
| Details of potential harm resulting from disclosure: |
| Period of Confidence (if applicable): |
| Contact Details for Transparency / Freedom of Information matters: Name: Position: Address: Telephone Number: email Address: |