Call-Off Schedule 1 (Transparency Reports)

1.1 The Supplier recognises that the Contracting Authority is subject to PPN 01/17 (Updates to transparency principles v1.1 (<https://www.gov.uk/government/publications/procurement-policy-note-0117-update-to-transparency-principles>). The Supplier shall comply with the provisions of this Schedule in order to assist the Contracting Authority with its compliance with its obligations under that PPN.

1.2 Without prejudice to the Supplier's reporting requirements set out in the Framework Contract, within three (3) Months of the Start Date the Supplier shall submit to the Contracting Authority for Approval (such Approval not to be unreasonably withheld or delayed) draft Transparency Reports consistent with the content requirements and format set out in the Annex of this Schedule.

1.3 If the Contracting Authority rejects any proposed Transparency Report submitted by the Supplier, the Supplier shall submit a revised version of the relevant report for further Approval within five (5) days of receipt of any notice of rejection, taking account of any recommendations for revision and improvement to the report provided by the Contracting Authority. If the Parties fail to agree on a draft Transparency Report the Contracting Authority shall determine what should be included. Any other disagreement in connection with Transparency Reports shall be treated as a Dispute.

1.4 The Supplier shall provide accurate and up-to-date versions of each Transparency Report to the Contracting Authority at the frequency referred to in the Annex of this Schedule.

Annex A: List of Transparency Reports

|  |  |  |  |
| --- | --- | --- | --- |
| **Title** | **Content** | **Format** | **Frequency** |
| [Performance] | [ ] | [ ] | [ ] |
| [Call-Off Contract Charges] | [ ] | [ ] | [ ] |
| [Key Subcontractors] | [ ] | [ ] | [ ] |
| [Technical] | [ ] | [ ] | [ ] |
| [Performance management] | [ ] | [ ] | [ ] |

**Call-Off Schedule 2 (Staff Transfer)**

[**Guidance note:** Contracting Authorities will need to ensure that appropriate provisions are included to deal with staff transfer on both entry and exit, and, irrespective of whether TUPE does apply on entry if there are employees eligible for New Fair Deal pension protection then the appropriate pensions provisions will also need to be selected.

If there is a staff transfer from the Contracting Authority on entry (1st generation) then Part A shall apply.

If there is a staff transfer from former/incumbent supplier on entry (2nd generation), Part B shall apply.

If there is both a 1st and 2nd generation staff transfer on entry, then both Part A and Part B shall apply.

If either Part A and/or Part B apply, then consider whether Part D (Pensions) shall apply and the Contracting Authority shall indicate on the Order Form which Annex shall apply (either D1 (CSPS), D2 (NHSPS), or D3 (LGPS)). Part D pensions may also apply where there is not a TUPE transfer for example where the incumbent provider is successful.

If there is no staff transfer (either 1st generation or 2nd generation) at the Start Date then Part C shall apply and Part D pensions may also apply where there is not a TUPE transfer for example where the incumbent provider is successful.

If the position on staff transfers is not known at the bid stage, include Parts A, B, C and D at the bid stage and then update the Contracting Authority Contract Details before signing to specify whether Parts A and/or B, or C and D apply to the Contract.

Part E (dealing with staff transfer on exit) shall apply to every Contract.

For further guidance on this Schedule contact Government Legal Department’s Employment Law Group]

1. Definitions
   1. In this Schedule, the following words have the following meanings and they shall supplement Joint Schedule 1  (Definitions):

|  |  |
| --- | --- |
| "Employee Liability" | 1. all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:    1. redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments; |
|  | * 1. unfair, wrongful or constructive dismissal compensation; |
|  | * 1. compensation for discrimination on grounds of  sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity  or sexual orientation or claims for equal pay; |
|  | * 1. compensation for less favourable treatment of part-time workers or fixed term employees; |
|  | * 1. outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions in relation to payments made by the Contracting Authority or the Replacement Supplier to a Transferring Supplier Employee which would have been payable by the Supplier or the Sub-contractor if such payment should have been made prior to the Service Transfer Date and also including any payments arising in respect of pensions; |
|  | * 1. claims whether in tort, contract or statute or otherwise; |
|  | any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation; |
| "Former Supplier" | a supplier supplying the Deliverables to the Contracting Authority before the Relevant Transfer Date that are the same as or substantially similar to the Deliverables (or any part of the Deliverables) and shall include any Sub-contractor of such supplier (or any Sub-contractor of any such Sub-contractor); |
| "Partial Termination" | the partial termination of the relevant Contract to the extent that it relates to the provision of any part of the Services as further provided for in Clause 10.4 (When the Authority or the Contracting Authority can end this contract ) or 10.6 (When the Supplier can end the contract); |
| "Relevant Transfer" | a transfer of employment to which the Employment Regulations applies; |
| "Relevant Transfer Date" | in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place, and for the purposes of Part D: Pensions, shall include the Commencement Date, where appropriate; |
| "Supplier's Final Supplier Personnel List" | a list provided by the Supplier of all Supplier Personnel whose will transfer under the Employment Regulations on the Service Transfer Date; |
| "Supplier's Provisional Supplier Personnel List" | a list prepared and updated by the Supplier of all Supplier Personnel who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier; |
| "Staffing Information" | in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, such information as the Contracting Authority may reasonably request (subject to all applicable provisions of the Data Protection Laws), but including in an anonymised format:  (a) their ages, dates of commencement of employment or engagement, gender and place of work; |
|  | (b) details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise; |
|  | (c) the identity of the employer or relevant contracting Party; |
|  | (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments; |
|  | (e) their wages, salaries, bonuses and profit sharing arrangements as applicable; |
|  | (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them; |
|  | (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims); |
|  | (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence; |
|  | (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and |
|  | (j) any other "employee liability information" as such term is defined in regulation 11 of the Employment Regulations; |
| "Term" | the period commencing on the Start Date and ending on the expiry of the Initial Period or any Extension Period or on earlier termination of the relevant Contract; |
| "Transferring Contracting Authority Employees" | those employees of the Contracting Authority to whom the Employment Regulations will apply on the Relevant Transfer Date and whose names are provided to the Supplier on or prior to the Relevant Transfer Date; |
| "Transferring Former Supplier Employees" | in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date and whose names are provided to the Supplier on or prior to the Relevant Transfer Date. |

1. INTERPRETATION

Where a provision in this Schedule imposes any obligation on the Supplier including (without limit) to comply with a requirement or provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Sub-contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Authority, the Contracting Authority, Former Supplier, Replacement Supplier or Replacement Sub-contractor, as the case may be and where the Sub-contractor fails to satisfy any claims under such indemnities the Supplier will be liable for satisfying any such claim as if it had provided the indemnity itself.

1. Which parts of this Schedule apply

Only the following parts of this Schedule shall apply to this Call Off Contract:

**[Delete** if not applicable to the Call Off Contract]

* + [Part A (Staff Transfer At Start Date – Outsourcing From the Contracting Authority) ]
  + [Part B (Staff Transfer At Start Date – Transfer From Former Supplier)]
  + [Part C (No Staff Transfer On Start Date)]
  + [Part D (Pensions) ]
    - * [ - Annex D1 (CSPS) ]
      * [ - Annex D2 (NHSPS) ]
      * [ - Annex D3 (LGPS) ]
      * [ - Annex D4 (Other Schemes) ]
  + Part E (Staff Transfer on Exit)

# Part A: Staff Transfer at the Start Date

# Outsourcing from the Contracting Authority

1. What is a relevant transfer
   1. The Contracting Authority and the Supplier agree that:
      1. the commencement of the provision of the Services or of each relevant part of the Services will be a Relevant Transfer in relation to the Transferring Contracting Authority Employees; and
      2. as a result of the operation of the Employment Regulations, the contracts of employment between the Contracting Authority and the Transferring Contracting Authority Employees (except in relation to any terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or any Sub-Contractor and each such Transferring Contracting Authority Employee.
      3. The Contracting Authority shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Contracting Authority Employees in respect of the period arising up to (but not including) the Relevant Transfer Date including (without limit) the payment of all remuneration, benefits, entitlements, PAYE, national insurance contributions and pension contributions.
2. Indemnities the Contracting Authority must give
   1. Subject to Paragraph 2.2, the Contracting Authority shall indemnify the Supplier and any Sub-contractor against any Employee Liabilities arising from or as a result of any act or omission by the indemnifying party in respect of any Transferring Contracting Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Contracting Authority Employee occurring before the Relevant Transfer Date.
   2. The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-contractor whether occurring or having its origin before, on or after the Relevant Transfer Date.
   3. Subject to Paragraphs 2.4 and 2.5, if any employee of the Contracting Authority who is not identified as a Transferring Contracting Authority Employee claims, or it is determined in relation to any employees of the Contracting Authority, that his/her contract of employment has been transferred from the Contracting Authority to the Supplier and/or any Sub-contractor pursuant to the Employment Regulations then -
      1. the Supplier will, within 5 Working Days of becoming aware of that fact, notify the Contracting Authority in writing;
      2. the Contracting Authority may offer employment to such person, or take such other steps as it considers appropriate to resolve the matter, within 10 Working Days of receipt of notice from the Supplier;
      3. if such offer of employment is accepted, the Supplier shall immediately release the person from its employment;
      4. if after the period referred to in Paragraph 2.3.2 no such offer has been made, or such offer has been made but not accepted, the Supplier may within 5 Working Days give notice to terminate the employment of such person;

and subject to the Supplier's compliance with Paragraphs 2.3.1 to 2.3.4 the Contracting Authority will indemnify the Supplier and/or the relevant Sub-contractor against all Employee Liabilities arising out of the termination of the employment of any of the Contracting Authority's employees referred to in this Paragraph 2.3.

* 1. The indemnity in Paragraph 2.3 shall not apply to any claim:
     1. for discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief or equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees in relation to any alleged act or omission of the Supplier and/or any Sub-contractor; or
     2. (b) any claim that the termination of employment was unfair because the Supplier and/or any Sub-contractor neglected to follow a fair dismissal procedure.
  2. The indemnity in Paragraph 2.3 shall not apply to any termination of employment occurring later than 3 Months from the Relevant Transfer Date.
  3. If the Supplier and/or any Sub-contractor at any point accept the employment of any person as is described in Paragraph 2.3, such person shall be treated as having transferred to the Supplier and/or any Sub-contractor and the Supplier shall comply with such obligations as may be imposed upon it under applicable Law.

1. Indemnities the Supplier must give and its obligations
   1. Subject to Paragraph 3.2, the Supplier shall indemnify the Contracting Authority against any Employee Liabilities arising from or as a result of any act or omission by the Supplier or any Sub-contractor in respect of any Transferring Contracting Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Contracting Authority Employee whether occurring before, on or after the Relevant Transfer Date.
   2. The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Contracting Authority whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Contracting Authority's failure to comply with its obligations under the Employment Regulations.
   3. The Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Contracting Authority Employees, from (and including) the Relevant Transfer Date including (without limit) the payment of all remuneration, benefits, entitlements, PAYE, national insurance contributions and pension contributions and any other sums due under Part D: Pensions.
2. Information the Supplier must provide

The Supplier shall promptly provide to the Contracting Authority in writing such information as is necessary to enable the Contracting Authority to carry out its duties under regulation 13 of the Employment Regulations. The Contracting Authority shall promptly provide to the Supplier in writing such information as is necessary to enable the Supplier and any Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

1. Cabinet Office requirements
   1. The Parties agree that the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the Supplier of employees whose employment begins after the Relevant Transfer Date, and the Supplier undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.
   2. The Supplier shall comply with any requirement notified to it by the Contracting Authority relating to pensions in respect of any Transferring Contracting Authority Employee as set down in (i) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007; (ii) HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999; (iii) HM Treasury's guidance "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or (iv) the New Fair Deal.
   3. Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraphs 5.1 or 5.2 shall be agreed in accordance with the Variation Procedure.
2. Pensions
   1. The Supplier shall comply with:
      1. all statutory pension obligations in respect of all Transferring Contracting Authority Employees; and
      2. the provisions in Part D: Pensions.

# Part B: Staff transfer at the Start Date

# Transfer from a former Supplier on Re-procurement

1. What is a relevant transfer
   1. The Contracting Authority and the Supplier agree that:
      1. the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Supplier Employees; and
      2. as a result of the operation of the Employment Regulations, the contracts of employment between each Former Supplier and the Transferring Former Supplier Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or any Sub-contractor and each such Transferring Former Supplier Employee.
   2. The Contracting Authority shall procure that each Former Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Supplier Employees in respect of the period up to (but not including) the Relevant Transfer Date including (without limit) the payment of all remuneration, benefits, entitlements, PAYE, national insurance contributions and pension contributions.
2. Indemnities given by the Former Supplier
   1. Subject to Paragraph 2.2, the Contracting Authority shall procure that each Former Supplier shall indemnify the Supplier and any Sub-contractor against any Employee Liabilities arising from or as a result of any act or omission by the Former Supplier in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee arising before the Relevant Transfer Date;
   2. The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-contractor whether occurring or having its origin before, on or after the Relevant Transfer Date.
   3. Subject to Paragraphs 2.4 and 2.5, if any employee of a Former Supplier who is not identified as a Transferring Former Supplier Employee and claims, and/or it is determined, in relation to such person that his/her contract of employment has been transferred from a Former Supplier to the Supplier and/or any Notified Sub-contractor pursuant to the Employment Regulations then:
      1. the Supplier will within 5 Working Days of becoming aware of that fact notify the Contracting Authority and the relevant Former Supplier in writing;
      2. the Former Supplier may offer employment to such person, or take such other steps as it considers appropriate to resolve the matter, within 10 Working Days of receipt of notice from the Supplier;
      3. if such offer of employment is accepted, the Supplier shall immediately release the person from its employment;
      4. if after the period referred to in Paragraph 2.3.2 no such offer has been made, or such offer has been made but not accepted, the Supplier may within 5 Working Days give notice to terminate the employment of such person;

#### and subject to the Supplier's compliance with Paragraphs 2.3.1 to 2.3.4 the Contracting Authority shall procure that the Former Supplier will indemnify the Supplier and/or the relevant Sub-contractor against all Employee Liabilities arising out of the termination of the employment of any of the Former Supplier's employees referred to in Paragraph 2.3.

* 1. The indemnity in Paragraph 2.3 shall not apply to any claim:
     1. for discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief or equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees, arising as a result of any alleged act or omission of the Supplier and/or any Sub-contractor; or
     2. that the termination of employment was unfair because the Supplier and/or Sub-contractor neglected to follow a fair dismissal procedure.
  2. The indemnity in Paragraph 2.3 shall not apply to any termination of employment occurring later than 3 Months from the Relevant Transfer Date.
  3. If the Supplier and/or any Sub-contractor at any point accept the employment of any person as is described in Paragraph 2.3, such person shall be treated as having transferred to the Supplier and/or any Sub-contractor and the Supplier shall comply with such obligations as may be imposed upon it under applicable Law.

1. Indemnities the Supplier must give and its obligations
   1. Subject to Paragraph 3.1, the Supplier shall indemnify the Contracting Authority, and the Former Supplier against any Employee Liabilities arising from or as a result of any act or omission by the Supplier or any Sub-contractor in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee whether occurring before, on or after the Relevant Transfer Date.
   2. The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Supplier’s failure to comply with its obligations under the Employment Regulations.
   3. The Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Supplier Employees, on and from the Relevant Transfer Date including (without limit) the payment of all remuneration, benefits, entitlements, PAYE, national insurance contributions and pension contributions and all such sums due under Part D: Pensions.
2. Information the Supplier must give

The Supplier shall promptly provide to the Contracting Authority and/or at the Contracting Authority’s direction, the Former Supplier, in writing such information as is necessary to enable the Contracting Authority and/or the Former Supplier to carry out their respective duties under regulation 13 of the Employment Regulations. The Contracting Authority shall procure that the Former Supplier shall promptly provide to the Supplier in writing such information as is necessary to enable the Supplier and any Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

1. Cabinet Office requirements
   1. The Supplier shall comply with any requirement notified to it by the Contracting Authority relating to pensions in respect of any Transferring Former Supplier Employee as set down in (i) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007; (ii) HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999; (iii) HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or (iv) the New Fair Deal.
   2. Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 5.1 shall be agreed in accordance with the Change Control Procedure.
2. Limits on the Former Supplier’s obligations

Notwithstanding any other provisions of this Part B, where in this Part B the Contracting Authority accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Contracting Authority’s contract with the Former Supplier contains a contractual right in that regard which the Contracting Authority may enforce, or otherwise so that it requires only that the Contracting Authority’s must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

1. Pensions
   1. The Supplier shall comply with:
      1. all statutory pension obligations in respect of all Transferring Former Supplier Employees; and
      2. the provisions in Part D: Pensions.

# Part C: No Staff Transfer on the Start Date

1. What happens if there is a staff transfer
   1. The Contracting Authority and the Supplier agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Contracting Authority and/or any Former Supplier.
   2. Subject to Paragraphs 1.3, 1.4 and 1.5, if any employee of the Contracting Authority and/or a Former Supplier claims, or it is determined in relation to any employee of the Contracting Authority and/or a Former Supplier, that his/her contract of employment has been transferred from the Contracting Authority and/or the Former Supplier to the Supplier and/or any Sub-contractor pursuant to the Employment Regulations then:
      1. the Supplier will, within 5 Working Days of becoming aware of that fact, notify the Contracting Authority in writing;
      2. the Contracting Authority may offer employment to such person, or take such other steps as it considered appropriate to resolve the matter, within 10 Working Days of receipt of notice from the Supplier;
      3. if such offer of employment is accepted, the Supplier shall immediately release the person from its employment;
      4. if after the period referred to in Paragraph 1.2.2 no such offer has been made, or such offer has been made but not accepted, the Supplier may within 5 Working Days give notice to terminate the employment of such person;

and subject to the Supplier's compliance with Paragraphs 1.2.1 to 1.2.4:

* + - 1. the Contracting Authority will indemnify the Supplier and/or the relevant Sub-contractor against all Employee Liabilities arising out of the termination of the employment of any of the Contracting Authority's employees referred to in Paragraph 1.2; and
      2. the Contracting Authority will procure that the Former Supplier indemnifies the Supplier and/or any Sub-contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier referred to in Paragraph 1.2.
  1. The indemnities in Paragraph 1.2 shall not apply to any claim:
     1. for discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief or equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees in relation to any alleged act or omission of the Supplier and/or Sub-contractor; or
     2. any claim that the termination of employment was unfair because the Supplier and/or any Sub-contractor neglected to follow a fair dismissal procedure
  2. The indemnities in Paragraph 1.2 shall not apply to any termination of employment occurring later than 3 Months from the Commencement Date.
  3. If the Supplier and/or the Sub-contractor does not comply with Paragraph 1.2, all Employee Liabilities in relation to such employees shall remain with the Supplier and/or the Sub-contractor and the Supplier shall (i) comply with the provisions of Part D: Pensions of this Schedule, and (ii) indemnify the Contracting Authority and any Former Supplier against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Sub-contractor.

1. Limits on the Former Supplier’s obligations

Where in this Part C the Contracting Authority accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Contracting Authority's contract with the Former Supplier contains a contractual right in that regard which the Contracting Authority may enforce, or otherwise so that it requires only that the Contracting Authority must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

# Part D: Pensions

1. Definitions

In this Part D, the following words have the following meanings and they shall supplement Joint Schedule 1 (Definitions), and shall be deemed to include the definitions set out in the Annexes:

|  |  |
| --- | --- |
| **"Actuary"** | a Fellow of the Institute and Faculty of Actuaries; |
| **"Admission Agreement"** | means either or both of the CSPS Admission Agreement (as defined in Annex D1: CSPS) or the LGPS Admission Agreement) as defined in Annex D3: LGPS), as the context requires; |
| **"Broadly Comparable"** | 1. in respect of a pension scheme, a status satisfying the condition that there are no identifiable employees who will suffer material detriment overall in terms of future accrual of pension benefits as assessed in accordance with Annex A of New Fair Deal and demonstrated by the issue by the Government Actuary’s Department of a broad comparability certificate; and |
|  | 1. in respect of benefits provided for or in respect of a member under a pension scheme, benefits that are consistent with that pension scheme’s certificate of broad comparability issued by the Government Actuary’s Department,   and "**Broad Comparability**" shall be construed accordingly; |
| **"CSPS"** | the schemes as defined in Annex D1 to this Part D; |
| **"Fair Deal Employees"** | those:   1. Transferring Contracting Authority Employees; and/or |
|  | 1. Transferring Former Supplier Employees; and/or |
|  | 1. employees who are not Transferring Contracting Authority Employees or Transferring Former Supplier Employees but to whom the Employment Regulations apply on the Relevant Transfer Date to transfer their employment to the Supplier or a Sub-contractor, and whose employment is not terminated in accordance with the provisions of Paragraphs 2.3.4 of Parts A or B or Paragraph 1.2.4 of Part C; |
|  | 1. where the Former Supplier becomes the Supplier those employees; |
|  | who at the Commencement Date or Relevant Transfer Date (as appropriate) are or become entitled to New Fair Deal protection in respect of any of the Statutory Schemes as notified by the Contracting Authority; |
| **"Fair Deal Schemes"** | means the relevant Statutory Scheme or a Broadly Comparable pension scheme; |
| **"Fund Actuary"** | means Fund Actuary as defined in Annex D3 to this Part D; |
| **"LGPS"** | the schemes as defined in Annex D3 to this Part D; |
| **"NHSPS"** | the schemes as defined in Annex D2 to this Part D; |
| **"New Fair Deal"** | the revised Fair Deal position set out in the HM Treasury guidance: "*Fair Deal for Staff Pensions: Staff Transfer from Central Government*" issued in October 2013 including:   1. any amendments to that document immediately prior to the Relevant Transfer Date; and |
|  | 1. any similar pension protection in accordance with the subsequent Annex D1-D3 inclusive as notified to the Supplier by the Authority or Contracting Authority; and |
| **"Statutory Schemes"** | means the CSPS, NHSPS or LGPS. |

1. Supplier obligations to participate in the pension schemes
   1. In respect of all or any Fair Deal Employees each of Annex D1: CSPS, Annex D2: NHSPS and/or Annex D3: LGPS shall apply, as appropriate.
   2. The Supplier undertakes to do all such things and execute any documents (including any relevant Admission Agreement and/or Direction Letter, if necessary) as may be required to enable the Supplier to participate in the appropriate Statutory Scheme in respect of the Fair Deal Employees and shall bear its own costs in such regard.
   3. The Supplier undertakes:
      1. to pay to the Statutory Schemes all such amounts as are due under the relevant Admission Agreement and/or Direction Letter or otherwise and shall deduct and pay to the Statutory Schemes such employee contributions as are required; and
      2. to be fully responsible for all other costs, contributions, payments and other amounts relating to its participation in the Statutory Schemes, including for the avoidance of doubt any exit payments and the costs of providing any bond, indemnity or guarantee required in relation to such participation.
2. Supplier obligation to provide information
   1. The Supplier undertakes to the Contracting Authority*:*
      1. to provide all information which the Contracting Authoritymay reasonably request concerning matters referred to in this Part D as expeditiously as possible; and
      2. not to issue any announcements to any Fair Deal Employee prior to the Relevant Transfer Date concerning the matters stated in this Part D without the consent in writing of the Contracting Authority (such consent not to be unreasonably withheld or delayed).
3. Indemnities the Supplier must give
   1. The Supplier undertakes to the Contracting Authorityto indemnify and keep indemnified the Authority, NHS Pensions the Contracting Authorityand/or any Replacement Supplier and/or any Replacement Sub-contractor on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards all and any Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which arise from any breach by the Supplier of this Part D, and/or the CSPS Admission Agreement and/or the Direction Letter and/or the LGPS Admission Agreement or relates to the payment of benefits under and/or participation in an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Fair Deal Schemes.
   2. The Supplier hereby indemnifies the Authority, NHS Pensions, the Contracting Authorityand/or any Replacement Supplier and/or Replacement Sub-contractor from and against all Losses suffered or incurred by it or them which arise from claims by Fair Deal Employees of the Supplier and/or of any Sub-contractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such Fair Deal Employees which Losses:
      1. relate to pension rights in respect of periods of employment on and after the Relevant Transfer Date until the date of termination or expiry of this Contract; or
      2. arise out of the failure of the Supplier and/or any relevant Sub-contractor to comply with the provisions of this Part D before the date of termination or expiry of this Contract.
   3. The indemnities in this Part D and its Annexes:
      1. shall survive termination of this Contract; and
      2. shall not be affected by the caps on liability contained in Clause 11 (How much you can be held responsible for).
4. What happens if there is a dispute
   1. The Dispute Resolution Procedure will not apply to this Part D and any dispute between the Authority and/or the Contracting Authority and/or the Supplier or between their respective actuaries or the Fund Actuary about any of the actuarial matters referred to in this Part D and its Annexes shall in the absence of agreement between the Authority and/or the Contracting Authority and/or the Supplier be referred to an independent Actuary:
      1. who will act as an expert and not as an arbitrator;
      2. whose decision will be final and binding on the Authority and/or the Contracting Authority and/or the Supplier; and
      3. whose expenses shall be borne equally by the Authority and/or the Contracting Authority and/or the Supplier unless the independent Actuary shall otherwise direct.
5. Other people’s rights
   1. The Parties agree Clause 19 (Other people’s rights in this contract) does not apply and that the CRTPA applies to this Part D to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to him or her or it by the Supplier under this Part D, in his or her or its own right under section 1(1) of the CRTPA.
   2. Further, the Supplier must ensure that the CRTPA will apply to any Sub-Contract to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to them by the Sub-contractor in his or her or its own right under section 1(1) of the CRTPA.
6. What happens if there is a breach of this Part D
   1. The Supplier agrees to notify the Contracting Authorityshould it breach any obligations it has under this Part D and agrees that the Contracting Authorityshall be entitled to terminate its Contract for material Default in the event that the Supplier:
      1. commits an irremediable breach of any provision or obligation it has under this Part D; or
      2. commits a breach of any provision or obligation it has under this Part D which, where capable of remedy, it fails to remedy within a reasonable time and in any event within 28 days of the date of a notice from the Contracting Authority giving particulars of the breach and requiring the Supplier to remedy it.
7. Transferring New Fair Deal Employees
   1. Save on expiry or termination of this Contract, if the employment of any Fair Deal Employee transfers to another employer (by way of a transfer under the Employment Regulations) the Supplier shall and shall procure that any relevant Sub-Contractor shall:
      1. consult with and inform those Fair Deal Employees of the pension provisions relating to that transfer; and
      2. procure that the employer to which the Fair Deal Employees are transferred (the **"New Employer"**) complies with the provisions of this Part D and its Annexes provided that references to the "Supplier" will become references to the New Employer, references to "Relevant Transfer Date" will become references to the date of the transfer to the New Employer and references to "Fair Deal Employees" will become references to the Fair Deal Employees so transferred to the New Employer.
8. What happens to pensions if this Contract ends

The provisions of Part E: Staff Transfer On Exit (Mandatory) apply in relation to pension issues on expiry or termination of this Contract.

1. Broadly Comparable Pension Schemes
   1. If either:
      1. the terms of any of Paragraphs 2.2 of Annex D1: CSPS, 5.2 of Annex D2: NHSPS and or 4 of Annex D3: LGPS apply; and/or
      2. the Contracting Authority agrees, having considered the exceptional cases provided for in New Fair Deal, (such agreement not to be unreasonably withheld) that the Supplier (and/or its Sub-contractors, if any) need not continue to provide the Fair Deal Employees, who continue to qualify for Fair Deal Protection, with access to the appropriate Statutory Scheme;

the Supplier must (and must, where relevant, procure that each of its Sub-contractors will) ensure that, with effect from the Relevant Transfer Date or if later cessation of participation in the Statutory Scheme until the day before the Service Transfer Date, the relevant Fair Deal Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided under the relevant Statutory Scheme, and then on such terms as may be decided by the Contracting Authority.

* 1. Where the Supplier has set up a Broadly Comparable pension scheme or schemes pursuant to the provisions of Paragraph 10.1, the Supplier shall (and shall procure that any of its Sub-contractors shall):
     1. supply to the Contracting Authority details of its (or its Sub-contractor’s) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability covering all relevant Fair Deal Employees, as soon as it is able to do so and in any event no later than 28 days before the Relevant Transfer Date;
     2. fully fund any such Broadly Comparable pension scheme in accordance with the funding requirements set by that Broadly Comparable pension scheme’s Actuary or by the Government Actuary’s Department for the period ending on the Service Transfer Date;
     3. instruct any such Broadly Comparable pension scheme’s Actuary to, and to provide all such co-operation and assistance in respect of any such Broadly Comparable pension scheme as the Replacement Supplier and/or the Authority and/or NHS Pension and/or CSPS and/or the relevant Administering Authority and/or the Contracting Authority may reasonably require, to enable the Replacement Supplier to participate in the appropriate Statutory Scheme in respect of any Fair Deal Employee that remain eligible for New Fair Deal protection following a Service Transfer;
     4. provide a replacement Broadly Comparable pension scheme with immediate effect for those Fair Deal Employees who are still employed by the Supplier and/or relevant Sub-contractor and are still eligible for New Fair Deal protection in the event that the Supplier and/or Sub-contractor's Broadly Comparable pension scheme is terminated;
     5. allow and make all necessary arrangements to effect, in respect of any Fair Deal Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the relevant Statutory Scheme and as is relevant on a day for day service basis and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal. For the avoidance of doubt, should the amount offered by the Broadly Comparable pension scheme be less than the amount required by the appropriate Statutory Scheme to fund day for day service (**"Shortfall"**), the Supplier or the Sub-contractor (as agreed between them) must pay the Statutory Scheme, as required, provided that in the absence of any agreement between the Supplier and any Sub-contractor, the Shortfall shall be paid by the Supplier; and
     6. indemnify the Authority and/or the Contracting Authority and/or NHS Pension and/or CSPS and/or the relevant Administering Authority and/or on demand for any failure to pay the Shortfall as required under Paragraph 10.2.5 above.

**Annex D1:**

**Civil Service Pensions Schemes (CSPS)**

1. Definitions

In this Annex D1: CSPS to Part D: Pensions, the following words have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

|  |  |
| --- | --- |
| **"CSPS Admission Agreement"** | an admission agreement in the form available on the Civil Service Pensions website immediately prior to the Relevant Transfer Date to be entered into for the CSPS in respect of the Services; |
| **"CSPS Eligible Employee"** | any Fair Deal Employee who at the relevant time is an eligible employee as defined in the CSPS Admission Agreement; |
| **"CSPS"** | the Principal Civil Service Pension Scheme available to Civil Servants and employees of bodies under Schedule 1 of the Superannuation Act 1972 (and eligible employees of other bodies admitted to participate under a determination under section 25 of the Public Service Pensions Act 2013), as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Arrangements and (ii) Death Benefits Arrangements; the Civil Service Additional Voluntary Contribution Scheme; [**Delete**after 30 September 2018: the Designated Stakeholder Pension Scheme which is scheduled to close to new members in September 2018] and "alpha" introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014. |

1. Access to equivalent pension schemes after transfer
   1. The Supplier shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the CSPS that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date or became eligible to join on the Relevant Transfer Date and the Supplier shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of the CSPS for service from (and including) the Relevant Transfer Date.
   2. The Supplier undertakes that should it cease to participate in the CSPS for whatever reason at a time when it has CSPS Eligible Employees, that it will, at no extra cost to the Contracting Authority, provide to any Fair Deal Employee who immediately prior to such cessation of participation remained a CSPS Eligible Employee with access to a pension scheme which is Broadly Comparable to the CSPS on the date the CSPS Eligible Employees ceased to participate in the CSPS.

**Annex D2: NHS Pension Schemes**

1. Definitions

In this Annex D2: NHSPS to Part D: Pensions, the following words have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

|  |  |
| --- | --- |
| **"Direction Letter"** | an NHS Pensions Direction or Determination (as appropriate) issued by the Secretary of State in exercise of the powers conferred by section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 or by section 25 of the Public Service Pensions Act 2013 (as appropriate) and issued to the Supplier or a Sub-contractor of the Supplier (as appropriate) relating to the terms of participation of the Supplier or Sub-contractor in the NHSPS in respect of the NHSPS Eligible Employees; |
| **"NHSPS Eligible Employees"** | each of the Fair Deal Employees who at a Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the NHSPS as a result of either: |
|  | 1. their employment with the Contracting Authority*,* an NHS Body or other employer which participates automatically in the NHSPS; or |
|  | 1. their employment with a Former Supplier who provides access to the NHSPS pursuant to an NHS Pensions Direction or Determination (as appropriate) issued by the Secretary of State in exercise of the powers conferred by section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 or by section 25 of the Public Service Pensions Act 2013 (as appropriate) in respect of their employment with that Former Supplier (on the basis that they are entitled to protection under New Fair Deal and were permitted to re-join the NHSPS, having been formerly in employment with the Contracting Authority, an NHS Body or other employer who participated automatically in the NHSPS in connection with the Services, prior to being employed by the Former Supplier), |
|  | and, in each case, being continuously engaged for more than fifty per cent (50%) of their employed time in the delivery of services (the same as or similar to the Services). |
|  | For the avoidance of doubt, an individual who is in or entitled to become a member of the NHSPS as a result of being engaged in the Services and being covered by an "open" Direction Letter or other NHSPS "access" facility but who has never been employed directly by an NHS Body (or other body which participates automatically in the NHSPS) is not an NHSPS Eligible Employee; |
| **"NHS Body"** | has the meaning given to it in section 275 of the National Health Service Act 2006 as amended by section 138(2)(c) of Schedule 4 to the Health and Social Care Act 2012; |
| **"NHS Pensions"** | NHS Pensions as the administrators of the NHSPS or such other body as may from time to time be responsible for relevant administrative functions of the NHSPS; |
| **"NHSPS"** | the National Health Service Pension Scheme for England and Wales, established pursuant to the Superannuation Act 1972 and governed by subsequent regulations under that Act including the NHS Pension Scheme Regulations; |
| **"NHS Pension Scheme Arrears"** | any failure on the part of the Supplier or its Sub-contractors (if any) to pay employer’s contributions or deduct and pay across employee’s contributions to the NHSPS or meet any other financial obligations under the NHSPS or any Direction Letter in respect of the NHSPS Eligible Employees; |
| **"NHS Pension Scheme Regulations"** | as appropriate, any or all of the National Health Service Pension Scheme Regulations 1995 (SI 1995/300), the National Health Service Pension Scheme Regulations 2008 (SI 2008/653), the National Health Service Pension Scheme Regulations 2015 (2015/94) and any subsequent regulations made in respect of the NHSPS, each as amended from time to time; |
| **"NHS Premature Retirement Rights"** | rights to which any Fair Deal Employee (had they remained in the employment of the Contracting Authority, an NHS Body or other employer which participates automatically in the NHSPS) would have been or are entitled under the NHS Pension Scheme Regulations, the NHS Compensation for Premature Retirement Regulations 2002 (SI 2002/1311), the NHS (Injury Benefits) Regulations 1995 (SI 1995/866) and section 45 of the General Whitley Council conditions of service, or any other legislative or contractual provision which replaces, amends, extends or consolidates the same from time to time; |
| **"Pension Benefits"** | any benefits payable in respect of an individual (including but not limited to pensions related allowances and lump sums) relating to old age, invalidity or survivor’s benefits provided under an occupational pension scheme; and |
| **"Retirement Benefits Scheme"** | a pension scheme registered under Chapter 2 of Part 4 of the Finance Act 2004. |

1. Membership of the NHS Pension Scheme
   1. In accordance with New Fair Deal, the Supplier and/or any of its Sub-contractors to which the employment of any NHSPS Eligible Employee compulsorily transfers as a result of the award of this Contract, if not an NHS Body or other employer which participates automatically in the NHSPS, must by or as soon as reasonably practicable after the Relevant Transfer Date, each secure a Direction Letter to enable the NHSPS Eligible Employees to retain either continuous active membership of or eligibility for, the NHSPS for so long as they remain employed in connection with the delivery of the Services under this Contract, and have a right to membership or eligibility of that scheme under the terms of the Direction Letter.
   2. The Supplier must supply to the Contracting Authorityby or as soon as reasonably practicable after the Relevant Transfer Date a complete copy of each Direction Letter.
   3. The Supplier must ensure (and procure that each of its Sub-Contracts (if any) ensures) that all of its NHSPS Eligible Employees have a contractual right to continuous active membership of or eligibility for the NHSPS for so long as they have a right to membership or eligibility of that scheme under the terms of the Direction Letter.
   4. The Supplier will (and will procure that its Sub-contractors (if any) will) comply with the terms of the Direction Letter, the NHS Pension Scheme Regulations (including any terms which change as a result of changes in Law) and any relevant policy issued by the Department of Health in respect of the NHSPS Eligible Employees for so long as it remains bound by the terms of any such Direction Letter.
   5. Where any employee omitted from the Direction Letter supplied in accordance with Paragraph 2 of this Annex are subsequently found to be an NHSPS Eligible Employee, the Supplier will (and will procure that its Sub-contractors (if any) will) treat that person as if they had been an NHSPS Eligible Employee from the Relevant Transfer Date so that their Pension Benefits and NHS Premature Retirement Rights are not adversely affected.
   6. The Supplier will (and will procure that its Sub-contractors (if any) will) as soon as reasonably practicable and at its (or its Sub-contractor’s) cost, obtain any guarantee, bond or indemnity that may from time to time be required by the Secretary of State for Health.
2. Access to NHS Pension Schemes after transfer

The Supplier will procure that with effect from the Relevant Transfer Date the NHSPS Eligible Employees shall be either eligible for or remain in continuous active membership of (as the case may be) the NHSPS for employment from (and including) the Relevant Transfer Date.

1. Continuation of early retirement rights after transfer

From the Relevant Transfer Date until the Service Transfer Date, the Supplier must provide (and/or must ensure that its Sub-contractors (if any) provide) NHS Premature Retirement Rights in respect of the NHSPS Eligible Employees that are identical to the benefits they would have received had they remained employees of the Contracting Authority, an NHS Body or other employer which participates automatically in the NHSPS.

1. What the Contracting Authority do if the Supplier breaches its pension obligations
   1. The Supplier agrees that the Contracting Authority is entitled to make arrangements with NHS Pensions for the Contracting Authority to be notified if the Supplier (or its Sub-contractor) breaches the terms of its Direction Letter. Notwithstanding the provisions of the foregoing, the Supplier shall notify the Contracting Authority in the event that it (or its Sub-contractor) breaches the terms of its Direction Letter.
   2. If the Contracting Authority is entitled to terminate the Contract or the Supplier (or its Sub-contractor, if relevant) ceases to participate in the NHSPS for whatever other reason, theContracting Authoritymay in its sole discretion, and instead of exercising its right to terminate this Contract where relevant, permit the Supplier (or any such Sub-contractor, as appropriate) to offer Broadly Comparable Pension Benefits, on such terms as decided by the Contracting Authority. The provisions of Paragraph 10 (Bulk Transfer Obligations in relation to any Broadly Comparable pension scheme) of Part D: Pensions shall apply in relation to any Broadly Comparable pension scheme established by the Supplier or its Sub-contractors.
   3. In addition to the Contracting Authority'sright to terminate the Contract, if the Contracting Authority is notified by NHS Pensions of any NHS Pension Scheme Arrears, the Contracting Authority will be entitled to deduct all or part of those arrears from any amount due to be paid under this Contract or otherwise.
2. Compensation when pension scheme access can’t be provided
   1. If the Supplier (or its Sub-contractor, if relevant) is unable to provide the NHSPS Eligible Employees with either:
      1. membership of the NHSPS (having used its best endeavours to secure a Direction Letter); or
      2. access to a Broadly Comparable pension scheme,

the Contracting Authoritymay in its sole discretion permit the Supplier (or any of its Sub-contractors) to compensate the NHSPS Eligible Employees in a manner that is Broadly Comparable or equivalent in cash terms, the Supplier (or Sub-contractor as relevant) having consulted with a view to reaching agreement with any recognised trade union or, in the absence of such body, the NHSPS Eligible Employees. The Supplier must meet (or must procure that the relevant Sub-contractor meets) the costs of the Contracting Authoritydetermining whether the level of compensation offered is reasonable in the circumstances.

* 1. This flexibility for the Contracting Authority to allow compensation in place of Pension Benefits is in addition to and not instead of the Contracting Authority’s right to terminate the Contract.

1. Indemnities that a Supplier must give
   1. The Supplier must indemnify and keep indemnified the Authority, the Contracting Authority and any Replacement Supplier against all Losses arising out of any claim by any NHSPS Eligible Employee that the provision of (or failure to provide) Pension Benefits and NHS Premature Retirement Rights from the Relevant Transfer Date, or the level of such benefit provided, constitutes a breach of his or her employment rights.
   2. The Supplier must indemnify and keep indemnified the Contracting Authority, NHS Pensions and any Replacement Supplier against all Losses arising out of the Supplier (or its Sub-contractor) allowing anyone who is not an NHSPS Eligible Employee to join or claim membership of the NHSPS at any time during the Contract Period.
2. Sub-Contractors
   1. If the Supplier enters into a Sub-Contract for the delivery of all or part or any component of the Services which will involve the transfer of employment of any NHSPS Eligible Employee it will impose obligations on its Sub-contractor in identical terms as those imposed on the Supplier in relation to Pension Benefits and NHS Premature Retirement Rights by this Annex, including requiring that:
      1. if the Supplier has secured a Direction Letter, the Sub-contractor also secures a Direction Letter in respect of the NHSPS Eligible Employees for their future service with the Sub-contractor as a condition of being awarded the Sub-Contract and the Supplier shall be responsible for ensuring that the Contracting Authority receives a complete copy of each such Sub-contractor direction letter as soon as reasonably practicable; or
      2. if, in accordance with Paragraph 4 of this Annex, the Supplier has offered the NHSPS Eligible Employees access to a pension scheme under which the benefits are Broadly Comparable to those provided under the NHSPS, the Sub-contractor either secures a Direction Letter in respect of the NHSPS Eligible Employees or (with the prior consent of the Contracting Authority) provides NHSPS Eligible Employees with access to a scheme with Pension Benefits which are Broadly Comparable to those provided under the NHSPS whereupon the provisions of Paragraph 10 below (Bulk Transfer Obligations in relation to any Broadly Comparable Scheme) shall apply.
   2. The Supplier shall procure that each Sub-contractor provides indemnities to the Contracting Authority, NHS Pensions and/or any Replacement Supplier and/or Replacement Sub-contractor that are identical to the indemnities set out in Paragraph 7 of this Annex B. Where a Sub-contractor fails to satisfy any claim made under such one or more indemnities, the Supplier will be liable for satisfying any such claim as if it had provided the indemnity itself.

**Annex D3:**

**Local Government Pension Schemes (LGPS)**

**[Guidance:** Note the LGPS unlike the CSPS & NHSPS is a funded scheme which has associated cost implications as follows:

There is not 1 LGPS but approx. 90 different Funds, each with their own separate Scheme Employer and Administering Authority, it is important to identify the correct one(s) and amend the definition of "Fund" accordingly.

It is important to check whether the Authority and or the Contracting Authority can actually participate in the LGPS. Where a government department is taking on services which were formerly the responsibility of a Local Authority it may be necessary to obtain secretary of state approval for participation in the LGPS, this is because the services are being provided to Gov. Dept. and not to a Local Authority.

Unlike New Fair Deal the 2007 Best Value pension direction does not provide a right to bulk transfer past service. Whilst typically before the 2007 direction LA did provide such a right, it is a significant additional cost and therefore bulk transfer wording has been excluded. If required take legal advice due to the exceptionally high costs which can result from a requirement to provide bulk transfers.]

1. Definitions
   1. In this Annex D3: LGPS to Part D: Pensions, the following words have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

|  |  |
| --- | --- |
| "**Administering Authority**" | in relation to **the Fund [insert name],**the relevant Administering Authority of that Fund for the purposes of the Local Government Pension Scheme Regulations 2013; |
| "**Fund Actuary**" | the actuary to a Fund appointed by the Administering Authority of that Fund; |
| "**Fund**" | **[insert name], a pension fund within the LGPS;** |
| "**LGPS**" | the Local Government Pension Scheme as governed by the LGPS Regulations, and any other regulations (in each case as amended from time to time) which are from time to time applicable to the Local Government Pension Scheme; |
| "**LGPS Admission Agreement**" | an admission agreement within the meaning in Schedule 1 of the Local Government Pension Scheme Regulations 2013; |
| "**LGPS Admission Body**" | an admission body (within the meaning of Part 3 of Schedule 2 of the Local Government Pension Scheme Regulations 2013); |
| "**LGPS Eligible Employees**" | any Fair Deal Employee who at the relevant time is an eligible employee as defined in the LGPS Admission Agreement or otherwise any Fair Deal Employees who immediately before the Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the LGPS or of a scheme Broadly Comparable to the LGPS; and |
| "**LGPS Regulations**" | the Local Government Pension Scheme Regulations 2013 (SI 2013/2356) and The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014, and any other regulations (in each case as amended from time to time) which are from time to time applicable to the LGPS. |

1. Supplier must become a LGPS admission body
   1. Where the Supplier employs any LGPS Eligible Employees from a Relevant Transfer Date, the Supplier shall become an LGPS Admission Body and shall on or before the Relevant Transfer Date enter into a LGPS Admission Agreement with the Administering Authority which will have effect from and including the Relevant Transfer Date.
   2. The LGPS Admission Agreement must ensure that all LGPS Eligible Employees covered by that Agreement who were active LGPS members immediately before the Relevant Transfer Date are admitted to the LGPS with effect on and from the Relevant Transfer Date. Any LGPS Eligible Employees who were eligible to join the LGPS but were not active LGPS members immediately before the Relevant Transfer Date must retain the ability to join the LGPS after the Relevant Transfer Date if they wish to do so.
   3. The Supplier shall provide any indemnity, bond or guarantee required by an Administering Authority in relation to an LGPS Admission Agreement.
   4. The Supplier shall not automatically enrol or re-enrol for the purposes of the Pensions Act 2008 any LGPS Eligible Employees in any pension scheme other than the LGPS.
2. Right of set-off

The Contracting Authorityshall have a right to set off against any payments due to the Supplier under the Contract an amount equal to any overdue employer and employee contributions and other payments (and interest payable under the LGPS Regulations) due from the Supplier (or from any relevant Sub-contractor) under an LGPS Admission Agreement and shall pay such amount to the relevant Fund.

1. Supplier ceases to be an LGPS Admission Body

If the Supplier employs any LGPS Eligible Employees from a Relevant Transfer Date and the Supplier either cannot or does not participate in the LGPS, the Supplier shall offer such LGPS Eligible Employee membership of a pension scheme Broadly Comparable to the LGPS.

1. Discretionary benefits

Where the Supplier is an LGPS Admission Body, the Supplier shall award benefits to the LGPS Eligible Employees under the LGPS in circumstances where the LGPS Eligible Employees would have received such benefits had they still been employed by their previous employer. Where such benefits are of a discretionary nature, they shall be awarded on the basis of the previous employer’s written policy in relation to such benefits at the time of the Relevant Transfer Date.

**Annex D4: Other Schemes**

**[Guidance:** Placeholder for Pension Schemes other than LGPS, CSPS & NHSPS]

Part E: Staff Transfer on Exit

1. Obligations before a Staff Transfer
   1. The Supplier agrees that within 20 Working Days of the earliest of:
      1. receipt of a notification from the Contracting Authority of a Service Transfer or intended Service Transfer;
      2. receipt of the giving of notice of early termination or any Partial Termination of the relevant Contract;
      3. the date which is 12 Months before the end of the Term; and
      4. receipt of a written request of the Contracting Authority at any time (provided that the Contracting Authority shall only be entitled to make one such request in any 6 Month period),

it shall provide in a suitably anonymised format so as to comply with the Data Protection Laws, the Supplier's Provisional Supplier Personnel List, together with the Staffing Information in relation to the Supplier's Provisional Supplier Personnel List and it shall provide an updated Supplier's Provisional Supplier Personnel List at such intervals as are reasonably requested by the Contracting Authority.

* 1. At least 20 Working Days prior to the Service Transfer Date, the Supplier shall provide to the Contracting Authority or at the direction of the Contracting Authority to any Replacement Supplier and/or any Replacement Sub-contractor (i) the Supplier's Final Supplier Personnel List, which shall identify the basis upon which they are Transferring Supplier Employees and (ii) the Staffing Information in relation to the Supplier’s Final Supplier Personnel List (insofar as such information has not previously been provided).
  2. The Contracting Authority shall be permitted to use and disclose information provided by the Supplier under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-contractor.
  3. The Supplier warrants, for the benefit of The Contracting Authority, any Replacement Supplier, and any Replacement Sub-contractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.
  4. From the date of the earliest event referred to in Paragraph 1.1.1, 1.1.2 and 1.1.3, the Supplier agrees that it shall not assign any person to the provision of the Services who is not listed on the Supplier’s Provisional Supplier Personnel List and shall, unless otherwise instructed by the Contracting Authority (acting reasonably):

not replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Supplier Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces

not make, promise, propose, permit or implement any material changes to the terms and conditions of (i) employment and/or (ii) pensions, retirement and death benefits (including not to make pensionable any category of earnings which were not previously pensionable or reduce the pension contributions payable) of the Supplier Personnel (including any payments connected with the termination of employment);

* + 1. not increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;
    2. not introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Personnel List;
    3. not increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services);
    4. not terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Personnel List save by due disciplinary process;
    5. not dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Contracting Authority and/or the Replacement Supplier and/or Replacement Sub-contractor;
    6. give the Contracting Authority and/or the Replacement Supplier and/or Replacement Sub-contractor reasonable access to Supplier Personnel and/or their consultation representatives to inform them of the intended transfer and consult any measures envisaged by the Contracting Authority, Replacement Supplier and/or Replacement Sub-contractor in respect of persons expected to be Transferring Supplier Employees;
    7. co-operate with the Contracting Authority and the Replacement Supplier to ensure an effective consultation process and smooth transfer in respect of Transferring Supplier Employees in line with good employee relations and the effective continuity of the Services, and to allow for participation in any pension arrangements to be put in place to comply with New Fair Deal;
    8. promptly notify the Contracting Authority or, at the direction of the Contracting Authority, any Replacement Supplier and any Replacement Sub-contractor of any notice to terminate employment given by the Supplier or received from any persons listed on the Supplier's Provisional Supplier Personnel List regardless of when such notice takes effect;
    9. not for a period of 12 Months from the Service Transfer Date re-employ or re-engage or entice any employees, suppliers or Sub-contractors whose employment or engagement is transferred to the Contracting Authority and/or the Replacement Supplier (unless otherwise instructed by the Contracting Authority (acting reasonably));
    10. not to adversely affect pension rights accrued by all and any Fair Deal Employees in the period ending on the Service Transfer Date;
    11. fully fund any Broadly Comparable pension schemes set up by the Supplier;
    12. maintain such documents and information as will be reasonably required to manage the pension aspects of any onward transfer of any person engaged or employed by the Supplier or any Sub-contractor in the provision of the Services on the expiry or termination of this Contract (including without limitation identification of the Fair Deal Employees);
    13. promptly provide to the Contracting Authority such documents and information mentioned in Paragraph 3.1.1 of Part D: Pensions which the Contracting Authority may reasonably request in advance of the expiry or termination of this Contract; and
    14. fully co-operate (and procure that the trustees of any Broadly Comparable pension scheme shall fully co-operate) with the reasonable requests of the Supplier relating to any administrative tasks necessary to deal with the pension aspects of any onward transfer of any person engaged or employed by the Supplier or any Sub-contractor in the provision of the Services on the expiry or termination of this Contract.
  1. On or around each anniversary of the Effective Date and up to four times during the last 12 Months of the Term, the Contracting Authority may make written requests to the Supplier for information relating to the manner in which the Services are organised. Within 20 Working Days of receipt of a written request the Supplier shall provide such information as the Contracting Authority may reasonably require which shall include:
     1. the numbers of employees engaged in providing the Services;
     2. the percentage of time spent by each employee engaged in providing the Services;
     3. the extent to which each employee qualifies for membership of any of the Fair Deal Schemes (as defined in Part D: Pensions); and
     4. a description of the nature of the work undertaken by each employee by location.
  2. The Supplier shall provide all reasonable cooperation and assistance to the Contracting Authority, any Replacement Supplier and/or any Replacement Sub-contractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Service Transfer Date, the Supplier shall provide to the Contracting Authority or, at the direction of the Contracting Authority, to any Replacement Supplier and/or any Replacement Sub-contractor (as appropriate), in respect of each person on the Supplier's Final Supplier Personnel List who is a Transferring Supplier Employee:
     1. the most recent month's copy pay slip data;
     2. details of cumulative pay for tax and pension purposes;
     3. details of cumulative tax paid;
     4. tax code;
     5. details of any voluntary deductions from pay; and
     6. bank/building society account details for payroll purposes.

1. Staff Transfer when the contract ends
   1. A change in the identity of the supplier of the Services (or part of the Services), howsoever arising, may constitute a Relevant Transfer to which the Employment Regulations will apply. The Contracting Authority and the Supplier agree that where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Supplier Employee.
   2. The Supplier shall comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date including (without limit) the payment of all remuneration, benefits, entitlements, PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Fair Deal Schemes (as defined in Part D: Pensions).
   3. Subject to Paragraph 2.4, the Supplier shall indemnify the Contracting Authority and/or the Replacement Supplier and/or any Replacement Sub-contractor against any Employee Liabilities arising from or as a result of any act or omission of the Supplier or any Sub-contractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee whether occurring before, on or after the Service Transfer Date.
   4. The indemnity in Paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Sub-contractor whether occurring or having its origin before, on or after the Service Transfer Date.
   5. Subject to Paragraphs 2.6 and 2.7, if any employee of the Supplier who is not identified in the Supplier's Final Transferring Supplier Employee List claims, or it is determined in relation to any employees of the Supplier, that his/her contract of employment has been transferred from the Supplier to the Replacement Supplier and/or Replacement Sub-contractor pursuant to the Employment Regulations then.
      1. the Replacement Supplier and/or Replacement Sub-contractor will, within 5 Working Days of becoming aware of that fact, notify the Contracting Authority and the Supplier in writing;
      2. the Supplier may offer employment to such person, or take such other steps as it considered appropriate to resolve the matter, within 10 Working Days of receipt of notice from the Replacement Supplier and/or Replacement Sub-contractor;
      3. if such offer of employment is accepted, the Replacement Supplier and/or Replacement Sub-contractor shall immediately release the person from its employment;
      4. if after the period referred to in Paragraph 2.5.2 no such offer has been made, or such offer has been made but not accepted, the Replacement Supplier and/or Replacement Sub-contractor may within 5 Working Days give notice to terminate the employment of such person;

### and subject to the Replacement Supplier's and/or Replacement Sub-contractor's compliance with Paragraphs 2.5.1 to 2.5.4 the Supplier will indemnify the Replacement Supplier and/or Replacement Sub-contractor against all Employee Liabilities arising out of the termination of the employment of any of the Supplier's employees referred to in Paragraph 2.5.

* 1. The indemnity in Paragraph 2.5 shall not apply to:
     1. (a) any claim for discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief, or equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees, arising as a result of any alleged act or omission of the Replacement Supplier and/or Replacement Sub-contractor, or
     2. (b) any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Sub-contractor neglected to follow a fair dismissal procedure.
  2. The indemnity in Paragraph 2.5 shall not apply to any termination of employment occurring later than 3 Months from the Service Transfer Date.
  3. If at any point the Replacement Supplier and/or Replacement Sub-contract accepts the employment of any such person as is described in Paragraph 2.5, such person shall be treated as a Transferring Supplier Employee and Paragraph 2.5 shall cease to apply to such person.
  4. The Supplier shall promptly provide the Contracting Authority and any Replacement Supplier and/or Replacement Sub-contractor, in writing such information as is necessary to enable the Contracting Authority, the Replacement Supplier and/or Replacement Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Contracting Authority shall procure that the Replacement Supplier and/or Replacement Sub-contractor, shall promptly provide to the Supplier and each Sub-contractor in writing such information as is necessary to enable the Supplier and each Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.
  5. Subject to Paragraph 2.9, the Contracting Authority shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-contractor and its Sub-contractors against any Employee Liabilities arising from or as a result of any act or omission, whether occurring before, on or after the Service Transfer Date, of the Replacement Supplier and/or Replacement Sub-contractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee.
  6. The indemnity in Paragraph 2.10 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Sub-contractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Sub-contractor (as applicable) to comply with its obligations under the Employment Regulations, or to the extent the Employee Liabilities arise out of the termination of employment of any person who is not identified in the Supplier’s Final Supplier Personnel List in accordance with Paragraph 2.5 (and subject to the limitations set out in Paragraphs 2.6 and 2.7 above).

**Call-Off Schedule 3 (Continuous Improvement)**

1. Contracting Authorities Rights
   1. The Contracting Authority and the Supplier recognise that, where specified in Framework Schedule 4 (Framework Management), the Contracting Authority may give the Authority the right to enforce the Contracting Authorities rights under this Schedule.
2. Supplier’s Obligations
   1. The Supplier must, throughout the Contract Period, identify new or potential improvements to the provision of the Deliverables with a view to reducing the Contracting Authorities costs (including the Charges) and/or improving the quality and efficiency of the Deliverables and their supply to the Contracting Authority.
   2. The Supplier must adopt a policy of continuous improvement in relation to the Deliverables, which must include regular reviews with the Contracting Authority of the Deliverables and the way it provides them, with a view to reducing the Contracting Authorities costs (including the Charges) and/or improving the quality and efficiency of the Deliverables. The Supplier and the Contracting Authority must provide each other with any information relevant to meeting this objective.
   3. In addition to Paragraph 2.1, the Supplier shall produce at the start of each Contract Year a plan for improving the provision of Deliverables and/or reducing the Charges (without adversely affecting the performance of this Contract) during that Contract Year (**"Continuous Improvement Plan"**) for the Contracting Authorities Approval. The Continuous Improvement Plan must include, as a minimum, proposals:
      1. identifying the emergence of relevant new and evolving technologies;
      2. changes in business processes of the Supplier or the Contracting Authority and ways of working that would provide cost savings and/or enhanced benefits to the Contracting Authority (such as methods of interaction, supply chain efficiencies, reduction in energy consumption and methods of sale);
      3. new or potential improvements to the provision of the Deliverables including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Deliverables; and
      4. measuring and reducing the sustainability impacts of the Supplier's operations and supply-chains relating to the Deliverables, and identifying opportunities to assist the Contracting Authority in meeting their sustainability objectives.
   4. The initial Continuous Improvement Plan for the first (1st) Contract Year shall be submitted by the Supplier to the Contracting Authority for Approval within one hundred (100) Working Days of the first Order or six (6) Months following the Start Date, whichever is earlier.
   5. The Contracting Authority shall notify the Supplier of its Approval or rejection of the proposed Continuous Improvement Plan or any updates to it within twenty (20) Working Days of receipt. If it is rejected then the Supplier shall, within ten (10) Working Days of receipt of notice of rejection, submit a revised Continuous Improvement Plan reflecting the changes required. Once Approved, it becomes the Continuous Improvement Plan for the purposes of this Contract.
   6. The Supplier must provide sufficient information with each suggested improvement to enable a decision on whether to implement it. The Supplier shall provide any further information as requested.
   7. If the Contracting Authority wishes to incorporate any improvement into this Contract, it must request a Variation in accordance with the Variation Procedure and the Supplier must implement such Variation at no additional cost to the Contracting Authority or the Authority.
   8. Once the first Continuous Improvement Plan has been Approved in accordance with Paragraph 2.5:
      1. the Supplier shall use all reasonable endeavours to implement any agreed deliverables in accordance with the Continuous Improvement Plan; and
      2. the Parties agree to meet as soon as reasonably possible following the start of each quarter (or as otherwise agreed between the Parties) to review the Supplier's progress against the Continuous Improvement Plan.
   9. The Supplier shall update the Continuous Improvement Plan as and when required but at least once every Contract Year (after the first (1st) Contract Year) in accordance with the procedure and timescales set out in Paragraph 2.3.
   10. All costs relating to the compilation or updating of the Continuous Improvement Plan and the costs arising from any improvement made pursuant to it and the costs of implementing any improvement, shall have no effect on and are included in the Charges.
   11. Should the Supplier's costs in providing the Deliverables to the Contracting Authority be reduced as a result of any changes implemented, all of the cost savings shall be passed on to the Contracting Authority by way of a consequential and immediate reduction in the Charges for the Deliverables.
   12. At any time during the Contract Period of the Call-Off Contract, the Supplier may make a proposal for gainshare. If the Contracting Authority deems gainshare to be applicable then the Supplier shall update the Continuous Improvement Plan so as to include details of the way in which the proposal shall be implemented in accordance with an agreed gainshare ratio.

**Call-Off Schedule 4 (Call Off Tender)**

**[Guidance for Contracting Authorities:**  After a further competition, if the Supplier’s bid has additional things that you would like included in the contract, insert the Supplier’s bid here.

[Insert Call-Off Tender Here]

**Call-Off Schedule 5 (Pricing Details)**

**[**This Schedule should be used to show further detailed pricing information, in addition to the pricing in the Order Form]

**Call-Off Schedule 6 (ICT Services)**

1. Definitions
   1. In this Schedule, the following words shall have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

|  |  |
| --- | --- |
| **"Contracting Authority Property"** | the property, other than real property and IPR, including the Contracting Authority System, any equipment issued or made available to the Supplier by the Contracting Authority in connection with this Contract; |
| **"Contracting Authority Software"** | any software which is owned by or licensed to the Contracting Authority and which is or will be used by the Supplier for the purposes of providing the Deliverables; |
| **"Contracting Authority System"** | the Contracting Authorities computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Contracting Authority or the Supplier in connection with this Contract which is owned by or licensed to the Contracting Authority by a third party and which interfaces with the Supplier System or which is necessary for the Contracting Authority to receive the Deliverables; |
| **“Commercial off the shelf Software” or “COTS Software”** | Non-customised software where the IPR may be owned and licensed either by the Supplier or a third party depending on the context, and which is commercially available for purchase and subject to standard licence terms |
| **"Defect"** | any of the following:   * 1. any error, damage or defect in the manufacturing of a Deliverable; or   2. any error or failure of code within the Software which causes a Deliverable to malfunction or to produce unintelligible or incorrect results; or |
|  | * 1. any failure of any Deliverable to provide the performance, features and functionality specified in the requirements of the Contracting Authority or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from passing any Test required under this Call Off Contract; or   2. any failure of any Deliverable to operate in conjunction with or interface with any other Deliverable in order to provide the performance, features and functionality specified in the requirements of the Contracting Authority or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from passing any Test required under this Contract; |
| **"Emergency Maintenance"** | ad hoc and unplanned maintenance provided by the Supplier where either Party reasonably suspects that the ICT Environment or the Services, or any part of the ICT Environment or the Services, has or may have developed a fault; |
| **"ICT Environment"** | the Contracting Authority System and the Supplier System; |
| **"Licensed Software"** | all and any Software licensed by or through the Supplier, its Sub-Contractors or any third party to the Contracting Authority for the purposes of or pursuant to this Call Off Contract, including any COTS Software; |
| **"Maintenance Schedule"** | has the meaning given to it in paragraph 8 of this Schedule; |
| **"Malicious Software"** | any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence; |
| **"New Release"** | an item produced primarily to extend, alter or improve the Software and/or any Deliverable by providing additional functionality or performance enhancement (whether or not defects in the Software and/or Deliverable are also corrected) while still retaining the original designated purpose of that item; |
| **"Open Source Software"** | computer software that has its source code made available subject to an open-source licence under which the owner of the copyright and other IPR in such software provides the rights to use, study, change and distribute the software to any and all persons and for any and all purposes free of charge; |
| **"Operating Environment"** | means the Contracting Authority System and any premises (including the Contracting Authority Premises, the Supplier’s premises or third party premises) from, to or at which:   * 1. the Deliverables are (or are to be) provided; or   2. the Supplier manages, organises or otherwise directs the provision or the use of the Deliverables; or   3. where any part of the Supplier System is situated; |
| **"Permitted Maintenance"** | has the meaning given to it in paragraph 8.2 of this Schedule; |
| **"Quality Plans"** | has the meaning given to it in paragraph 6.1 of this Schedule; |
| **"Sites"** | has the meaning given to it in Joint Schedule 1(Definitions), and for the purposes of this Call Off Schedule shall also include any premises from, to or at which physical interface with the Contracting Authority System takes place; |
| **"Software"** | Specially Written Software COTS Software and non-COTS Supplier and third party Software; |
| **"Software Supporting Materials"** | has the meaning given to it in paragraph 9.1 of this Schedule; |
| **"Source Code"** | computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software; |
| **"Specially Written Software"** | any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Sub-Contractor or other third party on behalf of the Supplier) specifically for the purposes of this Contract, including any modifications or enhancements to COTS Software. For the avoidance of doubt Specially Written Software does not constitute New IPR; |
|  |  |
| **"Supplier System"** | the information and communications technology system used by the Supplier in supplying the Deliverables, including the COTS Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Contracting Authority System); |
|  |  |

1. When this Schedule should be used
   1. This Schedule is designed to provide additional provisions necessary to facilitate the provision of ICT Services which are part of the Deliverables.
2. **Contracting Authority due diligence requirements** 
   1. The Supplier shall satisfy itself of all relevant details, including but not limited to, details relating to the following;
      1. suitability of the existing and (to the extent that it is defined or reasonably foreseeable at the Start Date) future Operating Environment;
      2. operating processes and procedures and the working methods of the Contracting Authority;
      3. ownership, functionality, capacity, condition and suitability for use in the provision of the Deliverables of the Contracting Authority Assets; and
      4. existing contracts (including any licences, support, maintenance and other contracts relating to the Operating Environment) referred to in the Due Diligence Information which may be novated to, assigned to or managed by the Supplier under this Contract and/or which the Supplier will require the benefit of for the provision of the Deliverables.
   2. The Supplier confirms that it has advised the Contracting Authority in writing of:
      1. each aspect, if any, of the Operating Environment that is not suitable for the provision of the ICT Services;
      2. the actions needed to remedy each such unsuitable aspect; and
      3. a timetable for and the costs of those actions.
3. **Licensed software warranty**
   1. The Supplier represents and warrants that:
      1. it has and shall continue to have all necessary rights in and to the Licensed Software made available by the Supplier (and/or any Sub-Contractor) to the Contracting Authority which are necessary for the performance of the Supplier’s obligations under this Contract including the receipt of the Deliverables by the Contracting Authority;
      2. all components of the Specially Written Software shall:
         1. be free from material design and programming errors;
         2. perform in all material respects in accordance with the relevant specifications contained in Call Off Schedule 14 (Service Levels) and Documentation; and
         3. not infringe any IPR.
4. Provision of ICT Services
   1. The Supplier shall:
      1. ensure that the release of any new COTS Software in which the Supplier owns the IPR, or upgrade to any Software in which the Supplier owns the IPR complies with the interface requirements of the Contracting Authority and (except in relation to new Software or upgrades which are released to address Malicious Software) shall notify the Contracting Authority three (3) Months before the release of any new COTS Software or Upgrade;
      2. ensure that all Software including upgrades, updates and New Releases used by or on behalf of the Supplier are currently supported versions of that Software and perform in all material respects in accordance with the relevant specification;
      3. ensure that the Supplier System will be free of all encumbrances;
      4. ensure that the Deliverables are fully compatible with any Contracting Authority Software, Contracting Authority System, or otherwise used by the Supplier in connection with this Contract;
      5. minimise any disruption to the Services and the ICT Environment and/or the Contracting Authorities operations when providing the Deliverables;
5. **Standards and Quality Requirements**
   1. The Supplier shall develop, in the timescales specified in the Order Form, quality plans that ensure that all aspects of the Deliverables are the subject of quality management systems and are consistent with BS EN ISO 9001 or any equivalent standard which is generally recognised as having replaced it ("**Quality Plans**")**.**
   2. The Supplier shall seek Approval from the Contracting Authority (not be unreasonably withheld or delayed) of the Quality Plans before implementing them. Approval shall not act as an endorsement of the Quality Plans and shall not relieve the Supplier of its responsibility for ensuring that the Deliverables are provided to the standard required by this Contract.
   3. Following the approval of the Quality Plans, the Supplier shall provide all Deliverables in accordance with the Quality Plans.
   4. The Supplier shall ensure that the Supplier Personnel shall at all times during the Call Off Contract Period:
      1. be appropriately experienced, qualified and trained to supply the Deliverables in accordance with this Contract;
      2. apply all due skill, care, diligence in faithfully performing those duties and exercising such powers as necessary in connection with the provision of the Deliverables; and
      3. obey all lawful instructions and reasonable directions of the Contracting Authority (including, if so required by the Contracting Authority, the ICT Policy) and provide the Deliverables to the reasonable satisfaction of the Contracting Authority.
6. **ICT Audit**
   1. The Supplier shall allow any auditor access to the Supplier premises to:
      1. inspect the ICT Environment and the wider service delivery environment (or any part of them);
      2. review any records created during the design and development of the Supplier System and pre-operational environment such as information relating to Testing;
      3. review the Supplier’s quality management systems including all relevant Quality Plans.
7. **Maintenance of the ICT Environment**
   1. If specified by the Contracting Authority in the Order Form, the Supplier shall create and maintain a rolling schedule of planned maintenance to the ICT Environment ("**Maintenance Schedule**") and make it available to the Contracting Authority for Approval in accordance with the timetable and instructions specified by the Contracting Authority.
   2. Once the Maintenance Schedule has been Approved, the Supplier shall only undertake such planned maintenance (which shall be known as "**Permitted Maintenance**") in accordance with the Maintenance Schedule.
   3. The Supplier shall give as much notice as is reasonably practicable to the Contracting Authority prior to carrying out any Emergency Maintenance.
   4. The Supplier shall carry out any necessary maintenance (whether Permitted Maintenance or Emergency Maintenance) where it reasonably suspects that the ICT Environment and/or the Services or any part thereof has or may have developed a fault. Any such maintenance shall be carried out in such a manner and at such times so as to avoid (or where this is not possible so as to minimise) disruption to the ICT Environment and the provision of the Deliverables.
8. **Intellectual Property Rights in ICT**
   1. Assignments granted by the Supplier: Specially Written Software
      1. The Supplier assigns (by present assignment of future rights to take effect immediately on it coming into existence) to the Contracting Authority with full guarantee (or shall procure assignment to the Contracting Authority), title to and all rights and interest in the Specially Written Software together with and including:
         1. the Documentation, Source Code and the Object Code of the Specially Written Software; and
         2. all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software and the New IPR (together the "**Software Supporting Materials**").
      2. The Supplier shall:
         1. inform the Contracting Authority of all Specially Written Software or New IPRs that are a modification, customisation, configuration or enhancement to any COTS Software;
         2. deliver to the Contracting Authority the Specially Written Software and any computer program elements of the New IPRs in both Source Code and Object Code forms together with relevant Documentation and all related Software Supporting Materials within seven days of completion or, if a relevant Milestone has been identified in an Implementation Plan, Achievement of that Milestone and shall provide updates of them promptly following each new release of the Specially Written Software, in each case on media that is reasonably acceptable to the Contracting Authority and the Contracting Authority shall become the owner of such media upon receipt; and
         3. without prejudice to paragraph 9.1.2.2, provide full details to the Contracting Authority of any of the Supplier’s Existing IPRs or Third Party IPRs which are embedded or which are an integral part of the Specially Written Software or New IPR and the Supplier hereby grants to the Contracting Authority and shall procure that any relevant third party licensor shall grant to the Contracting Authority a perpetual, irrevocable, non-exclusive, assignable, royalty-free licence to use, sub-license and/or commercially exploit such Supplier’s Existing IPRs and Third Party IPRs to the extent that it is necessary to enable the Contracting Authority to obtain the full benefits of ownership of the Specially Written Software and New IPRs.
      3. The Supplier shall promptly execute all such assignments as are required to ensure that any rights in the Specially Written Software and New IPRs are properly transferred to the Contracting Authority.
   2. Licences for non-COTS IPR from the Supplier and third parties to the Contracting Authority
      1. Unless the Contracting Authority gives its Approval the Supplier must not use any:
9. of its own Existing IPR that is not COTS Software;
10. third party software that is not COTS Software
    * 1. Where the Contracting Authority Approves the use of the Supplier’s Existing IPR that is not COTS Software the Supplier shall grants to the Contracting Authority a perpetual, royalty-free and non-exclusive licence to use adapt, and sub-license the same for any purpose relating to the Deliverables (or substantially equivalent deliverables) or for any purpose relating to the exercise of the Contracting Authorities (or, if the Contracting Authority is a Central Government Body, any other Central Government Body’s) business or function including the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display) for the Call Off Contract Period and after expiry of the Contract to the extent necessary to ensure continuity of service and an effective transition of Services to a Replacement Supplier.
      2. Where the Contracting Authority Approves the use of third party Software that is not COTS Software the Supplier shall procure that the owners or the authorised licensors of any such Software grant a direct licence to the Contracting Authority on terms at least equivalent to those set out in Paragraph 9.2.2. If the Supplier cannot obtain such a licence for the Contracting Authority it shall:
         1. notify the Contracting Authority in writing giving details of what licence terms can be obtained and whether there are alternative software providers which the Supplier could seek to use; and
         2. only use such third party IPR as referred to at paragraph 9.2.3.1 if the Contracting Authority Approves the terms of the licence from the relevant third party.
      3. Where the Supplier is unable to provide a license to the Supplier’s Existing IPR in accordance with Paragraph 9.2.2 above, it must meet the requirement by making use of COTS Software or Specially Written Software.
      4. The Supplier may terminate a licence granted under paragraph 9.2.1 by giving at least thirty (30) days’ notice in writing if there is an Authority Cause which constitutes a material Default which, if capable of remedy, is not remedied within twenty (20) Working Days after the Supplier gives the Contracting Authority written notice specifying the breach and requiring its remedy.
    1. Licenses for COTS Software by the Supplier and third parties to the Contracting Authority
       1. The Supplier shall either grant, or procure that the owners or the authorised licensors of any COTS Software grant, a direct licence to the Contracting Authority on terms no less favourable than those standard commercial terms on which such software is usually made commercially available.
       2. Where the Supplier owns the COTS Software it shall make available the COTS software to a Replacement Supplier at a price and on terms no less favourable than those standard commercial terms on which such software is usually made commercially available.
       3. Where a third party is the owner of COTS Software licensed in accordance with this Paragraph 9.3 the Supplier shall support the Replacement Supplier to make arrangements with the owner or authorised licencee to renew the license at a price and on terms no less favourable than those standard commercial terms on which such software is usually made commercially available.
       4. The Supplier shall notify the Contracting Authority within seven (7) days of becoming aware of any COTS Software which in the next thirty-six (36) months:
          1. will no longer be maintained or supported by the developer; or
          2. will no longer be made commercially available
    2. Contracting Authorities right to assign/novate licences
       1. The Contracting Authority may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to paragraph 9.2 (to:
          1. a Central Government Body; or
          2. to any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Contracting Authority.
       2. If the Contracting Authority ceases to be a Central Government Body, the successor body to the Contracting Authority shall still be entitled to the benefit of the licences granted in paragraph 9.2.
    3. **Licence granted by the Contracting Authority**
       1. The Contracting Authority grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Contract Period to use the Contracting Authority Software and the Specially Written Software solely to the extent necessary for providing the Deliverables in accordance with this Contract, including the right to grant sub-licences to Sub-Contractors provided that any relevant Sub-Contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 15 (Confidentiality).
    4. Open Source Publication
       1. Unless the Contracting Authority otherwise agrees in advance in writing (and subject to paragraph 9.6.3) all Specially Written Software and computer program elements of New IPR shall be created in a format, or able to be converted (in which case the Supplier shall also provide the converted format to the Contracting Authority) into a format, which is:
          1. suitable for publication by the Contracting Authority as Open Source; and
          2. based on Open Standards (where applicable),
       2. and the Contracting Authority may, at its sole discretion, publish the same as Open Source.
       3. The Supplier hereby warrants that the Specially Written Software and the New IPR:
          1. are suitable for release as Open Source and that the Supplier has used reasonable endeavours when developing the same to ensure that publication by the Contracting Authority will not enable a third party to use them in any way which could reasonably be foreseen to compromise the operation, running or security of the Specially Written Software, New IPRs or the Contracting Authority System;
          2. have been developed using reasonable endeavours to ensure that their publication by the Contracting Authority shall not cause any harm or damage to any party using them;
          3. do not contain any material which would bring the Contracting Authority into disrepute;
          4. can be published as Open Source without breaching the rights of any third party;
          5. will be supplied in a format suitable for publication as Open Source ("**the Open Source Publication Material**") no later than the date notified by the Contracting Authority to the Supplier; and
          6. do not contain any Malicious Software.
       4. Where the Contracting Authority has Approved a request by the Supplier for any part of the Specially Written Software or New IPRs to be excluded from the requirement to be in an Open Source format due to the intention to embed or integrate Supplier Existing IPRs and/or Third Party IPRs (and where the Parties agree that such IPRs are not intended to be published as Open Source), the Supplier shall:
          1. as soon as reasonably practicable, provide written details of the nature of the IPRs and items or Deliverables based on IPRs which are to be excluded from Open Source publication; and
          2. include in the written details and information about the impact that inclusion of such IPRs or Deliverables based on such IPRs, will have on any other Specially Written Software and/or New IPRs and the Contracting Authorities ability to publish such other items or Deliverables as Open Source.
    5. Malicious Software
       1. The Supplier shall, throughout the Contract Period, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor to check for, contain the spread of, and minimise the impact of Malicious Software.
       2. If Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Government Data, assist each other to mitigate any losses and to restore the provision of the Deliverables to its desired operating efficiency.
       3. Any cost arising out of the actions of the Parties taken in compliance with the provisions of paragraph 9.7.2 shall be borne by the Parties as follows:
          1. by the Supplier, where the Malicious Software originates from the Supplier Software, the third party Software supplied by the Supplier or the Government Data (whilst the Government Data was under the control of the Supplier) unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Contracting Authority when provided to the Supplier; and
          2. by the Contracting Authority, if the Malicious Software originates from the Contracting Authority Software or the Contracting Authority Data (whilst the Contracting Authority Data was under the control of the Contracting Authority).
11. **[Supplier-Furnished Terms**
    1. Software Licence Terms
       * 1. Terms for licensing of non-COTS third party software in accordance with Paragraph 9.2.3 are detailed in [insert reference to relevant Schedule].
         2. Terms for licensing of COTS software in accordance with Paragraph 9.3 are detailed in [insert reference to relevant Schedule].
    2. Software as a Service Terms
       * 1. Additional terms for provision of a Software as a Service solution are detailed in [insert reference to relevant Schedule].
    3. Software Support & Maintenance Terms
       * 1. Additional terms for provision of Software Support & Maintenance Services are detailed in [insert reference to relevant Schedule]**]**

**Call-Off Schedule 7 (Key Supplier Staff)**

1.1 The Annex 1 to this Schedule lists the key roles (“**Key Roles**”) and names of the persons who the Supplier shall appoint to fill those Key Roles at the Start Date.

1.2 The Supplier shall ensure that the Key Staff fulfil the Key Roles at all times during the Contract Period.

1.3 The Contracting Authority may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Staff.

1.4 The Supplier shall not and shall procure that any Subcontractor shall not remove or replace any Key Staff unless:

1.4.1 requested to do so by the Contracting Authority or the Contracting Authority Approves such removal or replacement (not to be unreasonably withheld or delayed);

1.4.2 the person concerned resigns, retires or dies or is on maternity or long-term sick leave; or

1.4.3 the person’s employment or contractual arrangement with the Supplier or Subcontractor is terminated for material breach of contract by the employee.

1.5 The Supplier shall:

1.5.1 notify the Contracting Authority promptly of the absence of any Key Staff (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);

1.5.2 ensure that any Key Role is not vacant for any longer than ten (10) Working Days;

1.5.3 give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Staff and, except in the cases of death, unexpected ill health or a material breach of the Key Staff’s employment contract, this will mean at least three (3) Months’ notice;

1.5.4 ensure that all arrangements for planned changes in Key Staff provide adequate periods during which incoming and outgoing staff work together to transfer responsibilities and ensure that such change does not have an adverse impact on the provision of the Deliverables; and

1.5.5 ensure that any replacement for a Key Role has a level of qualifications and experience appropriate to the relevant Key Role and is fully competent to carry out the tasks assigned to the Key Staff whom he or she has replaced.

1.6 The Contracting Authority may require the Supplier to remove or procure that any Subcontractor shall remove any Key Staff that the Contracting Authority considers in any respect unsatisfactory. The Contracting Authority shall not be liable for the cost of replacing any Key Staff.

**Annex 1- Key Roles**

|  |  |  |
| --- | --- | --- |
| **Key Role** | **Key Staff** | **Contract Details** |
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Call-Off Schedule 8 (Business Continuity and Disaster Recovery)

1. Definitions
   1. In this Schedule, the following words shall have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

|  |  |
| --- | --- |
| "BCDR Plan" | 1. has the meaning given to it in Paragraph 2.2 of this Schedule; |
| "Business Continuity Plan" | 1. has the meaning given to it in Paragraph 2.3.2 of this Schedule; |
| "Disaster Recovery Deliverables" | 1. the Deliverables embodied in the processes and procedures for restoring the provision of Deliverables following the occurrence of a Disaster; |
| "Disaster Recovery Plan" | 1. has the meaning given to it in Paragraph 2.3.3 of this Schedule; |
| "Disaster Recovery System" | 1. the system embodied in the processes and procedures for restoring the provision of Deliverables following the occurrence of a Disaster; |
| "Related Supplier" | 1. any person who provides Deliverables to the Contracting Authority which are related to the Deliverables from time to time; |
| "Review Report" | 1. has the meaning given to it in Paragraph 6.3 of this Schedule; and |
| "Supplier's Proposals" | 1. has the meaning given to it in Paragraph 6.3 of this Schedule; |

1. BCDR Plan
   1. The Contracting Authority and the Supplier recognise that, where specified in Schedule 4 (Framework Management), the Authority shall have the right to enforce the Contracting Authorities rights under this Schedule.
   2. At least ninety (90) Working Days prior to the Start Date the Supplier shall prepare and deliver to the Contracting Authority for the Contracting Authorities written approval a plan (a **“BCDR Plan”**), which shall detail the processes and arrangements that the Supplier shall follow to:
      1. ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Deliverables; and
      2. the recovery of the Deliverables in the event of a Disaster
   3. The BCDR Plan shall be divided into three sections:
      1. Section 1 which shall set out general principles applicable to the BCDR Plan;
      2. Section 2 which shall relate to business continuity (the **"Business Continuity Plan"**); and
      3. Section 3 which shall relate to disaster recovery (the **"Disaster Recovery Plan"**).
   4. Following receipt of the draft BCDR Plan from the Supplier, the Parties shall use reasonable endeavours to agree the contents of the BCDR Plan. If the Parties are unable to agree the contents of the BCDR Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
2. General Principles of the BCDR Plan (Section 1)
   1. Section 1 of the BCDR Plan shall:
      1. set out how the business continuity and disaster recovery elements of the BCDR Plan link to each other;
      2. provide details of how the invocation of any element of the BCDR Plan may impact upon the provision of the Deliverables and any goods and/or services provided to the Contracting Authority by a Related Supplier;
      3. contain an obligation upon the Supplier to liaise with the Contracting Authority and any Related Suppliers with respect to business continuity and disaster recovery;
      4. detail how the BCDR Plan interoperates with any overarching disaster recovery or business continuity plan of the Contracting Authority and any of its other Related Supplier in each case as notified to the Supplier by the Contracting Authority from time to time;
      5. contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multiple channels;
      6. contain a risk analysis, including:
         1. failure or disruption scenarios and assessments of likely frequency of occurrence;
         2. identification of any single points of failure within the provision of Deliverables and processes for managing those risks;
         3. identification of risks arising from the interaction of the provision of Deliverables with the goods and/or services provided by a Related Supplier; and
         4. a business impact analysis of different anticipated failures or disruptions;
      7. provide for documentation of processes, including business processes, and procedures;
      8. set out key contact details for the Supplier (and any Subcontractors) and for the Contracting Authority;
      9. identify the procedures for reverting to "normal service";
      10. set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to minimise data loss;
      11. identify the responsibilities (if any) that the Contracting Authority has agreed it will assume in the event of the invocation of the BCDR Plan; and
      12. provide for the provision of technical assistance to key contacts at the Contracting Authority as required by the Contracting Authority to inform decisions in support of the Contracting Authorities business continuity plans.
   2. The BCDR Plan shall be designed so as to ensure that:
      1. the Deliverables are provided in accordance with this Contract at all times during and after the invocation of the BCDR Plan;
      2. the adverse impact of any Disaster is minimised as far as reasonably possible;
      3. it complies with the relevant provisions of ISO/IEC 27002; ISO22301/ISO22313 and all other industry standards from time to time in force; and
      4. it details a process for the management of disaster recovery testing.
   3. The BCDR Plan shall be upgradeable and sufficiently flexible to support any changes to the Deliverables and the business operations supported by the provision of Deliverables.
   4. The Supplier shall not be entitled to any relief from its obligations under the Performance Indicators (PI’s) or Service levels, or to any increase in the Charges to the extent that a Disaster occurs as a consequence of any breach by the Supplier of this Contract.
3. Business Continuity (Section 2)
   1. The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes facilitated by the provision of Deliverables remain supported and to ensure continuity of the business operations supported by the Services including:
      1. the alternative processes, options and responsibilities that may be adopted in the event of a failure in or disruption to the provision of Deliverables; and
      2. the steps to be taken by the Supplier upon resumption of the provision of Deliverables in order to address the effect of the failure or disruption.
   2. The Business Continuity Plan shall:
      1. address the various possible levels of failures of or disruptions to the provision of Deliverables;
      2. set out the goods and/or services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Deliverables;
      3. specify any applicable Performance Indicators with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the Performance Indicators (PI’s) or Service Levels in respect of the provision of other Deliverables during any period of invocation of the Business Continuity Plan; and
      4. set out the circumstances in which the Business Continuity Plan is invoked.
4. Disaster Recovery (Section 3)
   1. The Disaster Recovery Plan (which shall be invoked only upon the occurrence of a Disaster) shall be designed to ensure that upon the occurrence of a Disaster the Supplier ensures continuity of the business operations of the Contracting Authority supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.
   2. The Supplier's BCDR Plan shall include an approach to business continuity and disaster recovery that addresses the following:
      1. loss of access to the Contracting Authority Premises;
      2. loss of utilities to the Contracting Authority Premises;
      3. loss of the Supplier's helpdesk or CAFM system;
      4. loss of a Subcontractor;
      5. emergency notification and escalation process;
      6. contact lists;
      7. staff training and awareness;
      8. BCDR Plan testing;
      9. post implementation review process;
      10. any applicable Performance Indicators (PI’s) with respect to the provision of the disaster recovery services and details of any agreed relaxation to the Performance Indicators (PI’s) or Service Levels in respect of the provision of other Deliverables during any period of invocation of the Disaster Recovery Plan;
      11. details of how the Supplier shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
      12. access controls to any disaster recovery sites used by the Supplier in relation to its obligations pursuant to this Schedule; and
      13. testing and management arrangements.
5. Review and changing the BCDR Plan
   1. The Supplier shall review the BCDR Plan:
      1. on a regular basis and as a minimum once every six (6) Months;
      2. within three (3) calendar Months of the BCDR Plan (or any part) having been invoked pursuant to Paragraph 7; and
      3. where the Contracting Authority requests in writing any additional reviews (over and above those provided for in Paragraphs 6.1.1 and 6.1.2 of this Schedule) whereupon the Supplier shall conduct such reviews in accordance with the Contracting Authorities written requirements. Prior to starting its review, the Supplier shall provide an accurate written estimate of the total costs payable by the Contracting Authority for the Contracting Authorities approval. The costs of both Parties of any such additional reviews shall be met by the Contracting Authority except that the Supplier shall not be entitled to charge the Contracting Authority for any costs that it may incur above any estimate without the Contracting Authorities prior written approval.
   2. Each review of the BCDR Plan pursuant to Paragraph 6.1 shall assess its suitability having regard to any change to the Deliverables or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the BCDR Plan or the last review of the BCDR Plan, and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the BCDR Plan. The review shall be completed by the Supplier within such period as the Contracting Authority shall reasonably require.
   3. The Supplier shall, within twenty (20) Working Days of the conclusion of each such review of the BCDR Plan, provide to the Contracting Authority a report (a **"Review Report"**) setting out the Supplier's proposals (the **"Supplier's Proposals"**) for addressing any changes in the risk profile and its proposals for amendments to the BCDR Plan.
   4. Following receipt of the Review Report and the Supplier’s Proposals, the Parties shall use reasonable endeavours to agree the Review Report and the Supplier's Proposals. If the Parties are unable to agree Review Report and the Supplier's Proposals within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
   5. The Supplier shall as soon as is reasonably practicable after receiving the approval of the Supplier's Proposals effect any change in its practices or procedures necessary so as to give effect to the Supplier's Proposals. Any such change shall be at the Supplier’s expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Deliverables.
6. Testing the BCDR Plan
   1. The Supplier shall test the BCDR Plan:
      1. regularly and in any event not less than once in every Contract Year;
      2. in the event of any major reconfiguration of the Deliverables
      3. at any time where the Contracting Authority considers it necessary (acting in its sole discretion).
   2. If the Contracting Authority requires an additional test of the BCDR Plan, it shall give the Supplier written notice and the Supplier shall conduct the test in accordance with the Contracting Authorities requirements and the relevant provisions of the BCDR Plan. The Supplier's costs of the additional test shall be borne by the Contracting Authority unless the BCDR Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.
   3. The Supplier shall undertake and manage testing of the BCDR Plan in full consultation with and under the supervision of the Contracting Authority and shall liaise with the Contracting Authority in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Contracting Authority.
   4. The Supplier shall ensure that any use by it or any Subcontractor of "live" data in such testing is first approved with the Contracting Authority. Copies of live test data used in any such testing shall be (if so required by the Contracting Authority) destroyed or returned to the Contracting Authority on completion of the test.
   5. The Supplier shall, within twenty (20) Working Days of the conclusion of each test, provide to the Contracting Authority a report setting out:
      1. the outcome of the test;
      2. any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and
      3. the Supplier's proposals for remedying any such failures.
   6. Following each test, the Supplier shall take all measures requested by the Contracting Authority to remedy any failures in the BCDR Plan and such remedial activity and re-testing shall be completed by the Supplier, at its own cost, by the date reasonably required by the Contracting Authority.
7. Invoking the BCDR Plan
   1. In the event of a complete loss of service or in the event of a Disaster, the Supplier shall immediately invoke the BCDR Plan (and shall inform the Contracting Authority promptly of such invocation). In all other instances the Supplier shall invoke or test the BCDR Plan only with the prior consent of the Contracting Authority.
8. Circumstances beyond your control
   1. The Supplier shall not be entitled to relief under Clause 20 (Circumstances beyond your control) if it would not have been impacted by the Force Majeure Event had it not failed to comply with its obligations under this Schedule.

Call-Off Schedule 9 (Security)

[Guidance Note: Contracting Authority to Select whether or when Part A (Short Form Security Requirements) or Part B (Long Form Security Requirements) should apply. Part B should be considered where there is a high level of risk to personal or sensitive data.]

Part A: Short Form Security Requirements

1. Definitions
   1. In this Schedule, the following words shall have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

|  |  |
| --- | --- |
| "Breach of Security" | 1. the occurrence of:    1. any unauthorised access to or use of the Deliverables, the Sites and/or any Information and Communication Technology ("ICT"), information or data (including the Confidential Information and the Government Data) used by the Contracting Authority and/or the Supplier in connection with this Contract; and/or    2. the loss and/or unauthorised disclosure of any information or data (including the Confidential Information and the Government Data), including any copies of such information or data, used by the Contracting Authority and/or the Supplier in connection with this Contract, 2. in either case as more particularly set out in the Security Policy where the Contracting Authority has required compliance therewith in accordance with paragraph 2.2; |
| "Security Management Plan" | 1. the Supplier's security management plan prepared pursuant to this Schedule, a draft of which has been provided by the Supplier to the Contracting Authority and as updated from time to time. |

1. Complying with security requirements and updates to them
   1. The Contracting Authority and the Supplier recognise that, where specified in Framework Schedule 4 (Framework Management), the Authority shall have the right to enforce the Contracting Authorities rights under this Schedule.
   2. The Supplier shall comply with the requirements in this Schedule in respect of the Security Management Plan. Where specified by a Contracting Authority that has undertaken a Further Competition it shall also comply with the Security Policy and shall ensure that the Security Management Plan produced by the Supplier fully complies with the Security Policy.
   3. Where the Security Policy applies the Contracting Authority shall notify the Supplier of any changes or proposed changes to the Security Policy.
   4. If the Supplier believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the provision of the Deliverables it may propose a Variation to the Contracting Authority. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Charges shall be subject to the Variation Procedure.
   5. Until and/or unless a change to the Charges is agreed by the Contracting Authority pursuant to the Variation Procedure the Supplier shall continue to provide the Deliverables in accordance with its existing obligations.
2. Security Standards
   1. The Supplier acknowledges that the Contracting Authority places great emphasis on the reliability of the performance of the Deliverables, confidentiality, integrity and availability of information and consequently on security.
   2. The Supplier shall be responsible for the effective performance of its security obligations and shall at all times provide a level of security which:
      1. is in accordance with the Law and this Contract;
      2. as a minimum demonstrates Good Industry Practice;
      3. meets any specific security threats of immediate relevance to the Deliverables and/or the Government Data; and
      4. where specified by the Contracting Authority in accordance with paragraph 2.2 complies with the Security Policy and the ICT Policy.
   3. The references to standards, guidance and policies contained or set out in Paragraph 3.2 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, as notified to the Supplier from time to time.
   4. In the event of any inconsistency in the provisions of the above standards, guidance and policies, the Supplier should notify the Contracting Authorities Representative of such inconsistency immediately upon becoming aware of the same, and the Contracting Authorities Representative shall, as soon as practicable, advise the Supplier which provision the Supplier shall be required to comply with.
3. Security Management Plan
   1. **Introduction**
      1. The Supplier shall develop and maintain a Security Management Plan in accordance with this Schedule. The Supplier shall thereafter comply with its obligations set out in the Security Management Plan.
   2. **Content of the Security Management Plan**
      1. The Security Management Plan shall:
         1. comply with the principles of security set out in Paragraph 3 and any other provisions of this Contract relevant to security;
         2. identify the necessary delegated organisational roles for those responsible for ensuring it is complied with by the Supplier;
         3. detail the process for managing any security risks from Subcontractors and third parties authorised by the Contracting Authority with access to the Deliverables, processes associated with the provision of the Deliverables, the Contracting Authority Premises, the Sites and any ICT, Information and data (including the Contracting Authorities Confidential Information and the Government Data) and any system that could directly or indirectly have an impact on that Information, data and/or the Deliverables;
         4. be developed to protect all aspects of the Deliverables and all processes associated with the provision of the Deliverables, including the Contracting Authority Premises, the Sites, and any ICT, Information and data (including the Contracting Authorities Confidential Information and the Government Data) to the extent used by the Contracting Authority or the Supplier in connection with this Contract or in connection with any system that could directly or indirectly have an impact on that Information, data and/or the Deliverables;
         5. set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the Deliverables and all processes associated with the provision of the Goods and/or Services and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Deliverables comply with the provisions of this Contract;
         6. set out the plans for transitioning all security arrangements and responsibilities for the Supplier to meet the full obligations of the security requirements set out in this Contract and, where necessary in accordance with paragraph 2.2 the Security Policy; and
         7. be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Contracting Authority engaged in the provision of the Deliverables and shall only reference documents which are in the possession of the Parties or whose location is otherwise specified in this Schedule.
   3. **Development of the Security Management Plan**
      1. Within twenty (20)Working Days after the Start Date and in accordance with Paragraph 4.4, the Supplier shall prepare and deliver to the Contracting Authority for Approval a fully complete and up to date Security Management Plan which will be based on the draft Security Management Plan.
      2. If the Security Management Plan submitted to the Contracting Authority in accordance with Paragraph 4.3.1, or any subsequent revision to it in accordance with Paragraph 4.4, is Approved it will be adopted immediately and will replace the previous version of the Security Management Plan and thereafter operated and maintained in accordance with this Schedule. If the Security Management Plan is not Approved, the Supplier shall amend it within ten (10) Working Days of a notice of non-approval from the Contracting Authority and re-submit to the Contracting Authority for Approval. The Parties will use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days from the date of its first submission to the Contracting Authority. If the Contracting Authority does not approve the Security Management Plan following its resubmission, the matter will be resolved in accordance with the Dispute Resolution Procedure.
      3. The Contracting Authority shall not unreasonably withhold or delay its decision to Approve or not the Security Management Plan pursuant to Paragraph 4.3.2. However a refusal by the Contracting Authority to Approve the Security Management Plan on the grounds that it does not comply with the requirements set out in Paragraph 4.2 shall be deemed to be reasonable.
      4. Approval by the Contracting Authority of the Security Management Plan pursuant to Paragraph 4.3.2 or of any change to the Security Management Plan in accordance with Paragraph 4.4 shall not relieve the Supplier of its obligations under this Schedule.
   4. **Amendment of the Security Management Plan**
      1. The Security Management Plan shall be fully reviewed and updated by the Supplier at least annually to reflect:
         1. emerging changes in Good Industry Practice;
         2. any change or proposed change to the Deliverables and/or associated processes;
         3. where necessary in accordance with paragraph 2.2, any change to the Security Policy;
         4. any new perceived or changed security threats; and
         5. any reasonable change in requirements requested by the Contracting Authority.
      2. The Supplier shall provide the Contracting Authority with the results of such reviews as soon as reasonably practicable after their completion and amendment of the Security Management Plan at no additional cost to the Contracting Authority. The results of the review shall include, without limitation:
         1. suggested improvements to the effectiveness of the Security Management Plan;
         2. updates to the risk assessments; and
         3. suggested improvements in measuring the effectiveness of controls.
      3. Subject to Paragraph 4.4.4, any change or amendment which the Supplier proposes to make to the Security Management Plan (as a result of a review carried out in accordance with Paragraph 4.4.1, a request by the Contracting Authority or otherwise) shall be subject to the Variation Procedure.
      4. The Contracting Authority may, acting reasonably, Approve and require changes or amendments to the Security Management Plan to be implemented on timescales faster than set out in the Variation Procedure but, without prejudice to their effectiveness, all such changes and amendments shall thereafter be subject to the Variation Procedure for the purposes of formalising and documenting the relevant change or amendment.
4. Security breach
   1. Either Party shall notify the other in accordance with the agreed security incident management process (as detailed in the Security Management Plan) upon becoming aware of any Breach of Security or any potential or attempted Breach of Security.
   2. Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in Paragraph 5.1, the Supplier shall:
      1. immediately take all reasonable steps (which shall include any action or changes reasonably required by the Contracting Authority) necessary to:
         1. minimise the extent of actual or potential harm caused by any Breach of Security;
         2. remedy such Breach of Security to the extent possible and protect the integrity of the Contracting Authority and the provision of the Goods and/or Services to the extent within its control against any such Breach of Security or attempted Breach of Security;
         3. prevent an equivalent breach in the future exploiting the same cause failure; and
         4. as soon as reasonably practicable provide to the Contracting Authority, where the Contracting Authority so requests, full details (using the reporting mechanism defined by the Security Management Plan) of the Breach of Security or attempted Breach of Security, including a cause analysis where required by the Contracting Authority.
   3. In the event that any action is taken in response to a Breach of Security or potential or attempted Breach of Security that demonstrates non-compliance of the Security Management Plan with the Security Policy (where relevant in accordance with paragraph 2.2) or the requirements of this Schedule, then any required change to the Security Management Plan shall be at no cost to the Contracting Authority.

Part B: Long Form Security Requirements

1. Definitions
   1. In this Schedule the following words shall have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

|  |  |
| --- | --- |
| "Breach of Security" | 1. means the occurrence of:    1. any unauthorised access to or use of the Goods and/or Deliverables, the Sites and/or any Information and Communication Technology ("ICT"), information or data (including the Confidential Information and the Government Data) used by the Contracting Authority and/or the Supplier in connection with this Contract; and/or    2. the loss and/or unauthorised disclosure of any information or data (including the Confidential Information and the Government Data), including any copies of such information or data, used by the Contracting Authority and/or the Supplier in connection with this Contract, 2. in either case as more particularly set out in the security requirements in the Security Policy where the Contracting Authority has required compliance therewith in accordance with paragraph 3.4.3 d; |
| "ISMS" | 1. the information security management system and process developed by the Supplier in accordance with Paragraph 3 (ISMS) as updated from time to time in accordance with this Schedule; and |
| "Security Tests" | 1. tests to validate the ISMS and security of all relevant processes, systems, incident response plans, patches to vulnerabilities and mitigations to Breaches of Security. |

1. Security Requirements
   1. The Contracting Authority and the Supplier recognise that, where specified in Framework Schedule 4 (Framework Management), the Authority shall have the right to enforce the Contracting Authorities rights under this Schedule.
   2. The Parties acknowledge that the purpose of the ISMS and Security Management Plan are to ensure a good organisational approach to security under which the specific requirements of this Contract will be met.
   3. The Parties shall each appoint a security representative to be responsible for Security. The initial security representatives of the Parties are:
      1. [insert security representative of the Contracting Authority]
      2. [insert security representative of the Supplier]
   4. The Contracting Authority shall clearly articulate its high level security requirements so that the Supplier can ensure that the ISMS, security related activities and any mitigations are driven by these fundamental needs.
   5. Both Parties shall provide a reasonable level of access to any members of their staff for the purposes of designing, implementing and managing security.
   6. The Supplier shall use as a minimum Good Industry Practice in the day to day operation of any system holding, transferring or processing Government Data and any system that could directly or indirectly have an impact on that information, and shall ensure that Government Data remains under the effective control of the Supplier at all times.
   7. The Supplier shall ensure the up-to-date maintenance of a security policy relating to the operation of its own organisation and systems and on request shall supply this document as soon as practicable to the Contracting Authority.
   8. The Contracting Authority and the Supplier acknowledge that information security risks are shared between the Parties and that a compromise of either the Supplier or the Contracting Authorities security provisions represents an unacceptable risk to the Contracting Authority requiring immediate communication and co-operation between the Parties.
2. Information Security Management System (ISMS)
   1. The Supplier shall develop and submit to the Contracting Authority, within twenty (20) Working Days after the Start Date, an information security management system for the purposes of this Contract and shall comply with the requirements of Paragraphs 3.4 to 3.6.
   2. The Supplier acknowledges that the Contracting Authority places great emphasis on the reliability of the performance of the Deliverables, confidentiality, integrity and availability of information and consequently on the security provided by the ISMS and that the Supplier shall be responsible for the effective performance of the ISMS.
   3. The Contracting Authority acknowledges that;
      1. If the Contracting Authority has not stipulated during a Further Competition that it requires a bespoke ISMS, the ISMS provided by the Supplier may be an extant ISMS covering the Services and their implementation across the Supplier’s estate; and
      2. Where the Contracting Authority has stipulated that it requires a bespoke ISMS then the Supplier shall be required to present the ISMS for the Contracting Authorities Approval.
   4. The ISMS shall:
      1. if the Contracting Authority has stipulated that it requires a bespoke ISMS, be developed to protect all aspects of the Deliverables and all processes associated with the provision of the Deliverables, including the Contracting Authority Premises, the Sites, the Supplier System, the Contracting Authority System (to the extent that it is under the control of the Supplier) and any ICT, information and data (including the Contracting Authorities Confidential Information and the Government Data) to the extent used by the Contracting Authority or the Supplier in connection with this Contract;
      2. meet the relevant standards in ISO/IEC 27001 and ISO/IEC27002 in accordance with Paragraph 7;
      3. at all times provide a level of security which:
         1. is in accordance with the Law and this Contract;
         2. complies with the Baseline Security Requirements;
         3. as a minimum demonstrates Good Industry Practice;
         4. where specified by a Contracting Authority that has undertaken a Further Competition - complies with the Security Policy and the ICT Policy;
         5. complies with at least the minimum set of security measures and standards as determined by the Security Policy Framework (Tiers 1-4) (<https://www.gov.uk/government/publications/security-policy-framework/hmg-security-policy-framework>)
         6. takes account of guidance issued by the Centre for Protection of National Infrastructure (<https://www.cpni.gov.uk>)
         7. complies with HMG Information Assurance Maturity Model and Assurance Framework (<https://www.ncsc.gov.uk/articles/hmg-ia-maturity-model-iamm>)
         8. meets any specific security threats of immediate relevance to the ISMS, the Deliverables and/or Government Data;
         9. addresses issues of incompatibility with the Supplier’s own organisational security policies; and
         10. complies with ISO/IEC27001 and ISO/IEC27002 in accordance with Paragraph 7;
      4. document the security incident management processes and incident response plans;
      5. document the vulnerability management policy including processes for identification of system vulnerabilities and assessment of the potential impact on the Deliverables of any new threat, vulnerability or exploitation technique of which the Supplier becomes aware, prioritisation of security patches, testing of security patches, application of security patches, a process for Contracting Authority approvals of exceptions, and the reporting and audit mechanism detailing the efficacy of the patching policy; and
      6. be certified by (or by a person with the direct delegated authority of) a Supplier’s main board representative, being the "Chief Security Officer", "Chief Information Officer", "Chief Technical Officer" or "Chief Financial Officer" (or equivalent as agreed in writing by the Contracting Authority in advance of issue of the relevant Security Management Plan).
   5. Subject to Paragraph 2 the references to Standards, guidance and policies contained or set out in Paragraph 3.4 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, as notified to the Supplier from time to time.
   6. In the event that the Supplier becomes aware of any inconsistency in the provisions of the standards, guidance and policies set out in Paragraph 3.4, the Supplier shall immediately notify the Contracting Authority Representative of such inconsistency and the Contracting Authority Representative shall, as soon as practicable, notify the Supplier as to which provision the Supplier shall comply with.
   7. If the bespoke ISMS submitted to the Contracting Authority pursuant to Paragraph 3.3.1 is Approved by the Contracting Authority, it shall be adopted by the Supplier immediately and thereafter operated and maintained in accordance with this Schedule. If the ISMS is not Approved by the Contracting Authority, the Supplier shall amend it within ten (10) Working Days of a notice of non-approval from the Contracting Authority and re-submit it to the Contracting Authority for Approval. The Parties shall use all reasonable endeavours to ensure that the Approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days from the date of the first submission of the ISMS to the Contracting Authority. If the Contracting Authority does not Approve the ISMS following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure. No Approval to be given by the Contracting Authority pursuant to this Paragraph 3 may be unreasonably withheld or delayed. However any failure to approve the ISMS on the grounds that it does not comply with any of the requirements set out in Paragraphs 3.4 to 3.6 shall be deemed to be reasonable.
   8. Approval by the Contracting Authority of the ISMS pursuant to Paragraph 3.7 or of any change to the ISMS shall not relieve the Supplier of its obligations under this Schedule.
3. Security Management Plan
   1. Within twenty (20) Working Days after the Start Date, the Supplier shall prepare and submit to the Contracting Authority for Approval in accordance with Paragraph 4 fully developed, complete and up-to-date Security Management Plan which shall comply with the requirements of Paragraph 4.2.
   2. The Security Management Plan shall:
      1. be based on the initial Security Management Plan set out in Annex 2 (Security Management Plan);
      2. comply with the Baseline Security Requirements and, where specified by the Contracting Authority in accordance with paragraph 3.4.3 d, the Security Policy;
      3. identify the necessary delegated organisational roles defined for those responsible for ensuring this Schedule is complied with by the Supplier;
      4. detail the process for managing any security risks from Subcontractors and third parties authorised by the Contracting Authority with access to the Goods and/or Services, processes associated with the delivery of the Goods and/or Services, the Contracting Authority Premises, the Sites, the Supplier System, the Contracting Authority System (to the extent that it is under the control of the Supplier) and any ICT, Information and data (including the Contracting Authorities Confidential Information and the Government Data) and any system that could directly or indirectly have an impact on that information, data and/or the Deliverables;
      5. unless otherwise specified by the Contracting Authority in writing, be developed to protect all aspects of the Deliverables and all processes associated with the delivery of the Deliverables, including the Contracting Authority Premises, the Sites, the Supplier System, the Contracting Authority System (to the extent that it is under the control of the Supplier) and any ICT, Information and data (including the Contracting Authorities Confidential Information and the Government Data) to the extent used by the Contracting Authority or the Supplier in connection with this Contract or in connection with any system that could directly or indirectly have an impact on that Information, data and/or the Deliverables;
      6. set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the Deliverables and all processes associated with the delivery of the Deliverables and at all times comply with and specify security measures and procedures which are sufficient to ensure that the Deliverables comply with the provisions of this Schedule (including the requirements set out in Paragraph 3.4);
      7. demonstrate that the Supplier’s approach to delivery of the Deliverables has minimised the Contracting Authority and Supplier effort required to comply with this Schedule through consideration of available, appropriate and practicable pan-government accredited services (for example, ‘platform as a service’ offering from the G-Cloud catalogue);
      8. set out the plans for transitioning all security arrangements and responsibilities from those in place at the Start Date to those incorporated in the ISMS within the timeframe agreed between the Parties;
      9. set out the scope of the Contracting Authority System that is under the control of the Supplier;
      10. be structured in accordance with ISO/IEC27001 and ISO/IEC27002, cross-referencing if necessary to other Schedules which cover specific areas included within those standards; and
      11. be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Contracting Authority engaged in the Deliverables and shall reference only documents which are in the possession of the Parties or whose location is otherwise specified in this Schedule.
   3. If the Security Management Plan submitted to the Contracting Authority pursuant to Paragraph 4.1 is Approved by the Contracting Authority, it shall be adopted by the Supplier immediately and thereafter operated and maintained in accordance with this Schedule. If the Security Management Plan is not approved by the Contracting Authority, the Supplier shall amend it within ten (10) Working Days of a notice of non-approval from the Contracting Authority and re-submit it to the Contracting Authority for Approval. The Parties shall use all reasonable endeavours to ensure that the Approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days from the date of the first submission to the Contracting Authority of the Security Management Plan. If the Contracting Authority does not Approve the Security Management Plan following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure. No Approval to be given by the Contracting Authority pursuant to this Paragraph may be unreasonably withheld or delayed. However any failure to approve the Security Management Plan on the grounds that it does not comply with the requirements set out in Paragraph 4.2 shall be deemed to be reasonable.
   4. Approval by the Contracting Authority of the Security Management Plan pursuant to Paragraph 4.3 or of any change or amendment to the Security Management Plan shall not relieve the Supplier of its obligations under this Schedule.
4. Amendment of the ISMS and Security Management Plan
   1. The ISMS and Security Management Plan shall be fully reviewed and updated by the Supplier and at least annually to reflect:
      1. emerging changes in Good Industry Practice;
      2. any change or proposed change to the Supplier System, the Deliverables and/or associated processes;
      3. any new perceived or changed security threats;
      4. where required in accordance with paragraph 3.4.3 d, any changes to the Security Policy;
      5. any new perceived or changed security threats; and
      6. any reasonable change in requirement requested by the Contracting Authority.
   2. The Supplier shall provide the Contracting Authority with the results of such reviews as soon as reasonably practicable after their completion and amend the ISMS and Security Management Plan at no additional cost to the Contracting Authority. The results of the review shall include, without limitation:
      1. suggested improvements to the effectiveness of the ISMS;
      2. updates to the risk assessments;
      3. proposed modifications to the procedures and controls that affect information security to respond to events that may impact on the ISMS; and
      4. suggested improvements in measuring the effectiveness of controls.
   3. Subject to Paragraph 5.4, any change which the Supplier proposes to make to the ISMS or Security Management Plan (as a result of a review carried out pursuant to Paragraph 5.1, a Contracting Authority request, a change to Annex 1 (Security) or otherwise) shall be subject to the Variation Procedure and shall not be implemented until Approved in writing by the Contracting Authority.
   4. The Contracting Authority may, acting reasonably, Approve and require changes or amendments to the ISMS or Security Management Plan to be implemented on timescales faster than set out in the Variation Procedure but, without prejudice to their effectiveness, all such changes and amendments shall thereafter be subject to the Variation Procedure for the purposes of formalising and documenting the relevant change or amendment.
5. Security Testing
   1. The Supplier shall conduct Security Tests from time to time (and at least annually across the scope of the ISMS) and additionally after any change or amendment to the ISMS (including security incident management processes and incident response plans) or the Security Management Plan. Security Tests shall be designed and implemented by the Supplier so as to minimise the impact on the delivery of the Deliverables and the date, timing, content and conduct of such Security Tests shall be agreed in advance with the Contracting Authority. Subject to compliance by the Supplier with the foregoing requirements, if any Security Tests adversely affect the Supplier’s ability to deliver the Deliverables so as to meet the KPIs, the Supplier shall be granted relief against any resultant under-performance for the period of the Security Tests.
   2. The Contracting Authority shall be entitled to send a representative to witness the conduct of the Security Tests. The Supplier shall provide the Contracting Authority with the results of such Security Tests (in a form approved by the Contracting Authority in advance) as soon as practicable after completion of each Security Test.
   3. Without prejudice to any other right of audit or access granted to the Contracting Authority pursuant to this Contract, the Contracting Authority and/or its authorised representatives shall be entitled, at any time upon giving reasonable notice to the Supplier, to carry out such tests (including penetration tests) as it may deem necessary in relation to the ISMS and the Supplier's compliance with the ISMS and the Security Management Plan. The Contracting Authority may notify the Supplier of the results of such tests after completion of each such test. If any such Contracting Authorities test adversely affects the Supplier’s ability to deliver the Deliverables so as to meet the KPIs, the Supplier shall be granted relief against any resultant under-performance for the period of the Contracting Authorities test.
   4. Where any Security Test carried out pursuant to Paragraphs 6.2 or 6.3 reveals any actual or potential Breach of Security or weaknesses (including un-patched vulnerabilities, poor configuration and/or incorrect system management), the Supplier shall promptly notify the Contracting Authority of any changes to the ISMS and to the Security Management Plan (and the implementation thereof) which the Supplier proposes to make in order to correct such failure or weakness. Subject to the Contracting Authorities prior written Approval, the Supplier shall implement such changes to the ISMS and the Security Management Plan and repeat the relevant Security Tests in accordance with the timetable agreed with the Contracting Authority or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the ISMS or Security Management Plan is to address a non-compliance with the Security Policy or security requirements (as set out in Annex 1 (Baseline Security Requirements) to this Schedule) or the requirements of this Schedule, the change to the ISMS or Security Management Plan shall be at no cost to the Contracting Authority.
   5. If any repeat Security Test carried out pursuant to Paragraph 6.4 reveals an actual or potential Breach of Security exploiting the same root cause failure, such circumstance shall constitute a material Default of this Contract.
6. Complying with the ISMS
   1. The Contracting Authority shall be entitled to carry out such security audits as it may reasonably deem necessary in order to ensure that the ISMS maintains compliance with the principles and practices of ISO 27001 and/or the Security Policy where such compliance is required in accordance with paragraph 3.4.3 d.
   2. If, on the basis of evidence provided by such security audits, it is the Contracting Authorities reasonable opinion that compliance with the principles and practices of ISO/IEC 27001 and/or, where relevant, the Security Policy are not being achieved by the Supplier, then the Contracting Authority shall notify the Supplier of the same and give the Supplier a reasonable time (having regard to the extent and criticality of any non-compliance and any other relevant circumstances) to implement and remedy. If the Supplier does not become compliant within the required time, then the Contracting Authority shall have the right to obtain an independent audit against these standards in whole or in part.
   3. If, as a result of any such independent audit as described in Paragraph the Supplier is found to be non-compliant with the principles and practices of ISO/IEC 27001 and/or, where relevant, the Security Policy then the Supplier shall, at its own expense, undertake those actions required in order to achieve the necessary compliance and shall reimburse in full the costs incurred by the Contracting Authority in obtaining such audit.
7. Security Breach
   1. Either Party shall notify the other in accordance with the agreed security incident management process as defined by the ISMS upon becoming aware of any breach of security or any potential or attempted Breach of Security.
   2. Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in Paragraph 8.1, the Supplier shall:
      1. immediately take all reasonable steps (which shall include any action or changes reasonably required by the Contracting Authority) necessary to:
         1. minimise the extent of actual or potential harm caused by any Breach of Security;
         2. remedy such Breach of Security or any potential or attempted Breach of Security in order to protect the integrity of the Contracting Authority Property and/or Contracting Authority Assets and/or ISMS to the extent that this is within the Supplier’s control;
         3. apply a tested mitigation against any such Breach of Security or attempted Breach of Security and provided that reasonable testing has been undertaken by the Supplier, if the mitigation adversely affects the Supplier’s ability to provide the Deliverables so as to meet the relevant Service Level Performance Indicators, the Supplier shall be granted relief against any resultant under-performance for such period as the Contracting Authority, acting reasonably, may specify by written notice to the Supplier;
         4. prevent a further Breach of Security or any potential or attempted Breach of Security in the future exploiting the same root cause failure; and
         5. supply any requested data to the Contracting Authority (or the Computer Emergency Response Team for UK Government ("GovCertUK")) on the Contracting Authorities request within two (2) Working Days and without charge (where such requests are reasonably related to a possible incident or compromise); and
         6. as soon as reasonably practicable provide to the Contracting Authority full details (using the reporting mechanism defined by the ISMS) of the Breach of Security or attempted Breach of Security, including a root cause analysis where required by the Contracting Authority.
   3. In the event that any action is taken in response to a Breach of Security or potential or attempted Breach of Security that demonstrates non-compliance of the ISMS with the Security Policy (where relevant) or the requirements of this Schedule, then any required change to the ISMS shall be at no cost to the Contracting Authority.
8. Vulnerabilities and fixing them
   1. The Contracting Authority and the Supplier acknowledge that from time to time vulnerabilities in the ICT Environment will be discovered which unless mitigated will present an unacceptable risk to the Contracting Authorities information.
   2. The severity of threat vulnerabilities for COTS Software shall be categorised by the Supplier as ‘Critical’, ‘Important’ and ‘Other’ by aligning these categories to the vulnerability scoring according to the agreed method in the ISMS and using the appropriate vulnerability scoring systems including:
      1. the ‘National Vulnerability Database’ ‘Vulnerability Severity Ratings’: ‘High’, ‘Medium’ and ‘Low’ respectively (these in turn are aligned to CVSS scores as set out by NIST http://nvd.nist.gov/cvss.cfm); and
      2. Microsoft’s ‘Security Bulletin Severity Rating System’ ratings ‘Critical’, ‘Important’, and the two remaining levels (‘Moderate’ and ‘Low’) respectively.
   3. The Supplier shall procure the application of security patches to vulnerabilities within a maximum period from the public release of such patches with those vulnerabilities categorised as ‘Critical’ within 14 days of release, ‘Important’ within 30 days of release and all ‘Other’ within 60 Working Days of release, except where:
      1. the Supplier can demonstrate that a vulnerability is not exploitable within the context of any Service (e.g. because it resides in a software component which is not running in the service) provided vulnerabilities which the Supplier asserts cannot be exploited within the context of a Service must be remedied by the Supplier within the above timescales if the vulnerability becomes exploitable within the context of the Service;
      2. the application of a ‘Critical’ or ‘Important’ security patch adversely affects the Supplier’s ability to deliver the Services in which case the Supplier shall be granted an extension to such timescales of 5 days, provided the Supplier had followed and continues to follow the security patch test plan agreed with the Contracting Authority; or
      3. the Contracting Authority agrees a different maximum period after a case-by-case consultation with the Supplier under the processes defined in the ISMS.
   4. The Specification and Mobilisation Plan (if applicable) shall include provisions for major version upgrades of all COTS Software to be upgraded within 6 Months of the release of the latest version, such that it is no more than one major version level below the latest release (normally codified as running software no older than the ‘n-1 version’) throughout the Term unless:
      1. where upgrading such COTS Software reduces the level of mitigations for known threats, vulnerabilities or exploitation techniques, provided always that such upgrade is made within 12 Months of release of the latest version; or
      2. is agreed with the Contracting Authority in writing.
   5. The Supplier shall:
      1. implement a mechanism for receiving, analysing and acting upon threat information supplied by GovCertUK, or any other competent Central Government Body;
      2. ensure that the ICT Environment (to the extent that the ICT Environment is within the control of the Supplier) is monitored to facilitate the detection of anomalous behaviour that would be indicative of system compromise;
      3. ensure it is knowledgeable about the latest trends in threat, vulnerability and exploitation that are relevant to the ICT Environment by actively monitoring the threat landscape during the Contract Period;
      4. pro-actively scan the ICT Environment (to the extent that the ICT Environment is within the control of the Supplier) for vulnerable components and address discovered vulnerabilities through the processes described in the ISMS as developed under Paragraph 3.3.5;
      5. from the date specified in the Security Management Plan provide a report to the Contracting Authority within five (5) Working Days of the end of each Month detailing both patched and outstanding vulnerabilities in the ICT Environment (to the extent that the ICT Environment is within the control of the Supplier) and any elapsed time between the public release date of patches and either time of application or for outstanding vulnerabilities the time of issue of such report;
      6. propose interim mitigation measures to vulnerabilities in the ICT Environment known to be exploitable where a security patch is not immediately available;
      7. remove or disable any extraneous interfaces, services or capabilities that are not needed for the provision of the Services (in order to reduce the attack surface of the ICT Environment); and
      8. inform the Contracting Authority when it becomes aware of any new threat, vulnerability or exploitation technique that has the potential to affect the security of the ICT Environment and provide initial indications of possible mitigations.
   6. If the Supplier is unlikely to be able to mitigate the vulnerability within the timescales under this Paragraph 9, the Supplier shall immediately notify the Contracting Authority.
   7. A failure to comply with Paragraph 9.3 shall constitute a Default, and the Supplier shall comply with the Rectification Plan Process.

Part B – Annex 1:

Baseline security requirements

1. Handling Classified information
   1. The Supplier shall not handle Contracting Authority information classified SECRET or TOP SECRET except if there is a specific requirement and in this case prior to receipt of such information the Supplier shall seek additional specific guidance from the Contracting Authority.
2. End user devices
   1. When Government Data resides on a mobile, removable or physically uncontrolled device it must be stored encrypted using a product or system component which has been formally assured through a recognised certification process of the UK Government Communications Electronics Security Group ("CESG") to at least Foundation Grade, for example, under the CESG Commercial Product Assurance scheme ("CPA").
   2. Devices used to access or manage Government Data and services must be under the management authority of Contracting Authority or Supplier and have a minimum set of security policy configuration enforced. These devices must be placed into a ‘known good’ state prior to being provisioned into the management authority of the Contracting Authority. Unless otherwise agreed with the Contracting Authority in writing, all Supplier devices are expected to meet the set of security requirements set out in the End User Devices Security Guidance (<https://www.ncsc.gov.uk/guidance/end-user-device-security)>. Where the guidance highlights shortcomings in a particular platform the Supplier may wish to use, then these should be discussed with the Contracting Authority and a joint decision shall be taken on whether the residual risks are acceptable. Where the Supplier wishes to deviate from the CESG guidance, then this should be agreed in writing on a case by case basis with the Contracting Authority.
3. Data Processing, Storage, Management and Destruction
   1. The Supplier and Contracting Authority recognise the need for the Contracting Authorities information to be safeguarded under the UK Data Protection regime or a similar regime. To that end, the Supplier must be able to state to the Contracting Authority the physical locations in which data may be stored, processed and managed from, and what legal and regulatory frameworks Government Data will be subject to at all times.
   2. The Supplier shall agree any change in location of data storage, processing and administration with the Contracting Authority in accordance with Clause 14 (Data protection).
   3. The Supplier shall:
      1. provide the Contracting Authority with all Government Data on demand in an agreed open format;
      2. have documented processes to guarantee availability of Government Data in the event of the Supplier ceasing to trade;
      3. securely destroy all media that has held Government Data at the end of life of that media in line with Good Industry Practice; and
      4. securely erase any or all Government Data held by the Supplier when requested to do so by the Contracting Authority.
4. Ensuring secure communications
   1. The Contracting Authority requires that any Government Data transmitted over any public network (including the Internet, mobile networks or un-protected enterprise network) or to a mobile device must be encrypted using a product or system component which has been formally assured through a certification process recognised by CESG, to at least Foundation Grade, for example, under CPA.
   2. The Contracting Authority requires that the configuration and use of all networking equipment to provide the Services, including those that are located in secure physical locations, are at least compliant with Good Industry Practice.
5. Security by design
   1. The Supplier shall apply the ‘principle of least privilege’ (the practice of limiting systems, processes and user access to the minimum possible level) to the design and configuration of IT systems which will process or store Government Data.
   2. When designing and configuring the ICT Environment (to the extent that the ICT Environment is within the control of the Supplier) the Supplier shall follow Good Industry Practice and seek guidance from recognised security professionals with the appropriate skills and/or a CESG Certified Professional certification (<https://www.ncsc.gov.uk/articles/cesg-certification-ia-professionals-and-guidance-certification-ia-professionals-documents>) for all bespoke or complex components of the ICT Environment (to the extent that the ICT Environment is within the control of the Supplier).
6. Security of Supplier Staff
   1. Supplier Staff shall be subject to pre-employment checks that include, as a minimum: identity, unspent criminal convictions and right to work.
   2. The Supplier shall agree on a case by case basis Supplier Staff roles which require specific government clearances (such as ‘SC’) including system administrators with privileged access to IT systems which store or process Government Data.
   3. The Supplier shall prevent Supplier Staff who are unable to obtain the required security clearances from accessing systems which store, process, or are used to manage Government Data except where agreed with the Contracting Authority in writing.
   4. All Supplier Staff that have the ability to access Government Data or systems holding Government Data shall undergo regular training on secure information management principles. Unless otherwise agreed with the Contracting Authority in writing, this training must be undertaken annually.
   5. Where the Supplier or Subcontractors grants increased ICT privileges or access rights to Supplier Staff, those Supplier Staff shall be granted only those permissions necessary for them to carry out their duties. When staff no longer need elevated privileges or leave the organisation, their access rights shall be revoked within one (1) Working Day.
7. Restricting and monitoring access
   1. The Supplier shall operate an access control regime to ensure all users and administrators of the ICT Environment (to the extent that the ICT Environment is within the control of the Supplier) are uniquely identified and authenticated when accessing or administering the Services. Applying the ‘principle of least privilege’, users and administrators shall be allowed access only to those parts of the ICT Environment that they require. The Supplier shall retain an audit record of accesses.
8. Audit
   1. The Supplier shall collect audit records which relate to security events in the systems or that would support the analysis of potential and actual compromises. In order to facilitate effective monitoring and forensic readiness such Supplier audit records should (as a minimum) include:
      1. Logs to facilitate the identification of the specific asset which makes every outbound request external to the ICT Environment (to the extent that the ICT Environment is within the control of the Supplier). To the extent the design of the Deliverables allows such logs shall include those from DHCP servers, HTTP/HTTPS proxy servers, firewalls and routers.
      2. Security events generated in the ICT Environment (to the extent that the ICT Environment is within the control of the Supplier) and shall include: privileged account log-on and log-off events, the start and termination of remote access sessions, security alerts from desktops and server operating systems and security alerts from third party security software.
   2. The Supplier and the Contracting Authority shall work together to establish any additional audit and monitoring requirements for the ICT Environment.
   3. The Supplier shall retain audit records collected in compliance with this Paragraph 8 for a period of at least 6 Months.

Part B – Annex 2 - Security Management Plan

[                ]

Call-Off Schedule 10 (Exit Management)

1. Definitions
   1. In this Schedule, the following words shall have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

|  |  |
| --- | --- |
| "Exclusive Assets" | 1. Supplier Assets used exclusively by the Supplier [or a Key Subcontractor] in the provision of the Deliverables; |
| "Exit Information" | 1. has the meaning given to it in Paragraph 3.1 of this Schedule; |
| "Exit Manager" | 1. the person appointed by each Party to manage their respective obligations under this Schedule; |
| "Net Book Value" | 1. the current net book value of the relevant Supplier Asset(s) calculated in accordance with the Framework Tender or Call-Off Tender (if stated) or (if not stated) the depreciation policy of the Supplier (which the Supplier shall ensure is in accordance with Good Industry Practice); |
| "Non-Exclusive Assets" | 1. those Supplier Assets used by the Supplier [or a Key Subcontractor] in connection with the Deliverables but which are also used by the Supplier [or Key Subcontractor] for other purposes; |
| "Registers" | 1. the register and configuration database referred to in Paragraph 2.2 of this Schedule; |
| "Replacement Goods" | 1. any goods which are substantially similar to any of the Goods and which the Contracting Authority receives in substitution for any of the Goods following the End Date, whether those goods are provided by the Contracting Authority internally and/or by any third party; |
| "Replacement Services" | 1. any services which are substantially similar to any of the Services and which the Contracting Authority receives in substitution for any of the Services following the End Date, whether those goods are provided by the Contracting Authority internally and/or by any third party; |
| "Termination Assistance" | 1. the activities to be performed by the Supplier pursuant to the Exit Plan, and other assistance required by the Contracting Authority pursuant to the Termination Assistance Notice; |
| "Termination Assistance Notice" | 1. has the meaning given to it in Paragraph 5.1 of this Schedule; |
| "Termination Assistance Period" | 1. the period specified in a Termination Assistance Notice for which the Supplier is required to provide the Termination Assistance as such period may be extended pursuant to Paragraph 5.2 of this Schedule; |
| "Transferable Assets" | 1. Exclusive Assets which are capable of legal transfer to the Contracting Authority; |
| "Transferable Contracts" | 1. Sub-Contracts, licences for Supplier's Software, licences for Third Party Software or other agreements which are necessary to enable the Contracting Authority or any Replacement Supplier to provide the Deliverables or the Replacement Goods and/or Replacement Services, including in relation to licences all relevant Documentation; |
| "Transferring Assets" | 1. has the meaning given to it in Paragraph 8.2.1 of this Schedule; |
| "Transferring Contracts" | 1. has the meaning given to it in Paragraph 8.2.3 of this Schedule. |

1. Supplier must always be prepared for contract exit
   1. The Supplier shall within 30 days from the Start Date provide to the Contracting Authority a copy of its depreciation policy to be used for the purposes of calculating Net Book Value.
   2. During the Contract Period, the Supplier shall promptly:
      1. create and maintain a detailed register of all Supplier Assets (including description, condition, location and details of ownership and status as either Exclusive Assets or Non-Exclusive Assets and Net Book Value) and Sub-contracts and other relevant agreements required in connection with the Deliverables; and
      2. create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Supplier provides the Deliverables

("**Registers**").

* 1. The Supplier shall:
     1. ensure that all Exclusive Assets listed in the Registers are clearly physically identified as such; and
     2. procure that all licences for Third Party Software and all Sub-Contracts shall be assignable and/or capable of novation (at no cost or restriction to the Contracting Authority) at the request of the Contracting Authority to the Contracting Authority (and/or its nominee) and/or any Replacement Supplier upon the Supplier ceasing to provide the Deliverables (or part of them) and if the Supplier is unable to do so then the Supplier shall promptly notify the Contracting Authority and the Contracting Authority may require the Supplier to procure an alternative Subcontractor or provider of Deliverables.
  2. Each Party shall appoint an Exit Manager within three (3) Months of the Start Date. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the expiry or termination of this Contract.

1. Assisting re-competition for Deliverables
   1. The Supplier shall, on reasonable notice, provide to the Contracting Authority and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), such information (including any access) as the Contracting Authority shall reasonably require in order to facilitate the preparation by the Contracting Authority of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence (the "**Exit Information**").
   2. The Supplier acknowledges that the Contracting Authority may disclose the Supplier's Confidential Information (excluding the Supplier’s or its Subcontractors’ prices or costs) to an actual or prospective Replacement Supplier to the extent that such disclosure is necessary in connection with such engagement.
   3. The Supplier shall provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and notify the Contracting Authority within five (5) Working Days of any material change to the Exit Information which may adversely impact upon the provision of any Deliverables (and shall consult the Contracting Authority in relation to any such changes).
   4. The Exit Information shall be accurate and complete in all material respects and shall be sufficient to enable a third party to prepare an informed offer for those Deliverables; and not be disadvantaged in any procurement process compared to the Supplier.
2. Exit Plan
   1. The Supplier shall, within three (3) Months after the Start Date, deliver to the Contracting Authority an Exit Plan which complies with the requirements set out in Paragraph 4.3 of this Schedule and is otherwise reasonably satisfactory to the Contracting Authority.
   2. The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of the latest date for its submission pursuant to Paragraph 4.1, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
   3. The Exit Plan shall set out, as a minimum:
      1. a detailed description of both the transfer and cessation processes, including a timetable;
      2. how the Deliverables will transfer to the Replacement Supplier and/or the Contracting Authority;
      3. details of any contracts which will be available for transfer to the Contracting Authority and/or the Replacement Supplier upon the Expiry Date together with any reasonable costs required to effect such transfer;
      4. proposals for the training of key members of the Replacement Supplier’s staff in connection with the continuation of the provision of the Deliverables following the Expiry Date;
      5. proposals for providing the Contracting Authority or a Replacement Supplier copies of all documentation relating to the use and operation of the Deliverables and required for their continued use;
      6. proposals for the assignment or novation of all services utilised by the Supplier in connection with the supply of the Deliverables;
      7. proposals for the identification and return of all Contracting Authority Property in the possession of and/or control of the Supplier or any third party;
      8. proposals for the disposal of any redundant Deliverables and materials;
      9. how the Supplier will ensure that there is no disruption to or degradation of the Deliverables during the Termination Assistance Period; and
      10. any other information or assistance reasonably required by the Contracting Authority or a Replacement Supplier.
   4. The Supplier shall:
      1. maintain and update the Exit Plan (and risk management plan) no less frequently than:
         1. every [six (6) months] throughout the Contract Period; and
         2. no later than [twenty (20) Working Days] after a request from the Contracting Authority for an up-to-date copy of the Exit Plan;
         3. as soon as reasonably possible following a Termination Assistance Notice, and in any event no later than [ten (10) Working Days] after the date of the Termination Assistance Notice;
         4. as soon as reasonably possible following, and in any event no later than [twenty (20) Working Days] following, any material change to the Deliverables (including all changes under the Variation Procedure); and
      2. jointly review and verify the Exit Plan if required by the Contracting Authority and promptly correct any identified failures.
   5. Only if (by notification to the Supplier in writing) the Contracting Authority agrees with a draft Exit Plan provided by the Supplier under Paragraph 4.2 or 4.4 (as the context requires), shall that draft become the Exit Plan for this Contract.
   6. A version of an Exit Plan agreed between the parties shall not be superseded by any draft submitted by the Supplier.
3. Termination Assistance
   1. The Contracting Authority shall be entitled to require the provision of Termination Assistance at any time during the Contract Period by giving written notice to the Supplier (a **"Termination Assistance Notice"**) at least four (4) Months prior to the Expiry Date or as soon as reasonably practicable (but in any event, not later than one (1) Month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:
      1. the nature of the Termination Assistance required; and
      2. the start date and period during which it is anticipated that Termination Assistance will be required, which shall continue no longer than twelve (12) Months after the date that the Supplier ceases to provide the Deliverables.
   2. The Contracting Authority shall have an option to extend the Termination Assistance Period beyond the Termination Assistance Notice period provided that such extension shall not extend for more than six (6) Months beyond the end of the Termination Assistance Period and provided that it shall notify the Supplier of such this extension no later than twenty (20) Working Days prior to the date on which the provision of Termination Assistance is otherwise due to expire. The Contracting Authority shall have the right to terminate its requirement for Termination Assistance by serving not less than (20) Working Days' written notice upon the Supplier.
   3. In the event that Termination Assistance is required by the Contracting Authority but at the relevant time the parties are still agreeing an update to the Exit Plan pursuant to Paragraph 4, the Supplier will provide the Termination Assistance in good faith and in accordance with the principles in this Schedule and the last Contracting Authority approved version of the Exit Plan (insofar as it still applies).
4. Termination Assistance Period
   1. Throughout the Termination Assistance Period the Supplier shall:
      1. continue to provide the Deliverables (as applicable) and otherwise perform its obligations under this Contract and, if required by the Contracting Authority, provide the Termination Assistance;
      2. provide to the Contracting Authority and/or its Replacement Supplier any reasonable assistance and/or access requested by the Contracting Authority and/or its Replacement Supplier including assistance and/or access to facilitate the orderly transfer of responsibility for and conduct of the Deliverables to the Contracting Authority and/or its Replacement Supplier;
      3. use all reasonable endeavours to reallocate resources to provide such assistance without additional costs to the Contracting Authority;
      4. subject to Paragraph 6.3, provide the Deliverables and the Termination Assistance at no detriment to the Performance Indicators (PI’s) or Service Levels, the provision of the Management Information or any other reports nor to any other of the Supplier's obligations under this Contract;
      5. at the Contracting Authorities request and on reasonable notice, deliver up-to-date Registers to the Contracting Authority;
      6. seek the Contracting Authorities prior written consent to access any Contracting Authority Premises from which the de-installation or removal of Supplier Assets is required.
   2. If it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in Paragraph 6.1.2 without additional costs to the Contracting Authority, any additional costs incurred by the Supplier in providing such reasonable assistance shall be subject to the Variation Procedure.
   3. If the Supplier demonstrates to the Contracting Authorities reasonable satisfaction that the provision of the Termination Assistance will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular Service Levels, the Parties shall vary the relevant Service Levels and/or the applicable Service Credits accordingly.
5. Obligations when the contract is terminated
   1. The Supplier shall comply with all of its obligations contained in the Exit Plan.
   2. Upon termination or expiry or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Deliverables and the Termination Assistance), the Supplier shall:
      1. vacate any Contracting Authority Premises;
      2. remove the Supplier Equipment together with any other materials used by the Supplier to supply the Deliverables and shall leave the Sites in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Sites or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier;
      3. provide access during normal working hours to the Contracting Authority and/or the Replacement Supplier for up to twelve (12) Months after expiry or termination to:
         1. such information relating to the Deliverables as remains in the possession or control of the Supplier; and
         2. such members of the Supplier Staff as have been involved in the design, development and provision of the Deliverables and who are still employed by the Supplier, provided that the Contracting Authority and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to such requests for access.
   3. Except where this Contract provides otherwise, all licences, leases and authorisations granted by the Contracting Authority to the Supplier in relation to the Deliverables shall be terminated with effect from the end of the Termination Assistance Period.
6. Assets, Sub-contracts and Software
   1. Following notice of termination of this Contract and during the Termination Assistance Period, the Supplier shall not, without the Contracting Authorities prior written consent:
      1. terminate, enter into or vary any Sub-contract or licence for any software in connection with the Deliverables; or
      2. (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Supplier Assets or acquire any new Supplier Assets.
   2. Within twenty (20) Working Days of receipt of the up-to-date Registers provided by the Supplier, the Contracting Authority shall notify the Supplier setting out:
      1. which, if any, of the Transferable Assets the Contracting Authority requires to be transferred to the Contracting Authority and/or the Replacement Supplier ("**Transferring Assets**");
      2. which, if any, of:
         1. the Exclusive Assets that are not Transferable Assets; and
         2. the Non-Exclusive Assets,

the Contracting Authority and/or the Replacement Supplier requires the continued use of; and

* + 1. which, if any, of Transferable Contracts the Contracting Authority requires to be assigned or novated to the Contracting Authority and/or the Replacement Supplier (the **"Transferring Contracts"**),

in order for the Contracting Authority and/or its Replacement Supplier to provide the Deliverables from the expiry of the Termination Assistance Period. The Supplier shall provide all reasonable assistance required by the Contracting Authority and/or its Replacement Supplier to enable it to determine which Transferable Assets and Transferable Contracts are required to provide the Deliverables or the Replacement Goods and/or Replacement Services.

* 1. With effect from the expiry of the Termination Assistance Period, the Supplier shall sell the Transferring Assets to the Contracting Authority and/or the Replacement Supplier for their Net Book Value less any amount already paid for them through the Charges.
  2. Risk in the Transferring Assets shall pass to the Contracting Authority or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title shall pass on payment for them.
  3. Where the Contracting Authority and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Supplier shall as soon as reasonably practicable:
     1. procure a non-exclusive, perpetual, royalty-free licence for the Contracting Authority and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which
     2. procure a suitable alternative to such assets, the Contracting Authority or the Replacement Supplier to bear the reasonable proven costs of procuring the same.
  4. The Supplier shall as soon as reasonably practicable assign or procure the novation of the Transferring Contracts to the Contracting Authority and/or the Replacement Supplier. The Supplier shall execute such documents and provide such other assistance as the Contracting Authority reasonably requires to effect this novation or assignment.
  5. The Contracting Authority shall:
     1. accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and
     2. once a Transferring Contract is novated or assigned to the Contracting Authority and/or the Replacement Supplier, discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.
  6. The Supplier shall hold any Transferring Contracts on trust for the Contracting Authority until the transfer of the relevant Transferring Contract to the Contracting Authority and/or the Replacement Supplier has taken place.
  7. The Supplier shall indemnify the Contracting Authority (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Contracting Authority (and/or Replacement Supplier) pursuant to Paragraph 8.6 in relation to any matters arising prior to the date of assignment or novation of such Transferring Contract. Clause 19 (Other people's rights in this contract) shall not apply to this Paragraph 8.9 which is intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.

1. No charges
   1. Unless otherwise stated, the Contracting Authority shall not be obliged to pay for costs incurred by the Supplier in relation to its compliance with this Schedule.
2. Dividing the bills
   1. All outgoings, expenses, rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Contracting Authority and/or the Replacement and the Supplier as follows:
      1. the amounts shall be annualised and divided by 365 to reach a daily rate;
      2. the Contracting Authority or Replacement Supplier (as applicable) shall be responsible for or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and
      3. the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.

Call-Off Schedule 11 (Installation Works)

1. When this Schedule should be used
   1. This Schedule is designed to provide additional provisions necessary to facilitate the provision Deliverables requiring installation by the Supplier.
2. **How things must be installed** 
   1. Where the Supplier reasonably believes, it has completed the Installation Works it shall notify the Contracting Authority in writing. Following receipt of such notice, the Contracting Authority shall inspect the Installation Works and shall, by giving written notice to the Supplier:
      1. accept the Installation Works, or
      2. reject the Installation Works and provide reasons to the Supplier if, in the Contracting Authorities reasonable opinion, the Installation Works do not meet the requirements set out in the Call-Off Order Form (or elsewhere in this Contract).
   2. If the Contracting Authority rejects the Installation Works in accordance with Paragraph 2.1.2, the Supplier shall immediately rectify or remedy any defects and if, in the Contracting Authorities reasonable opinion, the Installation Works do not, within five (5) Working Days of such rectification or remedy, meet the requirements set out in the Call-Off Order Form (or elsewhere in this Contract), the Contracting Authority may terminate this Contract for material Default.
   3. The Installation Works shall be deemed to be completed when the Supplier receives a notice issued by the Contracting Authority in accordance with Paragraph 2.2.1 Notwithstanding the acceptance of any Installation Works in accordance with Paragraph 2.2), the Supplier shall remain solely responsible for ensuring that the Goods and the Installation Works conform to the specification in the Call-Off Order Form (or elsewhere in this Contract). No rights of estoppel or waiver shall arise as a result of the acceptance by the Contracting Authority of the Installation Works.
   4. Throughout the Contract Period, the Supplier shall have at all times all licences, approvals and consents necessary to enable the Supplier and the Supplier Staff to carry out the Installation Works.

Call-Off Schedule 12 (Clustering)

1. When you should use this Schedule
   1. This Schedule is required where various Other Contracting Authorities want to join with the Contracting Authority to efficiently contract collectively under a single Call Off Contract rather than as separate individual Contracting Authorities under separate Call Off Contracts.
2. Definitions
   1. **“Cluster Members"** means a person named as such in the Annex A to this Schedule which shall be incorporated into the Order Form.
3. Cluster Members benefits under the Contract
   1. The Contracting Authority has entered into this Call-Off Contract both for its own benefit and for the benefit the Cluster Members.
   2. The Cluster Members who are to benefit under the Call-Off Contract are identified Annex 1 to this Schedule which shall be included into Order Form.
   3. Cluster Members shall have all of the rights granted to the Contracting Authority under a Call-Off Contract. Accordingly, where the context requires in order to assure the Cluster Members rights and benefits under a Call-Off Contract, and unless the Contracting Authority otherwise specifies, references to the Contracting Authority in a Call-Off Contract (including those references to a Party which are intended to relate to the Contracting Authority) shall be deemed to include a reference to the Cluster Members.
   4. Each of the Cluster Members will be a third party beneficiary for the purposes of the CRTPA and may enforce the relevant provisions of a Call-Off Contract pursuant to CRTPA.
   5. The Parties to a Call-Off Contract may in accordance with its provisions vary, terminate or rescind that Call-Off Contract or any part of it, without the consent of any Cluster Member.
   6. The enforcement rights granted to Cluster Members under Paragraph 1.4 are subject to the following provisions:
      1. the Contracting Authority may enforce any provision of a Call-Off Contract on behalf of a Cluster Member;
      2. any claim from a Cluster Member under the CRTPA to enforce a Call-Off Contract shall be brought by the Contracting Authority if reasonably practicable for the Contracting Authority and Cluster Member to do so; and
      3. the Supplier's limits and exclusions of liability in the Call-Off Contract shall apply to any claim to enforce a Call-Off Contract made by the Contracting Authority on behalf of a Cluster Member and to any claim to enforce a Call-Off Contract made by a Cluster Member acting on its own behalf.
   7. Notwithstanding that Cluster Members shall each receive the same Services from the Supplier the following adjustments will apply in relation to how the Call-Off Contract will operate in relation to the Contracting Authority and Cluster Members:
      1. Services will be provided by the Supplier to each Cluster Member and Contracting Authority separately;
      2. the Supplier's obligation in regards to reporting will be owed to each Cluster Member and Contracting Authority separately;
      3. the Contracting Authority and Cluster Members shall be entitled to separate invoices in respect of the provision of Deliverables;
      4. the separate invoices will correlate to the Deliverables provided to the respective Contracting Authority and Cluster Members;
      5. the Charges to be paid for the Deliverables shall be calculated on a per Cluster Member and Contracting Authority basis and each Cluster Member and the Contracting Authority shall be responsible for paying their respective Charges;
      6. the Service Levels and corresponding Service Credits will be calculated in respect of each Cluster Member and Contracting Authority, and they will be reported and deducted against Charges due by each respective Cluster Member and Contracting Authority; and
      7. such further adjustments as the Contracting Authority and each Cluster Member may notify to the Supplier from time to time.

**Annex A – Cluster Members**

The Deliverables shall also be provided for the benefit of the following Cluster Members:

|  |  |  |  |
| --- | --- | --- | --- |
| Name of Cluster Member | Services to be provided | Duration | Special Terms |
| [ ] | [ ] | [ ] | [ ] |
| [ ] | [ ] | [ ] | [ ] |
| [ ] | [ ] | [ ] | [ ] |
| [ ] | [ ] | [ ] | [ ] |

Call-Off Schedule 13 (Implementation Plan and Testing)

Part A - Implementation

1. definitions
   1. In this Schedule, the following words shall have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

|  |  |
| --- | --- |
| "Delay" | 1. a delay in the Achievement of a Milestone by its Milestone Date; or 2. a delay in the design, development, testing or implementation of a Deliverable by the relevant date set out in the Implementation Plan; |
| "Deliverable Item" | 1. an item or feature in the supply of the Deliverables delivered or to be delivered by the Supplier at or before a Milestone Date listed in the Implementation Plan; |
| "Milestone Payment" | 1. a payment identified in the Implementation Plan to be made following the issue of a Satisfaction Certificate in respect of Achievement of the relevant Milestone; |
| Implementation Period" | 1. has the meaning given to it in Paragraph 7.1; |

1. Agreeing and following the Implementation Plan
   1. A draft of the Implementation Plan is set out in the Annex to this Schedule. The Supplier shall provide a further draft Implementation Plan [**Insert** number of days] days after the Call-Off Contract Start Date.
   2. The draft Implementation Plan:
      1. must contain information at the level of detail necessary to manage the implementation stage effectively and as the Contracting Authority may otherwise require; and
      2. it shall take account of all dependencies known to, or which should reasonably be known to, the Supplier.
   3. Following receipt of the draft Implementation Plan from the Supplier, the Parties shall use reasonable endeavours to agree the contents of the Implementation Plan. If the Parties are unable to agree the contents of the Implementation Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
   4. The Supplier shall provide each of the Deliverable Items identified in the Implementation Plan by the date assigned to that Deliverable Item in the Implementation Plan so as to ensure that each Milestone identified in the Implementation Plan is Achieved on or before its Milestone Date.
   5. The Supplier shall monitor its performance against the Implementation Plan and Milestones (if any) and report to the Contracting Authority on such performance.
2. Reviewing and changing the Implementation Plan
   1. Subject to Paragraph 4.3, the Supplier shall keep the Implementation Plan under review in accordance with the Contracting Authorities instructions and ensure that it is updated on a regular basis.
   2. The Contracting Authority shall have the right to require the Supplier to include any reasonable changes or provisions in each version of the Implementation Plan.
   3. Changes to any Milestones, Milestone Payments and Delay Payments shall only be made in accordance with the Variation Procedure.
   4. Time in relation to compliance with the Implementation Plan shall be of the essence and failure of the Supplier to comply with the Implementation Plan shall be a material Default.
3. Security requirements before the Start Date
   1. The Supplier shall note that it is incumbent upon them to understand the lead-in period for security clearances and ensure that all Supplier Staff have the necessary security clearance in place before the Call-Off Start Date. The Supplier shall ensure that this is reflected in their Implementation Plans.
   2. The Supplier shall ensure that all Supplier Staff and Subcontractors do not access the Contracting Authorities IT systems, or any IT systems linked to the Contracting Authority, unless they have satisfied the Contracting Authorities security requirements.
   3. The Supplier shall be responsible for providing all necessary information to the Contracting Authority to facilitate security clearances for Supplier Staff and Subcontractors in accordance with the Contracting Authorities requirements.
   4. The Supplier shall provide the names of all Supplier Staff and Subcontractors and inform the Contracting Authority of any alterations and additions as they take place throughout the Call-Off Contract.
   5. The Supplier shall ensure that all Supplier Staff and Subcontractors requiring access to the Contracting Authority Premises have the appropriate security clearance. It is the Supplier's responsibility to establish whether or not the level of clearance will be sufficient for access. Unless prior approval has been received from the Contracting Authority, the Supplier shall be responsible for meeting the costs associated with the provision of security cleared escort services.
   6. If a property requires Supplier Staff or Subcontractors to be accompanied by the Contracting Authorities Authorised Representative, the Contracting Authority must be given reasonable notice of such a requirement, except in the case of emergency access.
4. What to do if there is a Delay
   1. If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay under this Contract it shall:
      1. notify the Contracting Authority as soon as practically possible and no later than within two (2) Working Days from becoming aware of the Delay or anticipated Delay;
      2. include in its notification an explanation of the actual or anticipated impact of the Delay;
      3. comply with the Contracting Authorities instructions in order to address the impact of the Delay or anticipated Delay; and
      4. use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay.
5. Compensation for a Delay
   1. If Delay Payments have been included in the Implementation Plan and a Milestone has not been achieved by the relevant Milestone Date, the Supplier shall pay to the Contracting Authority such Delay Payments (calculated as set out by the Contracting Authority in the Implementation Plan) and the following provisions shall apply:
      1. the Supplier acknowledges and agrees that any Delay Payment is a price adjustment and not an estimate of the Loss that may be suffered by the Contracting Authority as a result of the Supplier’s failure to Achieve the corresponding Milestone;
      2. Delay Payments shall be the Contracting Authorities exclusive financial remedy for the Supplier’s failure to Achieve a Milestone by its Milestone Date except where:
         1. the Contracting Authority is otherwise entitled to or does terminate this Contract pursuant to Clause 10.4 (When the Authority or the Contracting Authority can end this contract); or
         2. the delay exceeds the number of days (the "**Delay Period Limit**") specified in the Implementation Plan commencing on the relevant Milestone Date;
      3. the Delay Payments will accrue on a daily basis from the relevant Milestone Date until the date when the Milestone is Achieved;
      4. no payment or other act or omission of the Contracting Authority shall in any way affect the rights of the Contracting Authority to recover the Delay Payments or be deemed to be a waiver of the right of the Contracting Authority to recover any such damages; and
      5. Delay Payments shall not be subject to or count towards any limitation on liability set out in Clause 11 (How much you can be held responsible for).
6. [Implementation Plan
   1. The Implementation Period will be a [six (6)] Month period.
   2. During the Implementation Period, the incumbent supplier shall retain full responsibility for all existing services until the Call-Off Start Date or as otherwise formally agreed with the Contracting Authority. The Supplier's full service obligations shall formally be assumed on the Call-Off Start Date as set out in Order Form.
   3. In accordance with the Implementation Plan, the Supplier shall:
      1. work cooperatively and in partnership with the Contracting Authority, incumbent supplier, and other Framework Supplier(s), where applicable, to understand the scope of Services to ensure a mutually beneficial handover of the Services;
      2. work with the incumbent supplier and Contracting Authority to assess the scope of the Services and prepare a plan which demonstrates how they will mobilise the Services;
      3. liaise with the incumbent Supplier to enable the full completion of the Implementation Period activities; and
      4. produce a Implementation Plan, to be agreed by the Contracting Authority, for carrying out the requirements within the Implementation Period including, key Milestones and dependencies.
   4. The Implementation Plan will include detail stating:
      1. how the Supplier will work with the incumbent Supplier and the Contracting Authority Authorised Representative to capture and load up information such as asset data ; and
      2. a communications plan, to be produced and implemented by the Supplier, but to be agreed with the Contracting Authority, including the frequency, responsibility for and nature of communication with the Contracting Authority and end users of the Services.
   5. In addition, the Supplier shall:
      1. appoint a Supplier Authorised Representative who shall be responsible for the management of the Implementation Period, to ensure that the Implementation Period is planned and resourced adequately, and who will act as a point of contact for the Contracting Authority;
      2. mobilise all the Services specified in the Specification within the Call-Off Contract;
      3. produce an Implementation Plan report for each Contracting Authority Premises to encompass programmes that will fulfil all the Contracting Authorities obligations to landlords and other tenants:
         1. the format of reports and programmes shall be in accordance with the Contracting Authorities requirements and particular attention shall be paid to establishing the operating requirements of the occupiers when preparing these programmes which are subject to the Contracting Authorities approval; and
         2. the Parties shall use reasonable endeavours to agree the contents of the report but if the Parties are unable to agree the contents within twenty (20) Working Days of its submission by the Supplier to the Contracting Authority, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
      4. manage and report progress against the Implementation Plan;
      5. construct and maintain a Implementation risk and issue register in conjunction with the Contracting Authority detailing how risks and issues will be effectively communicated to the Contracting Authority in order to mitigate them;
      6. attend progress meetings (frequency of such meetings shall be as set out in the Order Form) in accordance with the Contracting Authorities requirements during the Implementation Period. Implementation meetings shall be chaired by the Contracting Authority and all meeting minutes shall be kept and published by the Supplier; and
      7. ensure that all risks associated with the Implementation Period are minimised to ensure a seamless change of control between incumbent provider and the Supplier.]

**Annex 1: Implementation Plan**

The Implementation Plan is set out below and the Milestones to be Achieved are identified below:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Milestone | Deliverable Items | Duration | Milestone Date | Contracting Authority Responsibilities | Milestone Payments | Delay Payments |
| [ ] | [ ] | [ ] | [ ] | [ ] | [ ] | [ ] |
| The Milestones will be Achieved in accordance with this Call-Off Schedule 13: (Implementation Plan and Testing)  For the purposes of Paragraph 9.1.2 the Delay Period Limit shall be [insert number of days]. | | | | | | |

Part B - Testing

1. Definitions
   1. In this Schedule, the following words shall have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

|  |  |
| --- | --- |
| "Component" | 1. any constituent parts of the Deliverables; |
| "Material Test Issue" | 1. a Test Issue of Severity Level 1 or Severity Level 2; |
| "Satisfaction Certificate" | 1. a certificate materially in the form of the document contained in Annex 2 issued by the Contracting Authority when a Deliverable and/or Milestone has satisfied its relevant Test Success Criteria; |
| "Severity Level" | 1. the level of severity of a Test Issue, the criteria for which are described in Annex 1; |
| "Test Issue Management Log" | 1. a log for the recording of Test Issues as described further in Paragraph 8.1 of this Schedule; |
| "Test Issue Threshold" | 1. in relation to the Tests applicable to a Milestone, a maximum number of Severity Level 3, Severity Level 4 and Severity Level 5 Test Issues as set out in the relevant Test Plan; |
| "Test Reports" | 1. the reports to be produced by the Supplier setting out the results of Tests; |
| "Test Specification" | 1. the specification that sets out how Tests will demonstrate that the Test Success Criteria have been satisfied, as described in more detail in Paragraph 6.2 of this Schedule; |
| "Test Strategy" | 1. a strategy for the conduct of Testing as described further in Paragraph 3.2 of this Schedule; |
| "Test Success Criteria" | 1. in relation to a Test, the test success criteria for that Test as referred to in Paragraph 5 of this Schedule; |
| "Test Witness" | 1. any person appointed by the Contracting Authority pursuant to Paragraph 9 of this Schedule; and |
| "Testing Procedures" | 1. the applicable testing procedures and Test Success Criteria set out in this Schedule. |

1. How testing should work
   1. All Tests conducted by the Supplier shall be conducted in accordance with the Test Strategy, Test Specification and the Test Plan.
   2. The Supplier shall not submit any Deliverable for Testing:
      1. unless the Supplier is reasonably confident that it will satisfy the relevant Test Success Criteria;
      2. until the Contracting Authority has issued a Satisfaction Certificate in respect of any prior, dependant Deliverable(s); and
      3. until the Parties have agreed the Test Plan and the Test Specification relating to the relevant Deliverable(s).
   3. The Supplier shall use reasonable endeavours to submit each Deliverable for Testing or re-Testing by or before the date set out in the Implementation Plan for the commencement of Testing in respect of the relevant Deliverable.
   4. Prior to the issue of a Satisfaction Certificate, the Contracting Authority shall be entitled to review the relevant Test Reports and the Test Issue Management Log.
2. Planning for testing
   1. The Supplier shall develop the final Test Strategy as soon as practicable after the Start Date but in any case no later than twenty (20) Working Days after the Start Date.
   2. The final Test Strategy shall include:
      1. an overview of how Testing will be conducted in relation to the Implementation Plan;
      2. the process to be used to capture and record Test results and the categorisation of Test Issues;
      3. the procedure to be followed should a Deliverable fail a Test, fail to satisfy the Test Success Criteria or where the Testing of a Deliverable produces unexpected results, including a procedure for the resolution of Test Issues;
      4. the procedure to be followed to sign off each Test;
      5. the process for the production and maintenance of Test Reports and a sample plan for the resolution of Test Issues;
      6. the names and contact details of the Contracting Authority and the Supplier's Test representatives;
      7. a high level identification of the resources required for Testing including Contracting Authority and/or third party involvement in the conduct of the Tests;
      8. the technical environments required to support the Tests; and
      9. the procedure for managing the configuration of the Test environments.
3. Preparing for Testing
   1. The Supplier shall develop Test Plans and submit these for Approval as soon as practicable but in any case no later than twenty (20) Working Days prior to the start date for the relevant Testing as specified in the Implementation Plan.
   2. Each Test Plan shall include as a minimum:
      1. the relevant Test definition and the purpose of the Test, the Milestone to which it relates, the requirements being Tested and, for each Test, the specific Test Success Criteria to be satisfied; and
      2. a detailed procedure for the Tests to be carried out.
   3. The Contracting Authority shall not unreasonably withhold or delay its approval of the Test Plan provided that the Supplier shall implement any reasonable requirements of the Contracting Authority in the Test Plan.
4. Passing Testing
   1. The Test Success Criteria for all Tests shall be agreed between the Parties as part of the relevant Test Plan pursuant to Paragraph 4.
5. How Deliverables will be tested
   1. Following approval of a Test Plan, the Supplier shall develop the Test Specification for the relevant Deliverables as soon as reasonably practicable and in any event at least 10 Working Days prior to the start of the relevant Testing (as specified in the Implementation Plan).
   2. Each Test Specification shall include as a minimum:
      1. the specification of the Test data, including its source, scope, volume and management, a request (if applicable) for relevant Test data to be provided by the Contracting Authority and the extent to which it is equivalent to live operational data;
      2. a plan to make the resources available for Testing;
      3. Test scripts;
      4. Test pre-requisites and the mechanism for measuring them; and
      5. expected Test results, including:
         1. a mechanism to be used to capture and record Test results; and
         2. a method to process the Test results to establish their content.
6. Performing the tests
   1. Before submitting any Deliverables for Testing the Supplier shall subject the relevant Deliverables to its own internal quality control measures.
   2. The Supplier shall manage the progress of Testing in accordance with the relevant Test Plan and shall carry out the Tests in accordance with the relevant Test Specification. Tests may be witnessed by the Test Witnesses in accordance with Paragraph 9.3.
   3. The Supplier shall notify the Contracting Authority at least 10 Working Days in advance of the date, time and location of the relevant Tests and the Contracting Authority shall ensure that the Test Witnesses attend the Tests.
   4. The Contracting Authority may raise and close Test Issues during the Test witnessing process.
   5. The Supplier shall provide to the Contracting Authority in relation to each Test:
      1. a draft Test Report not less than 2 Working Days prior to the date on which the Test is planned to end; and
      2. the final Test Report within 5 Working Days of completion of Testing.
   6. Each Test Report shall provide a full report on the Testing conducted in respect of the relevant Deliverables, including:
      1. an overview of the Testing conducted;
      2. identification of the relevant Test Success Criteria that have/have not been satisfied together with the Supplier's explanation of why any criteria have not been met;
      3. the Tests that were not completed together with the Supplier's explanation of why those Tests were not completed;
      4. the Test Success Criteria that were satisfied, not satisfied or which were not tested, and any other relevant categories, in each case grouped by Severity Level in accordance with Paragraph 8.1; and
      5. the specification for any hardware and software used throughout Testing and any changes that were applied to that hardware and/or software during Testing.
   7. When the Supplier has completed a Milestone it shall submit any Deliverables relating to that Milestone for Testing.
   8. Each party shall bear its own costs in respect of the Testing. However, if a Milestone is not Achieved the Contracting Authority shall be entitled to recover from the Supplier, any reasonable additional costs it may incur as a direct result of further review or re-Testing of a Milestone.
   9. If the Supplier successfully completes the requisite Tests, the Contracting Authority shall issue a Satisfaction Certificate as soon as reasonably practical following such successful completion. Notwithstanding the issuing of any Satisfaction Certificate, the Supplier shall remain solely responsible for ensuring that the Deliverables are implemented in accordance with this Contract.
7. Discovering Problems
   1. Where a Test Report identifies a Test Issue, the Parties shall agree the classification of the Test Issue using the criteria specified in Annex 1 and the Test Issue Management Log maintained by the Supplier shall log Test Issues reflecting the Severity Level allocated to each Test Issue.
   2. The Supplier shall be responsible for maintaining the Test Issue Management Log and for ensuring that its contents accurately represent the current status of each Test Issue at all relevant times. The Supplier shall make the Test Issue Management Log available to the Contracting Authority upon request.
   3. The Contracting Authority shall confirm the classification of any Test Issue unresolved at the end of a Test in consultation with the Supplier. If the Parties are unable to agree the classification of any unresolved Test Issue, the Dispute shall be dealt with in accordance with the Dispute Resolution Procedure using the Expedited Dispute Timetable.
8. Test witnessing
   1. The Contracting Authority may, in its sole discretion, require the attendance at any Test of one or more Test Witnesses selected by the Contracting Authority, each of whom shall have appropriate skills to fulfil the role of a Test Witness.
   2. The Supplier shall give the Test Witnesses access to any documentation and Testing environments reasonably necessary and requested by the Test Witnesses to perform their role as a Test Witness in respect of the relevant Tests.
   3. The Test Witnesses:
      1. shall actively review the Test documentation;
      2. will attend and engage in the performance of the Tests on behalf of the Contracting Authority so as to enable the Contracting Authority to gain an informed view of whether a Test Issue may be closed or whether the relevant element of the Test should be re-Tested;
      3. shall not be involved in the execution of any Test;
      4. shall be required to verify that the Supplier conducted the Tests in accordance with the Test Success Criteria and the relevant Test Plan and Test Specification;
      5. may produce and deliver their own, independent reports on Testing, which may be used by the Contracting Authority to assess whether the Tests have been Achieved;
      6. may raise Test Issues on the Test Issue Management Log in respect of any Testing; and
   4. may require the Supplier to demonstrate the modifications made to any defective Deliverable before a Test Issue is closed.
9. Auditing the quality of the test
   1. The Contracting Authority or an agent or contractor appointed by the Contracting Authority may perform on-going quality audits in respect of any part of the Testing (each a "**Testing Quality Audit**") subject to the provisions set out in the agreed Quality Plan.
   2. The Supplier shall allow sufficient time in the Test Plan to ensure that adequate responses to a Testing Quality Audit can be provided.
   3. The Contracting Authority will give the Supplier at least 5 Working Days' written notice of the Contracting Authorities intention to undertake a Testing Quality Audit.
   4. The Supplier shall provide all reasonable necessary assistance and access to all relevant documentation required by the Contracting Authority to enable it to carry out the Testing Quality Audit.
   5. If the Testing Quality Audit gives the Contracting Authority concern in respect of the Testing Procedures or any Test, the Contracting Authority shall prepare a written report for the Supplier detailing its concerns and the Supplier shall, within a reasonable timeframe, respond in writing to the Contracting Authorities report.
   6. In the event of an inadequate response to the written report from the Supplier, the Contracting Authority (acting reasonably) may withhold a Satisfaction Certificate until the issues in the report have been addressed to the reasonable satisfaction of the Contracting Authority.
10. Outcome of the testing
    1. The Contracting Authority will issue a Satisfaction Certificate when the Deliverables satisfy the Test Success Criteria in respect of that Test without any Test Issues.
    2. If the Deliverables (or any relevant part) do not satisfy the Test Success Criteria then the Contracting Authority shall notify the Supplier and:
       1. the Contracting Authority may issue a Satisfaction Certificate conditional upon the remediation of the Test Issues;
       2. the Contracting Authority may extend the Test Plan by such reasonable period or periods as the Parties may reasonably agree and require the Supplier to rectify the cause of the Test Issue and re-submit the Deliverables (or the relevant part) to Testing; or
       3. where the failure to satisfy the Test Success Criteria results, or is likely to result, in the failure (in whole or in part) by the Supplier to meet a Milestone, then without prejudice to the Contracting Authorities other rights and remedies, such failure shall constitute a material Default*.*
    3. The Contracting Authority shall be entitled, without prejudice to any other rights and remedies that it has under this Contract, to recover from the Supplier any reasonable additional costs it may incur as a direct result of further review or re-Testing which is required for the Test Success Criteria for that Deliverable to be satisfied.
    4. The Contracting Authority shall issue a Satisfaction Certificate in respect of a given Milestone as soon as is reasonably practicable following:
       1. the issuing by the Contracting Authority of Satisfaction Certificates and/or conditional Satisfaction Certificates in respect of all Deliverables related to that Milestone which are due to be Tested; and
       2. performance by the Supplier to the reasonable satisfaction of the Contracting Authority of any other tasks identified in the Implementation Plan as associated with that Milestone.
    5. The grant of a Satisfaction Certificate shall entitle the Supplier to the receipt of a payment in respect of that Milestone in accordance with the provisions of any Implementation Plan and Clause 4 (Pricing and payments).
    6. If a Milestone is not Achieved, the Contracting Authority shall promptly issue a report to the Supplier setting out the applicable Test Issues and any other reasons for the relevant Milestone not being Achieved.
    7. If there are Test Issues but these do not exceed the Test Issues Threshold, then provided there are no Material Test Issues, the Contracting Authority shall issue a Satisfaction Certificate.
    8. If there is one or more Material Test Issue(s), the Contracting Authority shall refuse to issue a Satisfaction Certificate and, without prejudice to the Contracting Authorities other rights and remedies, such failure shall constitute a material Default.
    9. If there are Test Issues which exceed the Test Issues Threshold but there are no Material Test Issues, the Contracting Authority may at its discretion (without waiving any rights in relation to the other options) choose to issue a Satisfaction Certificate conditional on the remediation of the Test Issues in accordance with an agreed Rectification Plan provided that:
       1. any Rectification Plan shall be agreed before the issue of a conditional Satisfaction Certificate unless the Contracting Authority agrees otherwise (in which case the Supplier shall submit a Rectification Plan for approval by the Contracting Authority within 10 Working Days of receipt of the Contracting Authorities report pursuant to Paragraph 10.5); and
       2. where the Contracting Authority issues a conditional Satisfaction Certificate, it may (but shall not be obliged to) revise the failed Milestone Date and any subsequent Milestone Date.
11. Risk
    1. The issue of a Satisfaction Certificate and/or a conditional Satisfaction Certificate shall not:
       1. operate to transfer any risk that the relevant Deliverable or Milestone is complete or will meet and/or satisfy the Contracting Authorities requirements for that Deliverable or Milestone; or
       2. affect the Contracting Authorities right subsequently to reject all or any element of the Deliverables and/or any Milestone to which a Satisfaction Certificate relates.

Annex 1: Test Issues – Severity Levels

1. Severity 1 Error
   1. This is an error that causes non-recoverable conditions, e.g. it is not possible to continue using a Component.
2. Severity 2 Error
   1. This is an error for which, as reasonably determined by the Contracting Authority, there is no practicable workaround available, and which:
      1. causes a Component to become unusable;
      2. causes a lack of functionality, or unexpected functionality, that has an impact on the current Test; or
      3. has an adverse impact on any other Component(s) or any other area of the Deliverables;
3. Severity 3 Error
   1. This is an error which:
      1. causes a Component to become unusable;
      2. causes a lack of functionality, or unexpected functionality, but which does not impact on the current Test; or
      3. has an impact on any other Component(s) or any other area of the Deliverables;

but for which, as reasonably determined by the Contracting Authority, there is a practicable workaround available;

1. Severity 4 Error
   1. This is an error which causes incorrect functionality of a Component or process, but for which there is a simple, Component based, workaround, and which has no impact on the current Test, or other areas of the Deliverables.
2. Severity 5 Error
   1. This is an error that causes a minor problem, for which no workaround is required, and which has no impact on the current Test, or other areas of the Deliverables.

Annex 2: Satisfaction Certificate

To: [insert name of Supplier]

From: [insert name of Contracting Authority]

[insert Date dd/mm/yyyy]

Dear Sirs,

**Satisfaction Certificate**

Deliverable/Milestone(s): [Insert relevant description of the agreed Deliverables/Milestones].

We refer to the agreement (**"Call-Off Contract"**) [insert Call-Off Contract reference number] relating to the provision of the [insert description of the Deliverables] between the [*insert Contracting Authority name*] (**"Contracting Authority"**) and [*insert Supplier name*] (**"Supplier"**) dated [*insert Call-Off Start Date dd/mm/yyyy*].

The definitions for any capitalised terms in this certificate are as set out in the Call-Off Contract.

[We confirm that all the Deliverables relating to [insert relevant description of Deliverables/agreed Milestones and/or reference number(s) from the Implementation Plan] have been tested successfully in accordance with the Test Plan [or that a conditional Satisfaction Certificate has been issued in respect of those Deliverables that have not satisfied the relevant Test Success Criteria].

[OR]

[This Satisfaction Certificate is granted on the condition that any Test Issues are remedied in accordance with the Rectification Plan attached to this certificate.]

[You may now issue an invoice in respect of the Milestone Payment associated with this Milestone in accordance with Clause 4 (Pricing and payments)].

Yours faithfully

[insert Name]

[insert Position]

acting on behalf of [insert name of Contracting Authority]

Call-Off Schedule 14 (Service Levels)

1. Definitions
   1. In this Schedule, the following words shall have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

|  |  |
| --- | --- |
| "Service Credits" | 1. any service credits specified in the Annex to Part A of this Schedule being payable by the Supplier to the Contracting Authority in respect of any failure by the Supplier to meet one or more Service Levels; |
| "Service Credit Cap" | 1. has the meaning given to it in the Order Form; |
|  |  |
| "Service Level Failure" | 1. means a failure to meet the Service Level Performance Measure in respect of a Service Level; |
| "Service Level Performance Measure" | 1. shall be as set out against the relevant Service Level in the Annex to Part A of this Schedule; and |
| "Service Level Threshold" | 1. shall be as set out against the relevant Service Level in the Annex to Part A of this Schedule. |

1. What happens if you don’t meet the Service Levels
   1. The Supplier shall at all times provide the Deliverables to meet or exceed the Service Level Performance Measure for each Service Level.
   2. The Supplier acknowledges that any Service Level Failure shall entitle the Contracting Authority to the rights set out in Part A of this Schedule including the right to any Service Credits and that any Service Credit is a price adjustment and not an estimate of the Loss that may be suffered by the Contracting Authority as a result of the Supplier’s failure to meet any Service Level Performance Measure.
   3. The Supplier shall send Performance Monitoring Reports to the Contracting Authority detailing the level of service which was achieved in accordance with the provisions of Part B (Performance Monitoring) of this Schedule.
   4. A Service Credit shall be the Contracting Authority’s exclusive financial remedy for a Service Level Failure except where:
      1. the Supplier has over the previous (twelve) 12 Month period exceeded the Service Credit Cap; and/or
      2. the Service Level Failure:
         1. exceeds the relevant Service Level Threshold;
         2. has arisen due to a Prohibited Act or wilful Default by the Supplier;
         3. results in the corruption or loss of any Government Data; and/or
         4. results in the Contracting Authority being required to make a compensation payment to one or more third parties; and/or
      3. the Contracting Authority is otherwise entitled to or does terminate this Contract pursuant to Clause 10.4 (the Authority and Contracting Authority Termination Rights).
   5. Not more than once in each Contract Year, the Contracting Authority may, on giving the Supplier at least three (3) Months’ notice, change the weighting of Service Level Performance Measure in respect of one or more Service Levels and the Supplier shall not be entitled to object to, or increase the Charges as a result of such changes, provided that:
      1. the total number of Service Levels for which the weighting is to be changed does not exceed the number applicable as at the Start Date;
      2. the principal purpose of the change is to reflect changes in the Contracting Authoroty business requirements and/or priorities or to reflect changing industry standards; and
      3. there is no change to the Service Credit Cap.
2. Critical Service Level Failure

On the occurrence of a Critical Service Level Failure:

* 1. any Service Credits that would otherwise have accrued during the relevant Service Period shall not accrue; and
  2. the Contracting Authority shall (subject to the Service Credit Cap) be entitled to withhold and retain as compensation a sum equal to any Charges which would otherwise have been due to the Supplier in respect of that Service Period ("Compensation for Critical Service Level Failure"),

provided that the operation of this paragraph 3 shall be without prejudice to the right of the Contracting Authority to terminate this Contract and/or to claim damages from the Supplier for material Default.

Part A: Service Levels and Service Credits

1. Service Levels

If the level of performance of the Supplier:

* 1. is likely to or fails to meet any Service Level Performance Measure; or
  2. is likely to cause or causes a Critical Service Failure to occur,

the Supplier shall immediately notify the Contracting Authority in writing and the Contracting Authority, in its absolute discretion and without limiting any other of its rights, may:

* + 1. require the Supplier to immediately take all remedial action that is reasonable to mitigate the impact on the Contracting Authority and to rectify or prevent a Service Level Failure or Critical Service Level Failure from taking place or recurring;
    2. instruct the Supplier to comply with the Rectification Plan Process;
    3. if a Service Level Failure has occurred, deduct the applicable Service Level Credits payable by the Supplier to the Contracting Authority; and/or
    4. if a Critical Service Level Failure has occurred, exercise its right to Compensation for Critical Service Level Failure (including the right to terminate for material Default).

1. Service Credits
   1. The Contracting Authority shall use the Performance Monitoring Reports supplied by the Supplier to verify the calculation and accuracy of the Service Credits, if any, applicable to each Service Period.
   2. Service Credits are a reduction of the amounts payable in respect of the Deliverables and do not include VAT. The Supplier shall set-off the value of any Service Credits against the appropriate invoice in accordance with calculation formula in the Annex to Part A of this Schedule.

Annex A to Part A: Services Levels and Service Credits Table

[**Guidance Note:** The following are included by way of example only. Procurement-specific Service Levels should be incorporated]

| Service Levels | | | | Service Credit for each Service Period |
| --- | --- | --- | --- | --- |
| Service Level Performance Criterion | Key Indicator | Service Level Performance Measure | Service Level Threshold |
| **[**Accurate and timely billing of Contracting Authority | Accuracy /Timelines | at least 98% at all times | [ ] | 0.5% Service Credit gained for each percentage under the specified Service Level Performance Measure |
| Access to Contracting Authority support | Availability | at least 98% at all times | [ ] | 0.5% Service Credit gained for each percentage under the specified Service Level Performance Measure |
| Flexible Resource Pool Fill Rate | Percentage of role fill from Flexible Resource Pool | [as defined by the Contracting Authority] | [ ] | 0.5% Service Credit gained for each percentage under the specified Service Level Performance Measure |

The Service Credits shall be calculated on the basis of the following formula:

[Example:

|  |  |  |
| --- | --- | --- |
| Formula: x% (Service Level Performance Measure) - x% (actual Service Level performance) | = | x% of the Charges payable to the Contracting Authority as Service Credits to be deducted from the next Invoice payable by the Contracting Authority |
| Worked example: 98% (e.g. Service Level Performance Measure requirement for accurate and timely billing Service Level) - 75% (e.g. actual performance achieved against this Service Level in a Service Period) | = | 23% of the Charges payable to the Contracting Authority as Service Credits to be deducted from the next Invoice payable by the Contracting Authority] |

Part B: Performance Monitoring

1. Performance Monitoring and Performance Review
   1. Within twenty (20) Working Days of the Start Date the Supplier shall provide the Contracting Authority with details of how the process in respect of the monitoring and reporting of Service Levels will operate between the Parties and the Parties will endeavour to agree such process as soon as reasonably possible.
   2. The Supplier shall provide the Contracting Authority with performance monitoring reports ("Performance Monitoring Reports") in accordance with the process and timescales agreed pursuant to paragraph 1.1 of Part B of this Schedule which shall contain, as a minimum, the following information in respect of the relevant Service Period just ended:
      1. for each Service Level, the actual performance achieved over the Service Level for the relevant Service Period;
      2. a summary of all failures to achieve Service Levels that occurred during that Service Period;
      3. details of any Critical Service Level Failures;
      4. for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence;
      5. the Service Credits to be applied in respect of the relevant period indicating the failures and Service Levels to which the Service Credits relate; and
      6. such other details as the Contracting Authority may reasonably require from time to time.
   3. The Parties shall attend meetings to discuss Performance Monitoring Reports ("Performance Review Meetings") on a Monthly basis. The Performance Review Meetings will be the forum for the review by the Supplier and the Contracting Authority of the Performance Monitoring Reports. The Performance Review Meetings shall:
      1. take place within one (1) week of the Performance Monitoring Reports being issued by the Supplier at such location and time (within normal business hours) as the Contracting Authority shall reasonably require;
      2. be attended by the Supplier's Representative and the Contracting Authority’s Representative; and
      3. be fully minuted by the Supplier and the minutes will be circulated by the Supplier to all attendees at the relevant meeting and also to the Contracting Authority’s Representative and any other recipients agreed at the relevant meeting.
   4. The minutes of the preceding Month's Performance Review Meeting will be agreed and signed by both the Supplier's Representative and the Contracting Authority’s Representative at each meeting.
   5. The Supplier shall provide to the Contracting Authority such documentation as the Contracting Authority may reasonably require in order to verify the level of the performance by the Supplier and the calculations of the amount of Service Credits for any specified Service Period.
2. Satisfaction Surveys
   1. The Contracting Authority may undertake satisfaction surveys in respect of the Supplier's provision of the Deliverables. The Contracting Authority shall be entitled to notify the Supplier of any aspects of their performance of the provision of the Deliverables which the responses to the Satisfaction Surveys reasonably suggest are not in accordance with this Contract.

**Call-Off Schedule 15 (Call-Off Contract Management)**

# Definitions

## In this Schedule, the following words shall have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

|  |  |
| --- | --- |
| **"Operational Board"** | the board established in accordance with paragraph 4.1 of this Schedule; |
| **"Project Manager"** | the manager appointed in accordance with paragraph 2.1 of this Schedule; |

# Project Management

## The Supplier and the Contracting Authority shall each appoint a Project Manager for the purposes of this Contract through whom the provision of the Services and the Deliverables shall be managed day-to-day.

## The Parties shall ensure that appropriate resource is made available on a regular basis such that the aims, objectives and specific provisions of this Contract can be fully realised.

## Without prejudice to paragraph 4 below, the Parties agree to operate the boards specified as set out in the Annex to this Schedule.

1. Role of the Supplier Contract Manager
   1. The Supplier's Contract Manager's shall be:

### the primary point of contact to receive communication from the Contracting Authority and will also be the person primarily responsible for providing information to the Contracting Authority;

### able to delegate his position to another person at the Supplier but must inform the Contracting Authority before proceeding with the delegation and it will be delegated person's responsibility to fulfil the Contract Manager's responsibilities and obligations;

### able to cancel any delegation and recommence the position himself; and

### replaced only after the Contracting Authority has received notification of the proposed change.

* 1. The Contracting Authority may provide revised instructions to the Supplier's Contract Manager's in regards to the Contract and it will be the Supplier's Contract Manager's responsibility to ensure the information is provided to the Supplier and the actions implemented.
  2. Receipt of communication from the Supplier's Contract Manager's by the Contracting Authority does not absolve the Supplier from its responsibilities, obligations or liabilities under the Contract.

# Role of the Operational Board

## The Operational Board shall be established by the Contracting Authority for the purposes of this Contract on which the Supplier and the Contracting Authority shall be represented.

## The Operational Board members, frequency and location of board meetings and planned start date by which the board shall be established are set out in the Order Form.

## In the event that either Party wishes to replace any of its appointed board members, that Party shall notify the other in writing for approval by the other Party (such approval not to be unreasonably withheld or delayed). Each Contracting Authority board member shall have at all times a counterpart Supplier board member of equivalent seniority and expertise.

## Each Party shall ensure that its board members shall make all reasonable efforts to attend board meetings at which that board member’s attendance is required. If any board member is not able to attend a board meeting, that person shall use all reasonable endeavours to ensure that a delegate attends the Operational Board meeting in his/her place (wherever possible) and that the delegate is properly briefed and prepared and that he/she is debriefed by such delegate after the board meeting.

## The purpose of the Operational Board meetings will be to review the Supplier’s performance under this Contract. The agenda for each meeting shall be set by the Contracting Authority and communicated to the Supplier in advance of that meeting.

1. Contract Risk Management
   1. Both Parties shall pro-actively manage risks attributed to them under the terms of this Call-Off Contract.
   2. The Supplier shall develop, operate, maintain and amend, as agreed with the Contracting Authority, processes for:

### the identification and management of risks;

* + 1. the identification and management of issues; and
    2. monitoring and controlling project plans.
  1. The Supplier allows the Contracting Authority to inspect at any time within working hours the accounts and records which the Supplier is required to keep.
  2. The Supplier will maintain a risk register of the risks relating to the Call Off Contract which the Contracting Authority's and the Supplier have identified.

**Annex: Contract Boards**

The Parties agree to operate the following boards at the locations and at the frequencies set out below:

[**Guidance note**: Details of additional boards to be inserted.]

**Call-Off Schedule 16 (Benchmarking)**

1. DEFINITIONS
   1. In this Schedule, the following expressions shall have the following meanings:

|  |  |
| --- | --- |
| "Benchmark Review" | 1. a review of the Deliverables carried out in accordance with this Schedule to determine whether those Deliverables represent Good Value; |
| "Benchmarked Deliverables" | 1. any Deliverables included within the scope of a Benchmark Review pursuant to this Schedule; |
| "Comparable Rates" | 1. the Charges for Comparable Deliverables; |
| "Comparable Deliverables" | 1. deliverables that are identical or materially similar to the Benchmarked Deliverables (including in terms of scope, specification, volume and quality of performance) provided that if no identical or materially similar Deliverables exist in the market, the Supplier shall propose an approach for developing a comparable Deliverables benchmark; |
| "Comparison Group" | 1. a sample group of organisations providing Comparable Deliverables which consists of organisations which are either of similar size to the Supplier or which are similarly structured in terms of their business and their service offering so as to be fair comparators with the Supplier or which, are best practice organisations; |
| "Equivalent Data" | 1. data derived from an analysis of the Comparable Rates and/or the Comparable Deliverables (as applicable) provided by the Comparison Group; |
| "Good Value" | 1. that the Benchmarked Rates are within the Upper Quartile; and |
| "Upper Quartile" | 1. in respect of Benchmarked Rates, that based on an analysis of Equivalent Data, the Benchmarked Rates, as compared to the range of prices for Comparable Deliverables, are within the top 25% in terms of best value for money for the recipients of Comparable Deliverables. |

1. When you should use this Schedule
   1. The Supplier acknowledges that the Contracting Authority wishes to ensure that the Deliverables, represent value for money to the taxpayer throughout the Contract Period.
   2. This Schedule sets to ensure the Contracts represent value for money throughout and that the Contracting Authority may terminate the Contract by issuing a Termination Notice to the Supplier if the Supplier refuses or fails to comply with its obligations as set out in Paragraphs 3 of this Schedule.
   3. Amounts payable under this Schedule shall not fall with the definition of a Cost.
2. Benchmarking
   1. **How benchmarking works**
      1. The Contracting Authority and the Supplier recognise that, where specified in Framework Schedule 4 (Framework Management), the Contracting Authority may give the Authority the right to enforce the Contracting Authority's rights under this Schedule.
      2. The Contracting Authority may, by written notice to the Supplier, require a Benchmark Review of any or all of the Deliverables.
      3. The Contracting Authority shall not be entitled to request a Benchmark Review during the first six (6) Month period from the Contract Commencement Date or at intervals of less than twelve (12) Months after any previous Benchmark Review.
      4. The purpose of a Benchmark Review will be to establish whether the Benchmarked Deliverables are, individually and/or as a whole, Good Value.
      5. The Deliverables that are to be the Benchmarked Deliverables will be identified by the Contracting Authority in writing.
      6. Upon its request for a Benchmark Review, the Contracting Authority shall nominate a benchmarker. The Supplier must approve the nomination within ten (10) Working Days, unless the Supplier provides a reasonable explanation for rejecting the appointment.  If the appointment is rejected then the Contracting Authority may propose an alternative benchmarker. If the Parties cannot agree the appointment within twenty (20) days of the initial request for Benchmark review, then a benchmarker shall be selected by the Chartered Institute of Financial Accountants.
      7. The cost of a benchmarker shall be borne by the Contracting Authority (provided that each Party shall bear its own internal costs of the Benchmark Review) except where the Benchmark Review demonstrates that the Benchmarked Service and/or the Benchmarked Deliverables are not Good Value, in which case the Parties shall share the cost of the benchmarker in such proportions as the Parties agree (acting reasonably). Invoices by the benchmarker shall be raised against the Supplier and the relevant portion shall be reimbursed by the Contracting Authority.
   2. **Benchmarking Process**
      1. The benchmarker shall produce and send to the Contracting Authority, for Approval, a draft plan for the Benchmark Review which must include:
         1. a proposed cost and timetable for the Benchmark Review;
         2. a description of the benchmarking methodology to be used which must demonstrate that the methodology to be used is capable of fulfilling the benchmarking purpose; and
         3. a description of how the benchmarker will scope and identify the Comparison Group.
      2. The benchmarker, acting reasonably, shall be entitled to use any model to determine the achievement of value for money and to carry out the benchmarking.
      3. The Contracting Authority must give notice in writing to the Supplier within ten (10) Working Days after receiving the draft plan, advising the benchmarker and the Supplier whether it Approves the draft plan, or, if it does not approve the draft plan, suggesting amendments to that plan (which must be reasonable). If amendments are suggested then the benchmarker must produce an amended draft plan and this Paragraph 3.2.3 shall apply to any amended draft plan.
      4. Once both Parties have approved the draft plan then they will notify the benchmarker. No Party may unreasonably withhold or delay its Approval of the draft plan.
      5. Once it has received the Approval of the draft plan, the benchmarker shall:
         1. finalise the Comparison Group and collect data relating to Comparable Rates. The selection of the Comparable Rates (both in terms of number and identity) shall be a matter for the Supplier's professional judgment using:
            1. market intelligence;
            2. the benchmarker’s own data and experience;
            3. relevant published information; and
            4. pursuant to Paragraph 3.2.6 below, information from other suppliers or purchasers on Comparable Rates;
         2. by applying the adjustment factors listed in Paragraph 3.2.7 and from an analysis of the Comparable Rates, derive the Equivalent Data;
         3. using the Equivalent Data, calculate the Upper Quartile;
         4. determine whether or not each Benchmarked Rate is, and/or the Benchmarked Rates as a whole are, Good Value.
      6. The Supplier shall use all reasonable endeavours and act in good faith to supply information required by the benchmarker in order to undertake the benchmarking. The Supplier agrees to use its reasonable endeavours to obtain information from other suppliers or purchasers on Comparable Rates.
      7. In carrying out the benchmarking analysis the benchmarker may have regard to the following matters when performing a comparative assessment of the Benchmarked Rates and the Comparable Rates in order to derive Equivalent Data:
         1. the contractual terms and business environment under which the Comparable Rates are being provided (including the scale and geographical spread of the customers);
         2. exchange rates;
         3. any other factors reasonably identified by the Supplier, which, if not taken into consideration, could unfairly cause the Supplier's pricing to appear non-competitive.
   3. Benchmarking Report
      1. For the purposes of this Schedule **"Benchmarking Report"** shall mean the report produced by the benchmarker following the Benchmark Review and as further described in this Schedule;
      2. The benchmarker shall prepare a Benchmarking Report and deliver it to the Contracting Authority, at the time specified in the plan Approved pursuant to Paragraph 3.2.3, setting out its findings. Those findings shall be required to:
         1. include a finding as to whether or not a Benchmarked Service and/or whether the Benchmarked Deliverables as a whole are, Good Value;
         2. if any of the Benchmarked Deliverables are, individually or as a whole, not Good Value, specify the changes that would be required to make that Benchmarked Service or the Benchmarked Deliverables as a whole Good Value; and
         3. include sufficient detail and transparency so that the Party requesting the Benchmarking can interpret and understand how the Supplier has calculated whether or not the Benchmarked Deliverables are, individually or as a whole, Good Value.
      3. The Parties agree that any changes required to this Contract identified in the Benchmarking Report shall be implemented at the direction of the Contracting Authority in accordance with Clause 24 (Changing the contract).

**Call-Off Schedule 17 (MOD Terms)**

1. Definitions
   1. In this Schedule, the following words shall have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

|  |  |
| --- | --- |
| **"MOD Terms and Conditions"** | the terms and conditions listed in this Schedule; |
| **"MOD Site"** | shall include any of Her Majesty's Ships or Vessels and Service Stations; |
| **"Officer in charge"** | shall include Officers Commanding Service Stations, Ships' Masters or Senior Officers, and Officers superintending Government Establishments; |

1. Access to MOD sites
   1. The Contracting Authority shall issue passes for those representatives of the Supplier who are approved for admission to the MOD Site and a representative shall not be admitted unless in possession of such a pass. Passes shall remain the property of the Contracting Authority and shall be surrendered on demand or on completion of the supply of the Deliverables.
   2. The Supplier's representatives when employed within the boundaries of a MOD Site, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force for the time being for the conduct of staff at that MOD Site. When on board ship, compliance shall be with the Ship's Regulations as interpreted by the Officer in charge. Details of such rules, regulations and requirements shall be provided, on request, by the Officer in charge.
   3. The Supplier shall be responsible for the living accommodation and maintenance of its representatives while they are employed at a MOD Site. Sleeping accommodation and messing facilities, if required, may be provided by the Contracting Authority wherever possible, at the discretion of the Officer in charge, at a cost fixed in accordance with current Ministry of Defence regulations. At MOD Sites overseas, accommodation and messing facilities, if required, shall be provided wherever possible. The status to be accorded to the Supplier's staff for messing purposes shall be at the discretion of the Officer in charge who shall, wherever possible give his decision before the commencement of this Contract where so asked by the Supplier. When sleeping accommodation and messing facilities are not available, a certificate to this effect may be required by the Contracting Authority and shall be obtained by the Supplier from the Officer in charge. Such certificate shall be presented to the Contracting Authority with other evidence relating to the costs of this Contract.
   4. Where the Supplier's representatives are required by this Contract to join or visit a Site overseas, transport between the United Kingdom and the place of duty (but excluding transport within the United Kingdom) shall be provided for them free of charge by the Ministry of Defence whenever possible, normally by Royal Air Force or by MOD chartered aircraft. The Supplier shall make such arrangements through the Technical Branch named for this purpose in the Contracting Authority Contract Details. When such transport is not available within a reasonable time, or in circumstances where the Supplier wishes its representatives to accompany material for installation which it is to arrange to be delivered, the Supplier shall make its own transport arrangements. The Contracting Authority shall reimburse the Supplier's reasonable costs for such transport of its representatives on presentation of evidence supporting the use of alternative transport and of the costs involved. Transport of the Supplier's representatives locally overseas which is necessary for the purpose of this Contract shall be provided wherever possible by the Ministry of Defence, or by the Officer in charge and, where so provided, shall be free of charge.
   5. Out-patient medical treatment given to the Supplier's representatives by a Service Medical Officer or other Government Medical Officer at a Site overseas shall be free of charge. Treatment in a Service hospital or medical centre, dental treatment, the provision of dentures or spectacles, conveyance to and from a hospital, medical centre or surgery not within the Site and transportation of the Supplier's representatives back to the United Kingdom, or elsewhere, for medical reasons, shall be charged to the Supplier at rates fixed in accordance with current Ministry of Defence regulations.
   6. Accidents to the Supplier's representatives which ordinarily require to be reported in accordance with Health and Safety at Work etc. Act 1974, shall be reported to the Officer in charge so that the Inspector of Factories may be informed.
   7. No assistance from public funds, and no messing facilities, accommodation or transport overseas shall be provided for dependants or members of the families of the Supplier's representatives. Medical or necessary dental treatment may, however, be provided for dependants or members of families on repayment at current Ministry of Defence rates.
   8. The Supplier shall, wherever possible, arrange for funds to be provided to its representatives overseas through normal banking channels (e.g. by travellers' cheques). If banking or other suitable facilities are not available, the Contracting Authority shall, upon request by the Supplier and subject to any limitation required by the Supplier, make arrangements for payments, converted at the prevailing rate of exchange (where applicable), to be made at the Site to which the Supplier's representatives are attached. All such advances made by the Contracting Authority shall be recovered from the Supplier

# DEFCONS and DEFFORMS

## The DEFCONS and DEFORMS listed in Annex 1 to this Schedule are incorporated into this Contract.

## In the event of a conflict between any DEFCONs and DEFFORMS listed in the Order Form and the other terms in a Call Off Contract, the DEFCONs and DEFFORMS shall prevail.

**ANNEX 1 - DEFCONS & DEFFORMS**

The full text of Defence Conditions (DEFCONs) and Defence Forms (DEFFORMS) are available electronically via <https://www.gov.uk/acquisition-operating-framework>.

The following MOD DEFCONs and DEFFORMs form part of this contract:

DEFCONs

|  |  |  |
| --- | --- | --- |
| **DEFCON No** | **Version** | **Description** |
|  |  |  |

DEFFORMs (Ministry of Defence Forms)

|  |  |  |
| --- | --- | --- |
| **DEFFORM No** | **Version** | **Description** |
|  |  |  |

**Call-Off Schedule 18 (Background Checks)**

1. When you should use this Schedule

This Schedule should be used where Supplier Staff must be vetted before working on Contract.

1. Definitions

**“Relevant Conviction”** means any conviction listed in Annex 1 to this Schedule.

1. Relevant Convictions
   * 1. The Supplier must ensure that no person who discloses that they have a Relevant Conviction, or a person who is found to have any Relevant Convictions (whether as a result of a police check or through the procedure of the Disclosure and Barring Service (DBS) or otherwise), is employed or engaged in any part of the provision of the Deliverables without Approval.
     2. Notwithstanding Paragraph 2.1.1 for each member of Supplier Staff who, in providing the Deliverables, has, will have or is likely to have access to children, vulnerable persons or other members of the public to whom the Contracting Authority owes a special duty of care, the Supplier must (and shall procure that the relevant Sub-Contractor must):
        1. carry out a check with the records held by the Department for Education (DfE);
        2. conduct thorough questioning regarding any Relevant Convictions; and
        3. ensure a police check is completed and such other checks as may be carried out through the Disclosure and Barring Service (DBS),

and the Supplier shall not (and shall ensure that any Sub-Contractor shall not) engage or continue to employ in the provision of the Deliverables any person who has a Relevant Conviction or an inappropriate record.

**Annex 1 – Relevant Convictions**

**[Insert** Relevant Convictions here]

**Call-Off Schedule 19 (Scottish Law)**

1. When you should use this Schedule
   1. This Call-Off Schedule 19 may be included to adapt the Core Terms and Schedules so that the Call Off Contract is under Scottish Law.
2. Changes to the Core Terms
   1. Clause 19, (Other people’s rights in this contract) – “Contract Rights of Third Parties Act (CRTPA)” shall be replaced by *“*Contract (Third Party Rights) (Scotland) Act 2017 (CTPRSA)*”.* References to “*CRTPA*” shall be replaced by “*CTPRSA*”.
   2. Clause 34 (Resolving Disputes):
      1. Clause 34.2 – add the following wording: “The governing law and jurisdiction provisions of CEDR’s Model Mediation Agreement shall be deemed to be amended to refer to the laws of Scotland and the Court of Session.”
      2. Clause 34.3 The term “Courts of England and Wales” shall be amended to read *“Court of Session”*
      3. Clause 34.4 – Conduct of Arbitration.
         1. The words “*under the London Court of International Arbitration rules current at the time of the Dispute*” shall be deleted.
         2. The seat or legal place of the arbitration shall be amended so that it takes place in “*Edinburgh*” as opposed to “*London*”.
         3. Add the following wording “*The arbitration shall be conducted in accordance with the Arbitration (Scotland) Act 2010 subject to disapplication in whole or in part of any of the default rules of the Scottish Arbitration Rules comprising Schedule 1 to that Act as the Parties may agree*.”
   3. Clause 35 (Which Laws apply) – the words “*English Law*” shall be replaced by “*the Law of Scotland*”.
3. Changes to the Joint Schedules
   1. Joint Schedule 1 – Definitions shall be amended as follows:
      1. The definition of “CRTPA” shall be replaced by “”CTPRSA” the Contract (Third Party Rights) (Scotland) Act 2017”.
      2. In the definition of “Dispute” the reference to “*English law*” shall be replaced by “*the Law of Scotland*” and the reference to the “*English courts*” shall be replaced by the “*courts of Scotland*”.
      3. In the definition of “Insolvency Event” – the word *“Assignment”* replaced by *“Assignation”.*
      4. In the definition of “Losses” theword *“tort”* shall be replaced with *“delict”.*
      5. In part (a) of the definition of “Intellectual Property Rights*”* the words *“Know-How”* and *“trade secrets”* refer to pre-existing know-how and trade secrets only*.*
      6. “Working Day”: reference to “England and Wales” replaced by “Scotland”
   2. Where a Call-Off Guarantee is selected, the following provisions of Joint Schedule 8 – Guarantee shall be amended as follows:
      1. Annex 1 – Form of Guarantee WHEREAS (B) “deed” replaced by “contract”
      2. Throughout the whole Schedule delete all references to “deed of Guarantee” merely express as “Guarantee”
      3. Clause 4.1 Delete references to “England and Wales” when referring to addresses.
      4. Clause 12 – the word “*assignment”* shall be amended to “assignation”.
      5. Clause 14 – “*Contract (Rights of Third Parties) Act 1999*” shall be amended to “*Contract (Third Party Rights) (Scotland) Act 2017*”.
      6. Clause 16 Governing Law (add “and Jurisdiction”). References to *“Courts of England”* to be replaced by *“Court of Session”.* References to *“English”* to be replaced by *“Scottish”*. References to “*England and Wales*” to be replaced by “*Scotland*”.
      7. Alter execution strip to read as follows:

*“IN WITNESS WHEREOF these presents consisting of this page and the [ ] preceding pages are executed in duplicate as follows:*

*SIGNATURE:*

*Name:*

*Position:*

*Place of signing:*

*Date:*

*Witness:*

*Witness name:*

*Witness address:”*

1. Changes to Call-Off Schedules

**[Contracting Authority Guidance** Insert any amendments to the Call-Off schedules where Scottish Law applies]

1. References to Legislation

Where legislation applicable to England and Wales only is expressly mentioned in this Call Off Contract it shall have the effect of substituting the equivalent legislation applicable in Scotland.

**Call-Off Schedule 20 (Call-Off Specification)**

This Schedule sets out the characteristics of the Deliverables that the Supplier will be required to make to the Contracting Authorities under this Call-Off Contract

[Insert the Specification]

**Call-Off Schedule 21 (Northern Ireland Law)**

1. **When you should use this Schedule**
   1. This Call-Off Schedule 21 may be included to adapt the Core Terms and Schedules so that the Call-Off Contract is under Northern Ireland Law.
2. **Changes to the Core Terms**

2.1 Clause 34 (Resolving Disputes):

2.1.1 Clause 34.2: substitute the following wording: “If the Dispute is not resolved at that meeting, the Parties can attempt to settle it by mediation using the Dispute Resolution Service of Northern Ireland (DRS) Code of Practice current time at the time of the Dispute. If the Parties cannot agree on a mediator, the mediator will be nominated by DRS. If either Party does not wish to use, or continue to use mediation, or mediation does not resolve the Dispute, the Dispute must be resolved using Clauses 34.3 to 34.5”.

2.1.2 Clause 34.3: the term “Courts of England and Wales” shall be amended to read “Courts of Northern Ireland”.

2.1.3 Clause 34.4: the seat or legal place of the arbitration shall be amended, so that it takes place in Belfast as opposed to London.

2.2 Clause 35 (Which Laws apply): the term “English Law” shall be replaced with “the Law of Northern Ireland”.

1. **Changes to the Joint Schedules**

3.1 Joint Schedule 1 - Definitions

3.1.1. “Insolvency Event”: any reference to a Part or section of the Insolvency Act 1986 shall be deemed to include an alternative reference, if applicable, to the equivalent Part or section of the Insolvency (Northern Ireland) Order 1989.

3.1.2 “Working Day”: reference to “England and Wales” replaced by “Northern Ireland”

3.2 Joint Schedule 5 - Corporate Social Responsibility

3.2.1 Clause 1.1: substitute the following wording: “NOT USED”.

3.2.2 Clause 1.2: substitute the following wording: “NOT USED”.

3.2.3 Clause 2.1: substitute the following wording: “In addition to applicable equality and anti-discrimination legal obligations in Northern Ireland, the Supplier shall support the Authority and the Contracting Authority in fulfilling its obligations to promote equality of treatment under Section 75 of the Northern Ireland Act 1998.”

3.3 Joint Schedule 8 - Guarantee

3.3.1 Clause 4.1: Delete references to “England and Wales” when referring to addresses.

3.3.2 Clause 16: change title to Governing Law and Jurisdiction”; references to “Courts of England” to be replaced by “Courts of Northern Ireland”, references to “English law” to be replaced by the “the laws of Northern Ireland”.

1. **Changes to the Call-Off Schedules**

4.1 Call-Off Schedule 1 (Transparency Reports)

4.1.1 If this Call-Off Schedule 21 (Northern Ireland Law) is included in any Call-Off Contract then Call-Off Schedule 1 (Transparency Reports) is excluded from that Call-Off Contract and does not apply to that Call-Off Contract.

4.2 Call-Off Schedule 18 (Background Checks)

4.2.1 Clause 3.1.2: substitute the following wording: “Notwithstanding Paragraph 2.1.1 for each member of Supplier Staff who, in providing the Deliverables, has, will have or is likely to have access to children, vulnerable persons or other members of the public to whom the Contracting Authority owes a special duty of care, the Supplier must (and shall procure that the relevant Sub-Contractor must) conduct an “Enhanced” Access NI Check and the Supplier shall not (and shall ensure that any Sub-Contractor shall not) engage or continue to employ in the provision of the Deliverables any person who has a Relevant Conviction or an inappropriate record.”

# Call-Off Schedule 22 (Lease Terms)

## 1. Introduction

## 1.1 The Contracting Authority has decided to lease Equipment under the Framework Contract using Framework Schedule 7 (Call-Off Award Procedure) and has stated its requirement using Framework Schedule 6 (Order Form Template and Call-Off Schedules) including specified Joint Schedules and Call-Off Schedules, this Call-Off Schedule 22 (Lease Terms), the Core Terms and each Equipment Order Form.

# 2. Definitions

## 2.1 In this Schedule, the following words shall have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

|  |  |
| --- | --- |
| **"Actual Delivery Date"** | the date on which a piece of Equipment is actually delivered to the Contracting Authority; |
| **"Additional Charges"** | the amounts so specified in the Call-Off Schedule 5 (Pricing Details) or an Equipment Order; |
| **“Delivery Place”** | the place for delivery specified in the Equipment Order; |
| **“Deposit”** | the deposit amount set out in the Equipment Order; |
| **“Due Delivery Date”** | the date specified as the due date for delivery of a piece of Equipment in the Equipment Order; |
| **“Equipment"** | those devices, machines, tools and/or vehicles set out in Framework Schedule 1 - Specification and ordered by the Contracting Authority as may be supplemented in the Call-Off Contract or in an Equipment Order; |
| **“Equipment Order”** | the agreement specifying the piece of Equipment or the pieces of Equipment that the Contracting Authority will hire from the Supplier under the Call-Off Contract which will be in the form prescribed by the Contracting Authority or in an equivalent form as agreed by the Parties from time to time; |
| **“Equipment Specific Maintenance”** | (a) topping up between routine maintenance visits of consumables;  (b) repairs outside of normal routine maintenance but excluding costs occasioned by wilful damage, neglect, accident damage or top ups of consumables between routine maintenance visits; and  (c) replacements of any components which wear out due to fair wear and tear during the Lease Period, except where such replacement is occasioned by the lack of care or abuse of the piece of Equipment by the Contracting Authority; |
| **"Excess"** | has the same meaning given to it in Clause 8.9.1; |
| **"Lease Payments"** | the Deposit, Rentals and Additional Charges (exclusive of any applicable VAT) payable to the Owner by the Contracting Authority under the Call-Off Contract for the full and proper performance by the Supplier of its obligations under the Call-Off Contract which price must not be greater than the prices provided for in the Framework Contract from time to time; |
| **"Lease Period"** | in relation to a piece of Equipment, the period commencing on the Actual Delivery Date for that piece of Equipment and ending on the Return Date for that piece of Equipment unless extended or terminated early in accordance with this Call-Off Contract; |
| **"Lease Terms"** | the terms and conditions of supply and lease set out in this Call-Off Schedule 22; |
| **"Net Book Value"** | the value of a piece of Equipment from time to time being its purchase price less an amount equal to the depreciation of the piece of Equipment, calculated on a straight-line basis, at the time a valuation is made; |
| **“Owner”** | the person who has title to the Equipment and who is listed as the Owner in the Equipment Order; |
| **“Purchase Option”** | the Contracting Authorities option to purchase the Equipment as more fully described in paragraph 9; |
| **“Purchase Option Price”** | the price of the Purchase Option set out in the Equipment Order; |
| **"Rental"** | the amount specified in the Equipment Order; |
| **"Return Date"** | the date so specified in the Equipment Order or as varied by the application of paragraph 5.5; |
| **"Termination Sum"** | for any piece of Equipment, the aggregate of:   1. any Rentals due but unpaid up to the date of termination; 2. any other sum due or to become due to the Supplier hereunder by reason of any breach by the Contracting Authority prior to the date of termination of any of its obligations under the Lease Terms; and 3. the termination rental charges calculated in accordance with the Call-Off Contract or, if lower, 50% of the Rentals that would have been payable under the Lease Terms but for the termination; and |
| **"Total Loss"** | any event which, in the opinion of the insurers of the piece of Equipment, renders the piece of Equipment incapable of economic repair if it is lost, stolen or destroyed. |

# Exclusion of certain Core Terms

## When the Parties have entered into a Call-Off Contract which incorporates the Lease Terms, the following Core Terms are modified in respect of the Call-Off Contract (but are not modified in respect of the Framework Contract):

### 3.1.1 Clause 3.1.2 does not apply to the Call-Off Contract;

### 3.1.2 Clause 3.2 does not apply to the Call-Off Contract;

### 3.1.3 Clause 8.7 does not apply to the Call-Off Contract;

### 3.1.4 Clause 10.2 does not apply to the Contracting Authority extending the Lease Period of any Equipment;

### Clause 10.3.2 does not apply to the Contracting Authority terminating the hire of any Equipment; and

### Clause 11.3 does not apply where the Contracting Authority must pay a Settlement Sum, a Termination Sum or any amount under paragraph 11.

# Equipment Orders

## Each Equipment Order is subject to and incorporates the Lease Terms so that no other terms and conditions which the Supplier tries to impose under any quotation, confirmation of order, delivery note, invoice or similar document are part of the Call-Off Contract.

## The Parties agree that any other terms or conditions (whether or not inconsistent with the terms of this Call-Off Contract) contained or referred to in any correspondence or any documentation submitted by the Supplier which is not part of the Framework Contract or which are elsewhere implied by custom, practice or course of dealing do not apply.

## The Supplier must send a confirmation of the Equipment Order to the Contracting Authority by electronic means (or in any other method as the Parties may agree from time to time) within [forty-eight (48)] hours of receipt of the Equipment Order and the confirmation will confirm the order details including:

### a description of the piece of Equipment ordered;

### details of any optional extras ordered and any conversion work to be carried out;

### the anticipated delivery details; and

### the name and address of the Supplier.

## For the avoidance of doubt, each Equipment Order survives the expiration or termination of the Framework Contract.

# Hiring Equipment

## Lease

## In consideration of the payment of the Lease Payments, the Supplier will hire the Equipment to the Contracting Authority in a timely manner and in accordance the Call-Off Contract and the requirements notified to the Supplier in the Equipment Order.

## The Deposit is a deposit against default by the Contracting Authority of payment of any Lease Payments or any loss of or damage caused to the Equipment. The Contracting Authority must, on the Actual Delivery Date, pay the Deposit to the Supplier. If the Contracting Authority fails [without due cause] to make any Lease Payments in accordance with the Equipment Order, or causes any loss or damage to the Equipment (in whole or in part), the Supplier can apply the Deposit against that default, loss or damage. The Contracting Authority must pay to the Supplier any sums deducted from the Deposit within ten (10) Working Days of a demand for the same. The Supplier must refund the Deposit (or balance of the Deposit) within [five (5)] Working Days after the end of the Lease Period.

## The Supplier must advise the Contracting Authority on the selection and specification of the Equipment and, where applicable, any conversion work to be carried out in respect of them so as to ensure that the Equipment will be of sufficient quality and suitable for the requirements of the Contracting Authority.

## Before the Due Delivery Date of any piece of Equipment the Contracting Authority can amend or cancel and remove that piece of Equipment from the Equipment Order by notifying the Supplier. If the Contracting Authority does cancel all or part of an Equipment Order:

### for standard specification pieces of Equipment, the Contracting Authority can cancel any Equipment Order or part of any Equipment Order which has not been delivered. The Contracting Authority will pay the Supplier’s reasonable and proven costs already incurred on the cancelled Equipment Order as long as the Supplier takes all reasonable steps to minimise these costs, including an attempt to redeploy the ordered Equipment to an alternative customer. [Where the Equipment is a vehicle, cancellation terms for converted vehicles or vehicles above 3.5 tonnes should be agreed by the Contracting Authority and Supplier prior to award of the Call-Off Contract];

### in all other circumstances (including where the Equipment is not standard specification or less than thirty (30) days’ notice is given), the Supplier will take all reasonable steps to allocate the piece of Equipment to an alternative Contracting Authority. If the Supplier is unable to re-allocate the piece of Equipment, the Contracting Authority must pay the Supplier any cancellation charges reasonably, properly and proven to be incurred by the Supplier provided that the Supplier can prove to the reasonable satisfaction of the Contracting Authority that the Supplier has taken all reasonable efforts to minimise such charges; and

### where the amendment or cancellation of an Equipment Order is directly or indirectly due to the Supplier’s failure to comply with its obligations under the Call-Off Contract, the Contracting Authority has no liability to the Supplier in respect of the amendment or cancellation.

## If the Contracting Authority wants to keep any piece of Equipment after the expiry of the current Lease Period then the Contracting Authority must give written notice to the Supplier [1 Month] prior to the end of the Lease Period and the Supplier must confirm its agreement (which the Supplier cannot unreasonably refuse). The Rentals payable in relation to any extensions of a Lease Period are (unless otherwise agreed between the Parties) calculated:

### where the extension is for twenty-eight (28) days or less, proportionately based on the original Rental for the piece of Equipment and the Parties shall agree (such agreement not to be unreasonably withheld or delayed) the revised Agreement Mileage for that vehicle as soon as reasonably practicable; or

### where the extension is for more than twenty-eight (28) days, using the same method that was used to calculate the original Rentals.

## Delivery and Installation

## The Supplier must give the Contracting Authority confirmation of the anticipated Due Delivery Date for each piece of Equipment within five (5) Working Days of receipt of the Equipment Order.

## The Supplier will deliver the Equipment to the Delivery Place or as otherwise reasonably directed by the Contracting Authority.

## If the Contracting Authority has specified that the Supplier must install the Equipment at the Delivery Place, the Supplier must at the Contracting Authorities expense install the Equipment at the Delivery Place. The Contracting Authority must make sure that a duly authorised representative of the Contracting Authority is present at the installation of the Equipment.

## The Supplier will, at the Supplier's cost, deliver the Equipment to the Contracting Authority in a good working and clean condition on the Due Delivery Date.

## [If the Equipment is a vehicle, on delivery, the mileage of each piece of Equipment must not exceed one hundred (100) miles unless, due to the nature of the piece of Equipment, it is impractical to do so in which event the Supplier must minimise the delivery mileage and the Supplier must ensure that any delivery mileage is deducted for the purposes of calculating any Excess/under Mileage. On delivery, each piece of Equipment must contain not less than a quarter a tank of fuel.]

## The Supplier can only deliver Equipment before the Due Delivery Date if the Contracting Authority agrees to early delivery before the Supplier attempts delivery.

## Any defects to a piece of Equipment notified to the Supplier by the Contracting Authority must be rectified within fourteen (14) days at no cost to the Contracting Authority.

## A piece of Equipment is only delivered once a duly authorised representative of the Contracting Authority signs a delivery note (which quotes the Supplier's order number and full details of the piece of Equipment) to confirm delivery of the Equipment but that signature is not evidence that the Equipment complies with the requirements of the Equipment Order.

## If, for any reason, the Contracting Authority is unable to take delivery of a piece of Equipment on or after the Due Delivery Date the Supplier must, at its own expense, store or arrange for the storage of the Equipment for a reasonable time and must safeguard the Equipment until actual delivery.

## The Supplier must make sure (at its own cost) that each piece of Equipment is delivered in a new and unused condition unless the Contracting Authority requests otherwise. The Contracting Authority can at its sole discretion reject a piece of Equipment which is not in the condition requested and/or in respect of which the delivery note does not include the required information.

## If the Supplier does not deliver a piece of Equipment by the agreed time or specified date then the Contracting Authority can withhold payment of the Lease Payments for that piece of Equipment until the time when the Supplier actually delivers it.

## If the Supplier becomes aware that a piece of Equipment cannot be delivered by the agreed Due Delivery Date or if a piece of Equipment is not actually delivered by its Due Delivery Date, the Supplier shall inform the Contracting Authority of the revised delivery date. Where the Contracting Authority has indicated that the timing of delivery is critical, the Supplier must provide an alternative piece of Equipment of the same specification or one with equivalent specification by the Due Delivery Date until the time as the piece of Equipment is actually delivered. If the Supplier cannot supply an alternative piece of Equipment by the Due Delivery Date, the Supplier must meet and promptly refund to the Contracting Authority all and any additional costs incurred by the Contracting Authority for provision of a piece of Equipment of the same specification or one with equivalent specification.

## To facilitate delivery and, if applicable, installation, the Contracting Authority must provide all requisite materials, facilities, access and suitable working conditions to enable delivery and, if applicable, installation to be carried out safely and efficiently.

# Title, Possession And Risk

## The Equipment is the property of the Owner at all time and the Contracting Authority will not have any right, title or interest in or to the Equipment apart from the right to possess and use the Equipment in accordance with the Call-Off Contract.

## The Contracting Authority accepts a piece of Equipment by signing a delivery form and the Lease Period for that piece of Equipment starts unless the Contracting Authority notifies the Supplier that the piece of Equipment is not in accordance with the agreed specification or otherwise not in conformity with the requirements of the Equipment Order by telephone and confirmed in writing, email or facsimile within seventy-two (72) hours of delivery.

## Once the Contracting Authority notifies the Supplier of non-acceptance, the Parties will agree a course of action to take.

## Except where non-acceptance is due to default of the Contracting Authority, in the event of non-acceptance the Supplier will, at its own expense make an equivalent alternative piece of Equipment available for use by the Contracting Authority until the time that the Supplier actually delivers an acceptable piece of Equipment to the Contracting Authority. If non-acceptance is due to the default of the Contracting Authority, the Contracting Authority can cancel the part of the Equipment Order relating to that piece of Equipment but must pay reasonable cancellation charges to the Supplier.

## From the time of acceptance of a piece of Equipment, the Contracting Authority bears the risk of loss or damage to the Equipment however caused and whether insured or not, provided that the Contracting Authority does not bear the risk of loss or damage:

### caused by the negligence of the Supplier, its Subcontractors or its agents; or

### while the Supplier has possession of the Equipment, including for any maintenance.

## The Supplier must give, and must make sure that the Owner gives, the Contracting Authority quiet possession of the Equipment and the Supplier warrants that the Contracting Authority can peaceably hold the Equipment throughout the Lease Period free of any interference from the Supplier, the Owner or any person acting through the Supplier.

# Supplier's Obligations

## Warranty

## The Supplier warrants that the Equipment substantially conforms to its specification (as made available by the Supplier), be of satisfactory quality and fit for any purpose held out by the Supplier.

## The Supplier must use all reasonable endeavours to remedy, free of charge, any material defect in the Equipment which manifests itself within [twelve (12)] Months from the Actual Delivery Date, provided that:

### the Contracting Authority notifies the Supplier of any defect in writing within [ten (10)] Working Days of the defect occurring [or of becoming aware of the defect];

### the Contracting Authority permits the Supplier to make a full examination of the alleged defect;

### the defect did not materialise as a result of misuse, neglect, alteration, mishandling or unauthorised manipulation by any person other than the Supplier’s authorised personnel;

### the defect did not arise out of any information, design or any other assistance supplied or furnished by the Contracting Authority or on its behalf; and

### the defect is directly attributable to defective material, workmanship or design.

## To the extent that the Equipment comprises or contains equipment or components which were not manufactured or produced by the Supplier, the Contracting Authority is only entitled to any warranty or other benefit that the Supplier has received from the manufacturer.

## The Supplier must transfer to the Contracting Authority, so far as is possible, the benefits of any manufacturers' warranties relating to the fitness and performance of the Equipment.

## If the Supplier does not remedy any material defect in the Equipment in accordance with Clause 7.2, the Supplier must, at the Contracting Authorities request, accept the return of part or all of the Equipment and make an appropriate reduction to the Rentals payable during the remaining term of the agreement and, if relevant, return any Deposit (or any part of it).

## Maintenance

## Where the Contracting Authority selects the maintenance option in the Equipment Order, the Supplier is responsible for the costs of:

### normal routine maintenance in accordance with manufacturers' maintenance recommendations as amended from time to time; and

### any Equipment Specific Maintenance, provided that the costs have been duly authorised by the Supplier and a service outlet approved by the Supplier carries out the maintenance.

## If the Supplier replaces any components which wear out due to fair wear and tear, the replacement component must be new and of the same or equivalent specification.

## If the Parties agree that the Contracting Authority will pay any additional maintenance or repair costs, the Supplier must advise the Contracting Authority of the costs as soon as practicable which must then be subject to approval in writing by the Contracting Authority and the Supplier must submit an invoice to the Contracting Authority within twenty-one (21) days of the cost being incurred.

## Indemnity

## The Supplier indemnifies the Contracting Authority against all reasonable Losses incurred whilst the Equipment is unavailable for use by the Contracting Authority due a Default or due to the negligence of the Supplier, its servants or agents.

## Equipment Collection

## At the Supplier's cost, the Supplier must collect the Equipment from the agreed collection point at the expiry or termination of the Lease Period within five (5) Working Days after the expiry or termination of the Lease Period.

## The Supplier must agree a note of the condition of the Equipment with the authorised representative of the Contracting Authority at the time of collection and state the condition and mileage on an inspection form.

## If Supplier does not collect the Equipment at the agreed time and collection point, the Supplier indemnifies the Contracting Authority against all Losses due to the failure to collect the Equipment as agreed.

## Relief Equipment

## If, whilst in the United Kingdom, a piece of Equipment becomes not fit for any of the purposes for which Equipment of its type is commonly used and the Equipment Order states that the Contracting Authority requires relief Equipment, the Supplier must make relief Equipment available for the Contracting Authorities use within the conditions specified in the Call-Off Contract for a period up to twenty-eight (28) days for any one event.

## The Supplier must provide relief Equipment that is, where reasonably possible, a comparable model to the piece of Equipment which has become unfit for purpose.

## The Contracting Authority must return the relief Equipment as directed by the Supplier within two (2) Working Days of being informed that the original Equipment is fit for all of the purposes for which Equipment of its type is commonly used.

## The Contracting Authority must use and insure the relief Equipment on the terms specified within this Call-Off Contract.

## Where a piece of Equipment is withdrawn from service under paragraph 8.9 above, if the Supplier does not provide relief Equipment to the Contracting Authority within five (5) Working Days of withdrawal, the Rentals in respect of that piece of Equipment are suspended and do not resume until relief Equipment has been provided or the Equipment has been returned to the Contracting Authority. The suspension of Rentals is calculated on a daily basis.

# Contracting Authorities Obligations

## Modifications

## The Contracting Authority must not alter, tamper with or modify any Equipment without the Supplier's written consent, which cannot be unreasonably withheld or delayed.

## Limits of Use

## While a piece of Equipment is in its control, the Contracting Authority must:

### keep and operate the Equipment in a suitable environment, use it only for the purposes for which it is intended, and operate it in a proper manner by trained competent staff in accordance with any operating instructions provided by the Supplier;

### take such steps (including compliance with all safety and usage instructions provided by the Supplier) as may be necessary to make sure, so far as is reasonably practicable, that the Equipment is at all times safe and without risk to health when it is being set, used, cleaned or maintained by a person at work;

### not overload the Equipment or use it for sub-hire or reward activities, any use for which it was not intended or any form of sporting competition;

### make sure that only persons qualified to do so operate the Equipment and that each operator holds any necessary permits, including a valid operator’s licence or a valid driving licence where appropriate;

### not without the prior written consent of the Supplier, attach the Equipment to any land or building so as to cause the Equipment to become a permanent or immovable fixture on the land or building. If the Equipment does become affixed to any land or building then the Equipment must be capable of being removed without material injury to the land or building and the Contracting Authority must repair and make good any damage caused by the affixation or removal of the Equipment from any land or building;

### not do or allow to be done anything which will or might jeopardise the right, title and/or interest of the Owner or the Supplier in the Equipment and, where the Equipment has become affixed to any land or building, the Contracting Authority must take all necessary steps to ensure that the Supplier can enter the land or building and recover the Equipment both during the Lease Period and for a reasonable period after the Lease Period, including by procuring from any person having an interest in the land or building, a waiver in writing and in favour of the Supplier of any rights the person may have or acquire in the Equipment and a right for the Supplier to enter onto the land or building to remove the Equipment;

### not allow the Equipment to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Equipment is confiscated, seized or taken, the Contracting Authority must notify the Supplier and the Contracting Authority must at its sole expense use its best endeavours to procure an immediate release of the Equipment;

### not do or allow anything to be done which could invalidate the insurances referred to in paragraph 8.9; and

### not use the Equipment for any unlawful purpose.

## The Contracting Authority must make sure that at all times the Equipment is identifiable as being the Owner’s property and wherever possible must make sure that a visible sign is attached to the Equipment labelling it as the Owner’s property.

## The Contracting Authority must not sell or offer to sell the Equipment and can only part with possession or control of the Equipment to an authorised user in the employment of the Contracting Authority.

## The Contracting Authority must not allow to exist any lien nor assign mortgage pledge or otherwise deal with the Equipment in a manner inconsistent with either the Supplier's interest or the Owner’s interest in the Equipment.

## The Contracting Authority must keep the Supplier fully informed of all material matters relating to the Equipment.

## The Contracting Authority must at all times keep the Equipment in the possession or control of the Contracting Authority and keep the Supplier informed of its location.

## The Contracting Authority must allow the Supplier or its duly authorised representative to inspect the Equipment at all reasonable times and, to enable the Supplier to do so, the Contracting Authority must allow the Supplier entry to the Delivery Place or any premises at which the Equipment may be located, and must grant reasonable access and facilities for such inspection.

## Insurance

## The Contracting Authority must (unless self-insuring):

### insure the Equipment from the Actual Delivery Date and keep the Equipment insured during the Lease Period and until the agreed date of collection by the Supplier, or its nominated agent to the full replacement value of the Equipment under a fully comprehensive policy of insurance in the name of the Contracting Authority bearing endorsements recording the interest of the Supplier and any other persons the Supplier nominates as loss payee. The insurance policy referred to above may be subject to such uninsured amount (**"Excess"**) as may be applicable from time to time and the Contracting Authority indemnifies the Supplier against any Losses with the Excess;

### punctually pay all premiums due under the insurance policy and otherwise comply with all the terms and conditions thereof and produce to the Supplier on demand the policy, evidence of the adequacy of the insurance and evidence that all premiums have been duly paid. If the Contracting Authority does not pay any premium the Supplier can do so and the Contracting Authority must reimburse the Supplier;

### apply all money received in respect of such insurances in the repairing of damage to or in restoring or replacing the Equipment; and

### on termination of the lease of a piece of Equipment for Total Loss, pay the Termination Sum together with all other sums due on termination. If the Contracting Authority pays the Supplier all amounts due on termination for Total Loss the Supplier must pay to the Contracting Authority a refund of Rentals of an amount equal to any insurance proceeds the Supplier receives.

## Maintenance

## The Contracting Authority must ensure that at all times the Equipment is maintained and operated in accordance with the manufacturer's recommendations and warranty stipulations and that the Equipment is kept clean and in a good state of repair.

## The Contracting Authority must maintain operating and maintenance records of the Equipment and make copies of those records readily available to the Supplier, together with any additional information relating to the Equipment as the Supplier may reasonably require.

## If any piece of Equipment is involved in an accident which is not a Total Loss the Contracting Authority must have repairs carried out promptly at the Contracting Authorities own expense by either a retailer holding the franchise for the Equipment or an accredited insurance repair specialist approved by the Supplier. The Contracting Authority is responsible for ensuring that those repairs are properly carried out.

## Fines and Penalties

## The Contracting Authority is liable for all fines, fees or penalties incurred by any operator of a piece of Equipment provided under the Call-Off Contract. The Supplier must in all cases send to the Contracting Authority any notice or other communication the Supplier receives in respect of fines, fees or penalties.

## Taking Overseas

## The Contracting Authority must not take or allow any Equipment to be taken out of the United Kingdom without the previous written consent of the Supplier, which cannot be unreasonably withheld or delayed.

## If the Supplier grants consent the Contracting Authority must pay a repatriation insurance premium to an association approved by the Supplier to make sure that the Equipment can, if necessary, be returned to the United Kingdom without cost to the Supplier.

## The Contracting Authority must make sure that any Equipment is not taken outside of the United Kingdom for a period of more than twenty-eight (28) days without the previous written consent of the Supplier which cannot be unreasonably withheld or delayed.

## Actions upon Termination of Lease or Expiry of Lease Period

## On expiry of the Lease Period or in the event of early termination of the lease in respect of any Equipment the Contracting Authority must:

### make the Equipment available for collection by the Supplier on the date assigned for collection. The Supplier will be bound by all obligations under this Call-Off Contract until the time when the Supplier actually collects the Equipment which the Supplier shall do promptly;

### complete an inspection form with the Supplier on the Return Date and ensure that the Equipment is returned and that the Equipment is in a condition consistent with its age and mileage making due allowance for fair wear and tear;

### remove all personal effects and any other items belonging to the Contracting Authority;

### if the Supplier notifies the Contracting Authority that the Equipment is not in the condition required under paragraph 8.17.2, pay to the Supplier the amount that the Contracting Authority and the Supplier agree as the cost of rectification. In the event of any dispute regarding the condition of the Equipment, an independent assessment must be carried out by a properly qualified and experienced consultant appointed by the Supplier and the Contracting Authority. Any consultant must act as an expert and not as an arbitrator and their decision is final;

### in the event of a dispute the Equipment or other form of evidence acceptable to the Contracting Authority must be held by the Supplier until an independent assessment has been made in accordance with Clause 8.17.4 above. The costs of the independent consultant must be borne equally between the Contracting Authority and the Supplier provided that both Parties act reasonably at all times during the dispute; and

### in the event of damage to any Equipment the Supplier must forward an invoice to the Contracting Authority within twenty-one (21) days following the Return Date. In the case of dispute the Contracting Authority will notify the Supplier of what is in dispute within twenty-one (21) days of receipt of invoice or pay the invoice in accordance with the payment terms. Any such dispute must be resolved in accordance with Clause 34 of the Core Terms.

# Purchase Option

## Subject to paragraph 9.2, the Supplier must make sure that the Contracting Authority has the option, exercisable by not less than [twenty (20)] Working Days’ written notice to the Supplier, to purchase the Equipment from the Owner on the last Working Day of the Lease Period at the Purchase Option Price.

## The Contracting Authority can only exercise the Purchase Option if the Contracting Authority has paid in full all amounts due to the Supplier under the Call-Off Contract up to the date of exercise of the Purchase Option.

## On completion of the purchase of the Equipment under this paragraph 9, the title to the Equipment as the Owner had on the Actual Delivery Date will transfer to the Contracting Authority. The Equipment will transfer to the Contracting Authority in the condition and at the location in which it is found on the date of transfer.

# Termination Of A Lease

## Without affecting any other right or remedy available to them, the Supplier can terminate the hire of any piece of Equipment with immediate effect by giving written notice to the Contracting Authority if:

### the Contracting Authority fails to pay any amount due under this Call-Off Contract on the due date for payment and remains in Default not less than 40 Working Days after being notified in writing to make such payment;

### there is a material default of any other term of these Lease Terms by the Contracting Authority which is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 Working Days after being notified in writing to do so; or

### there is a consistent repeated failure by the Contracting Authority to comply with any of the terms of the Call-Off Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with them having the intention or ability to give effect to the terms of the Call-Off Contract.

## The hire of a piece of Equipment terminates automatically if a Total Loss occurs in relation to the Equipment.

## At any time, the Contracting Authority can terminate the hire of any piece of Equipment by giving 10 days’ written notice to the Supplier.

# Consequences Of Expiry Or Termination

## Where the lease of any piece of Equipment is terminated for any reason, the Supplier’s consent to the Contracting Authorities possession of the Equipment will terminate and the Supplier can, by its authorised representatives, without notice and at the Contracting Authorities expense, retake possession of the Equipment and for this purpose may enter the Delivery Place or any premises at which the Equipment is located.

## Where paragraph 10 applies, the standard early termination charges apply and the Supplier must invoice the Contracting Authority as appropriate within twenty one (21) days following the termination.

## The following table indicates the number of Month’s rental that the Supplier can invoice to the Contracting Authority as a result of the lease of a piece of Equipment being terminated early based on the length of the Equipment lease and at which point during the Lease Period the lease of the Equipment is early terminated.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| YEAR OF TERMINATION | SCHEDULED LEASE PERIOD | | | |
| 2 YEARS | 3 YEARS | 4 YEARS | 5YEARS |
| YEAR 1 | 2 months | 5 months | 6 months | 7 months |
| YEAR 2 | 1 month | 3 months | 4 months | 5 months |
| YEAR 3 |  | 1 month | 2 months | 3 months |
| YEAR 4 |  |  | 1 month | 2 months |
| YEAR 5 |  |  |  | 1 month |

## Where paragraph 10 applies or where the lease of a piece of Equipment is terminated for any other reason (including Total Loss but excluding termination pursuant to Clause 10 of the Core Terms) the Contracting Authority must, within thirty (30) days of the termination pay the Supplier the Termination Sum by way of agreed liquidated damages.

## The Supplier agrees that any payments made pursuant to paragraphs 11.2 or 11.3 above is the Suppliers sole and exclusive remedy in respect of the termination which resulted in the payment of money as provided for in those paragraphs.

## Where the Contracting Authority terminates the Call-Off Contract under Clause 10 of the Core Terms and then makes other arrangements for the supply of the Equipment, the Contracting Authority can recover the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Contracting Authority from the Supplier. The Contracting Authority must take reasonable steps to mitigate any additional expenditure. Where the Call-Off Contract is terminated under Clause 10 of the Core Terms, the Contracting Authority will not make any further payments to the Supplier until the Contracting Authority has established the final cost of making those other arrangements.

# The Owner

## If the Owner and the Supplier are not the same person, the Owner can enforce:

## paragraph 6.1; and

## each of the following paragraphs of the Lease Terms as if it was the Supplier:

## paragraph 7.15;

## paragraph 7.16;

## paragraph 8;

## paragraph 10.1.2; and

## paragraph 11.1.

### **Annex A**

### **Call-Off Schedule [22] (Lease Terms) – Equipment Order Form Template**

**[Contracting Authority guidance:** This Equipment Order Form, when completed and executed by both Parties, forms an Equipment Order. An Equipment Order can be completed and executed using an equivalent document or available electronic purchase order system. If an electronic purchasing system is used instead of signing as a hard-copy, the text below must be copied into the electronic order form]

ORDER REFERENCE: **[Insert** Contracting Authorities Equipment Order number]

DATE OF ORDER: **[Insert** Date the order is placed]

THE CONTRACTING AUTHORITY: **[Insert** Contracting Authorities name]

CONTRACTING AUTHORITY CONTACT [**Insert** business address and contact number]

INVOICE CONTACT [**Insert** business address for equipment invoicing]

THE SUPPLIER: [**Insert** name of Supplier]

SUPPLIER ADDRESS:[**Insert** registered address]

SUPPLIER ACCOUNT

MANAGER: **Insert** registered address]

THE DELIVERABLES

[**Contracting Authority guidance**: Insert the details for the Equipment and/or services which are the subject of the Call-Off Contract. For example:

**[the Authority** **guidance: It may be helpful to Contracting Authorities if a list of Equipment from the Specification is included here for Contracting Authorities to choose from. Also please include a list of available support or maintenance services that Contracting Authorities can choose from]**

Equipment: [**Insert** Description of Equipment]

Quantity: [**Insert** Number of items]

Owner: [**Insert** Name of the owner of the Equipment]

Services: [[**Insert** Description of any additional services]

Delivery Place: [**Insert** all addresses where the Equipment is to be delivered and/or the services are to be performed]

Time and Date of Delivery [**Insert** the Due Delivery Date]

LEASE PERIOD

The Lease Period shall be the period of **[Insert**[ ] months / quarters / years from the Actual Delivery Date until the Return Date which is **[Insert**[ ] months / quarters / years after the Actual Delivery Date.

**[Contracting Authority guidance**: Extension periods are agreed in accordance with paragraph 6.5 of the Lease Terms]

PRICE AND PAYMENT

Deposit payable by the Contracting Authority [**Insert** Deposit payable (including any applicable discount but excluding VAT)]

Rentals payable by the Contracting Authority[**Insert** Rentals payable (including any applicable discount but excluding VAT)]

**[Contracting Authority guidance** where the Contracting Authority requests and the Supplier provides the requested services then the Contracting Authority shall pay the corresponding charges]

Additional Charges for services **[Insert** additional charges payable by the Contracting Authority (including any applicable discount but excluding VAT):

Purchase Option Price [**Insert** the Purchase Option Price (excluding VAT)]

Payment Method [**Insert** payment method(s) and necessary details]

Invoicing and Payment

The Supplier shall issue invoices **[Delete** monthly]/[quarterly] and the Contracting Authority shall pay the Supplier within thirty (30) days of receipt of a valid invoice, submitted in accordance with this Equipment Order Form and the provisions of the Call-Off Contract.

Termination Rental Charges

The termination rental charge shall be calculated as follows:

SPECIAL TERMS

#### [Contracting Authority guidance specify whether any clauses apply to this Equipment Order in addition to the Lease Terms that are needed.]

Special Term 1

Special Term 2

**BY SIGNING AND RETURNING THIS ORDER THE SUPPLIER AGREES** that they have read the Lease Terms and by signing below agree to be bound by the terms.

|  |  |
| --- | --- |
| **For and on behalf of the Contracting Authority:** | |
| Name and Title |  |
| Signature |  |
| Date |  |

|  |  |
| --- | --- |
| **For and on behalf of the Supplier:** | |
| Name and Title |  |
| Signature |  |
| Date |  |