

Joint Schedule 10 (Remedies in the event of inadequate performance)

1 PART A: REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE

1.1 Rectification

1.1.1 The Supplier shall at all times provide the Deliverables to meet or exceed the Service Level Threshold for each Service Level.

1.1.2 The Parties acknowledge that, without limiting the Buyer's other rights, any Service Level Failure shall entitle the Buyer to the rights and remedies set out in Call-Off Schedule 14 (*Service Levels*).

Process

1.1.3 In the event that:

- (i) there is, or is reasonably likely to be, a Delay; or
- (ii) in any Service Period there is likely to be or has been:
 - (A) a Critical Performance Failure; and/or
 - (B) A Persistent PI Failure; and/or
 - (C) any Serious Performance Failure as set out in Annex A to Part A of Call-Off Schedule 14 (*Service Levels*); and/or
 - (D) three or more serious Service Level Thresholds as set out in Annex A to Part A of Call-Off Schedule 14 (*Service Levels*); and/or
 - (E) the Supplier commits a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of breaches or repeated breaches (whether of the same or different obligations and regardless of whether such breaches are remedied) which taken together constitute a material Default)

(each a "**Notifiable Default**"),

the Supplier shall notify the Buyer of the Notifiable Default as soon as practicable but in any event within three (3) Working Days of becoming aware of the Notifiable Default, detailing the actual or anticipated effect of the Notifiable Default.

Notification

- 1.1.4 If:
- (i) the Supplier notifies the Buyer pursuant to Paragraph 1.1.3 that a Notifiable Default has occurred; or
 - (ii) the Buyer notifies the Supplier that it considers that a Notifiable Default has occurred (setting out sufficient detail so that it is reasonably clear what the Supplier has to rectify),

then, unless the Notifiable Default also constitutes a Supplier Termination Event and the Buyer serves a Termination Notice, the Buyer may, without limiting its other rights, request that the Supplier provide a Rectification Plan and the Supplier shall comply with the Rectification Plan Process.

- 1.1.5 A failure by the Supplier to comply with the Rectification Plan Process or to implement an agreed Rectification Plan in accordance with such agreed plan, shall entitle the Buyer to step-in pursuant to Paragraph 1.4.

- 1.1.6 The Rectification Plan Process shall be as set out in Paragraphs 1.1.7 to 1.1.13.

Submission of the draft Rectification Plan

- 1.1.7 If there is a Notifiable Default, the Buyer may, without limiting its other rights, request that the Supplier provide a Rectification Plan.
- 1.1.8 Following receipt of the request in accordance with Paragraph 1.1.7 the Supplier shall submit a draft Rectification Plan to the Buyer for it to review as soon as possible and in any event within ten (10) Working Days (or such other period as may be agreed between the Parties) after the original notification pursuant to Paragraph 1.1.4.
- 1.1.9 The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Notifiable Default.
- 1.1.10 The Supplier shall promptly provide to the Buyer any further documentation that the Buyer reasonably requires to assess the Supplier's root cause analysis.

Agreement of the Rectification Plan

- 1.1.11 When the Buyer receives a requested Rectification Plan it can either:
- (i) reject the Rectification Plan or revised Rectification Plan, giving reasons; or
 - (ii) accept the Rectification Plan or revised Rectification Plan (without limiting its rights) and the Supplier must immediately

start work on the actions in the Rectification Plan at its own cost, unless agreed otherwise by the Parties.

- 1.1.12 Where the Rectification Plan or revised Rectification Plan is rejected, the Buyer:
- (i) must give reasonable grounds for its decision; and
 - (ii) may request that the Supplier provides a revised Rectification Plan within five (5) Working Days (or such other period as agreed between the Parties) of the Buyer rejecting the first draft Rectification Plan.
- 1.1.13 If the Buyer rejects any Rectification Plan, including any revised Rectification Plan, the Buyer does not have to request a revised Rectification Plan before exercising its right to terminate its Contract under Clause 21 (*Termination*) of the Special Terms.

1.2 Service Exclusion

Where:

- 1.2.1 the Supplier has not achieved a Milestone within thirty (30) days of the relevant Milestone Date; and/or
- 1.2.2 a breach of Clauses 7.1 to 7.3 (inclusive) (*Independence, Conflicts of Interest and Proscribed Conduct*) of the Special Terms has occurred, or the Buyer reasonably believes that a breach of Clause 7.1 to 7.3 (inclusive) (*Independence Conflicts of Interest and Proscribed Conduct*) of the Special Terms has or is likely to occur; and/or
- 1.2.3 there is a material Default of part of the Services,
- (each a “**Service Exclusion Cause**”)
- the Buyer may give notice to the Supplier (a “**Service Exclusion Notice**”) giving reasonable details of the Service Exclusion Cause.
- 1.2.4 The Service Exclusion Notice shall set out the following:
- (i) the relevant Service Exclusion Cause that has occurred (or in the case of Paragraph 1.2.2 is likely to occur);
 - (ii) the date on which the Buyer wishes to commence provision of the relevant part or parts of the Service whether by itself or through a third party;
 - (iii) whether the Buyer or any third party appointed by the Buyer will require access to the Supplier's premises and/or any Buyer Premises; and

- (iv) to the extent practicable, the impact that the Buyer anticipates the action set out in the Service Exclusion Notice will have on the Supplier's obligations to provide the remaining Services.

1.2.5 Following service of a Service Exclusion Notice:

- (i) the Buyer shall and/or shall procure that a third party shall take the action set out in the Service Exclusion Notice and any consequential additional action as it reasonably believes is necessary to ensure that the Services (or relevant part thereof) are delivered to the standard required pursuant to the terms of this Contract and so that the Buyer is not in breach of any Law and/or its statutory duties;
- (ii) the Supplier shall co-operate fully (and/or procure that any Buyer Supply Chain Member co-operates fully) with the Buyer and/or any third party appointed by the Buyer in order to enable the Buyer and/or any third party appointed by the Buyer to provide the Services identified in the Service Exclusion Notice so as to ensure that such Services are provided to: the standard required pursuant to the terms of this Contract and so that the Buyer is not in breach of any Law and/or its statutory duties;
- (iii) without double counting with Paragraph 1.2.4(iv) the Supplier shall be responsible for the Buyer's reasonable and properly incurred costs and expenses (including any internal management time and/or procurement costs associated with appointing a third party) relating to the exercise of the Buyer's rights under this Paragraph 1.2 (*Service Exclusion*); and
- (iv) the Charges shall be adjusted to reflect the removal of the relevant parts of the Services identified in the Service Exclusion Notice.

1.3 Remedial Adviser

If:

1.3.1 any of the Intervention Trigger Events occur; or

1.3.2 the Buyer reasonably believes that any of the Intervention Trigger Events are likely to occur,

(each an "**Intervention Cause**"), the Buyer may give notice to the Supplier (an "**Intervention Notice**") giving reasonable details of the Intervention Cause and requiring:

- (i) a meeting between the Buyer Authorised Representative and the Supplier Authorised Representative to discuss the Intervention Cause; and/or

- (ii) the appointment as soon as practicable by the Supplier of a Remedial Adviser, as further described in this Paragraph 1.3.
- 1.3.3 For the avoidance of doubt, if the Intervention Cause is also a Supplier Termination Event, the Buyer has no obligation to exercise its rights under this Paragraph 1.3 prior to or instead of exercising its right to terminate this Contract.
- 1.3.4 If the Buyer gives notice that it requires the appointment of a Remedial Adviser:
 - (i) the Remedial Adviser shall be:
 - (A) a person selected by the Supplier and Approved by the Buyer; or
 - (B) if none of the persons selected by the Supplier have been Approved by the Buyer (or no person has been selected by the Supplier) within ten (10) Working Days following the date on which the Intervention Notice is given, a person identified by the Buyer;
 - (ii) the terms of engagement and start date agreed with the Remedial Adviser must be Approved by the Buyer; and
 - (iii) any right of the Buyer to terminate this Contract pursuant to Clause 21 (*Termination by the Buyer*) of the Special Terms for the occurrence of that Intervention Cause shall be suspended for sixty (60) Working Days from (and including) the date of the Intervention Notice (or such other period as may be agreed between the Parties) (the “**Intervention Period**”).
- 1.3.5 The Remedial Adviser’s overall objective shall be to mitigate the effects of, and (to the extent capable of being remedied) to remedy, the Intervention Cause and to avoid the occurrence of similar circumstances in the future. In furtherance of this objective (but without diminishing the Supplier’s responsibilities under this Contract), the Parties agree that the Remedial Adviser may undertake any one or more of the following actions:
 - (i) observe the conduct of and work alongside the Supplier Staff to the extent that the Remedial Adviser considers reasonable and proportionate having regard to the Intervention Cause;
 - (ii) gather any information the Remedial Adviser considers relevant in the furtherance of its objective;
 - (iii) write reports and provide information to the Buyer in connection with the steps being taken by the Supplier to remedy the Intervention Cause;

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- (iv) make recommendations to the Buyer and/or the Supplier as to how the Intervention Cause might be mitigated or avoided in the future; and/or
- (v) take any other steps that the Buyer and/or the Remedial Adviser reasonably considers necessary or expedient in order to mitigate or rectify the Intervention Cause.

1.3.6 The Supplier shall:

- (i) work alongside, provide information to, co-operate in good faith with and adopt any reasonable methodology in providing the Services recommended by the Remedial Adviser;
- (ii) ensure that the Remedial Adviser has all the access it may require in order to carry out its objective, including access to the Assets;
- (iii) submit to such monitoring as the Buyer and/or the Remedial Adviser considers reasonable and proportionate in respect of the Intervention Cause;
- (iv) implement any reasonable recommendations made by the Remedial Adviser that have been Approved by the Buyer within the timescales given by the Remedial Adviser; and
- (v) not terminate the appointment of the Remedial Adviser prior to the end of the Intervention Period without the prior consent of the Buyer (such consent not to be unreasonably withheld).

1.3.7 The Supplier shall be responsible for:

- (i) the costs of appointing, and the fees charged by, the Remedial Adviser; and
- (ii) its own costs in connection with any action required by the Buyer and/or the Remedial Adviser pursuant to this Paragraph 1.3.

1.3.8 If:

- (i) the Supplier:
 - (A) fails to perform any of the steps required by the Buyer in an Intervention Notice; and/or
 - (B) is in Default of any of its obligations under Paragraph 1.3.6; and/or
- (ii) the relevant Intervention Trigger Event is not rectified by the end of the Intervention Period,

(each a “**Remedial Adviser Failure**”), the Buyer shall be entitled to terminate this Contract pursuant to Clause 21 (*Termination*) of the Special Terms.

1.4 Step-in Rights

1.4.1 On the occurrence of a Step-In Trigger Event, the Buyer may serve notice on the Supplier (a “**Step-In Notice**”) that it will be taking action under this Paragraph 1.4 (*Step-in Rights*), either itself or with the assistance of a third party. The Step-In Notice shall set out the following:

- (i) the action the Buyer wishes to take and in particular the Services that it wishes to control (“the **Required Action**”);
- (ii) the Step-In Trigger Event that has occurred and whether the Buyer believes that the Required Action is due to the Supplier's Default;
- (iii) the date on which it wishes to commence the Required Action;
- (iv) the time period which it believes will be necessary for the Required Action;
- (v) whether the Buyer will require access to the Supplier's premises and/or the Sites; and
- (vi) to the extent practicable, the impact that the Buyer anticipates the Required Action will have on the Supplier's obligations to provide the Services during the period that the Required Action is being taken.

1.4.2 Following service of a Step-In Notice, the Buyer shall:

- (i) take the Required Action set out in the Step-In Notice and any consequential additional action as it reasonably believes is necessary to achieve the Required Action;
- (ii) keep records of the Required Action taken and provide information about the Required Action to the Supplier;
- (iii) co-operate wherever reasonable with the Supplier in order to enable the Supplier to continue to provide the Services in relation to which the Buyer is not assuming control; and
- (iv) act reasonably in mitigating the cost that the Supplier will incur as a result of the exercise of the Buyer's rights under this Paragraph 1.4.

1.4.3 For so long as and to the extent that the Required Action is continuing, then:

- (i) the Supplier shall not be obliged to provide the Services to the extent that they are the subject of the Required Action;
 - (ii) no Deductions shall be applicable in relation to Charges in respect of Services that are the subject of the Required Action and the provisions of Paragraph 1.4.5 shall apply to Deductions from Charges in respect of other Services; and
 - (iii) the Buyer shall pay to the Supplier the Charges after subtracting any applicable Deductions and the Buyer's costs of taking the Required Action.
- 1.4.4 If the Supplier demonstrates to the reasonable satisfaction of the Buyer that the Required Action has resulted in:
 - (i) the degradation of any Services not subject to the Required Action; or
 - (ii) the non-Achievement of a Milestone,

beyond that which would have been the case had the Buyer not taken the Required Action, then the Supplier shall be entitled to an agreed adjustment of the Charges.
- 1.4.5 Before ceasing to exercise its Step-In Rights under this Paragraph 1.4 the Buyer shall deliver a written notice to the Supplier (a **"Step-Out Notice"**), specifying:
 - (i) the Required Action it has actually taken; and
 - (ii) the date on which the Buyer plans to end the Required Action (the **"Step-Out Date"**) subject to the Buyer being satisfied with the Supplier's ability to resume the provision of the Services and the Supplier's plan developed in accordance with Clause 1.4.6.
- 1.4.6 The Supplier shall, following receipt of a Step-Out Notice and not less than twenty (20) Working Days prior to the Step-Out Date, develop for Approval a draft plan (a **"Step-Out Plan"**) relating to the resumption by the Supplier of the Services, including any action the Supplier proposes to take to ensure that the affected Services satisfy the requirements of this Contract.
- 1.4.7 If the Buyer does not Approve the draft Step-Out Plan, the Buyer shall inform the Supplier of its reasons for not Approving it. The Supplier shall then revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the Buyer for the Approval. The Buyer shall not withhold or delay Approval of the draft Step-Out Plan unnecessarily.

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- 1.4.8 The Supplier shall bear its own costs in connection with any step-in by the Buyer under this Paragraph 1.4, provided that the Buyer shall reimburse the Supplier's, reasonable additional expenses incurred directly as a result of any step-in action taken by the Buyer other than as a result of a Default or threat of Default by the Supplier.

1.5 Where the Buyer:

- 1.5.1 exercises its rights; or

- 1.5.2 requires the Supplier to act,

pursuant to Paragraph 1.1.3, Paragraph 2, Paragraph 1.2, Paragraph 1.3, and, save where there is no failure or breach by the Supplier, Paragraph 1.4 the Supplier shall indemnify and keep indemnified the Buyer for all expenses (including professional fees), costs, damages and losses incurred by it thereunder.

2 PART B: PERFORMANCE MONITORING

- 2.1 The Supplier shall monitor and report (in a Performance Monitoring Report) its performance of the Services and the provision of the Deliverables in accordance with Call-Off Schedule 14 (*Service levels*) and Framework Schedule 4 (*Framework Management*) and the Parties agree that the provisions of such Call-Off Schedule 14 (*Service Levels*) shall apply to determine (amongst other things) the process following (and the outcome of) such monitoring and reporting (including in relation to the carrying out of the Performance Review Meeting and the requirement for and consequences of any Rectification Plan).
- 2.2 Without prejudice to the Buyer's rights set out in Call-Off Schedule 14 (*Service Levels*), at any time the Buyer may by notice to the Supplier increase the level of its monitoring of the Supplier, and/or (at the Buyer's option), of the Supplier's monitoring of its own performance of its obligations under this Contract in respect of the Services until such time as the Supplier shall have demonstrated to the reasonable satisfaction of the Buyer that it will perform (and is capable of performing) its obligations under this Contract.
- 2.3 For the purposes of Paragraph 2.2, the Buyer acknowledges that if the Supplier has otherwise failed to have demonstrated to the reasonable satisfaction of the Buyer as required by Paragraph 2.2 but:
- (i) if the Supplier has removed the person or persons responsible for the fraudulent reporting; or
 - (ii) if in the following three (3) month period following the Buyer notice (if it has not already been established) there have been no further erroneous reports of any kind,
- this shall be regarded as sufficient demonstration that the Supplier will perform and is capable of performing its obligations.
- 2.4 If the Buyer issues a notice under Paragraph 2.2 as a result of any failure by the Supplier to perform the Services in accordance with this Contract, the Supplier shall bear its own costs and indemnify and keep the Buyer indemnified at all times from and against all reasonable costs and expenses (including internal management costs and professional fees) incurred by or on behalf of the Buyer in relation to such increased level of monitoring arising due to circumstances under Paragraph 2.2.
- 2.5 If the Buyer issues a notice under Paragraph 2.2 other than as a result of any failure by the Supplier to perform the Services in accordance with this Contract, the Buyer shall bear its own costs and indemnify and keep the Supplier indemnified at all times from and against all reasonable costs and expenses incurred by the Supplier in relation to such increased level of monitoring arising due to circumstances under Paragraph 2.2 provided always that the Supplier shall notify the Buyer of any such reasonable costs and expenses prior to incurring those costs and/or expenses.

ANNEX A: REQUEST FOR REVISED RECTIFICATION PLAN

Request for Revised Rectification Plan			
Details of the Default:	[Guidance: Explain the Default, with clear schedule and clause references as appropriate]		
Deadline for receiving the Revised Rectification Plan:	[add date]		
Signed by Buyer		Date:	
Supplier Revised Rectification Plan			
Cause of the Default	[add cause]		
Anticipated impact assessment:	[add impact]		
Actual effect of Default:	[add effect]		
Steps to be taken to rectification:	Steps	Timescale	
	1.	[date]	
	2.	[date]	
	3.	[date]	
	4.	[date]	
	[...]	[date]	
Timescale for complete Rectification of Default	[X] Working Days		
Steps taken to prevent recurrence of Default	Steps	Timescale	
	1.	[date]	
	2.	[date]	
	3.	[date]	
	4.	[date]	
	[...]	[date]	
Signed by the Supplier:		Date:	

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Review of Rectification Plan by Buyer			
Outcome of review	[Plan Accepted] [Plan Rejected] [Revised Plan Requested]		
Reasons for Rejection (if applicable)	[add reasons]		
Signed by Buyer		Date:	