HM Revenue & Customs

HMRC Tier 3 Model ICT Contract
Version 2.0 (April 2019)

SCHEDULE 8.6 | Business Continuity and Disaster Capability

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DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

"Business Continuity Plan"	has the meaning given in Paragraph 2.2(a)(ii));
"Business Continuity Services"	has the meaning given in Paragraph 4.2(b);
"Disaster"	the occurrence of one or more events which, either separately or cumulatively, mean that the Services, or a material part of the Services will be unavailable for period as specified in BCDC Plan or which is reasonably anticipated will mean that the Services or a material part of the Services will be unavailable for that period;
"Disaster Capability Plan"	has the meaning given in Paragraph 2.2(a)(iii);
"Disaster Capability Services"	the services embodied in the processes and procedures for restoring the Services following the occurrence of a Disaster;
"Disaster Capability System"	the system identified by the Supplier in the Supplier Solution which shall be used for the purpose of delivering the Disaster **Capability** Services;
"Related Service Provider"	any person who provides services to the Authority in relation to this Agreement from time to time which persons include as at the Effective Date.

2 BCDC PLAN

2.1 Within forty (40) Working Days from the Effective Date the Supplier shall prepare and deliver to the Authority for the Authority's written approval a plan, which shall detail the processes and arrangements that the Supplier shall follow to:

(a) ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services; and

(b) ensure the recovery of the Services in the event of a Disaster.

2.2 The BCDC Plan shall:

(a) be divided into three parts:

(i) Part A which shall set out general principles applicable to the BCDC Plan;

(ii) Part B which shall relate to business continuity (the **"Business Continuity Plan"**); and

(iii) Part C which shall relate to disaster capability (the **"Disaster Capability Plan"**); and

(b) unless otherwise required by the Authority in writing, be based upon and be consistent with the provisions of Paragraphs 3, 4 and 5.

2.3 Following receipt of the draft BCDC Plan from the Supplier, the Authority shall:

(a) review and comment on the draft BCDC Plan as soon as reasonably practicable; and

(b) notify the Supplier in writing that it approves or rejects the draft BCDC Plan no later than twenty (20) Working Days after the date on which the draft BCDC Plan is first delivered to the Authority.

2.4 If the Authority rejects the draft BCDC Plan:

(a) the Authority shall inform the Supplier in writing of its reasons for its rejection; and

(b) the Supplier shall then revise the draft BCDC Plan (taking reasonable account of the Authority's comments) and shall re-submit a revised draft BCDC Plan to the Authority for the Authority's approval within twenty (20) Working Days of the date of the Authority's notice of rejection. The provisions of Paragraph 2.3 and this Paragraph 2.4 shall apply again to any resubmitted draft BCDC Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

3 GENERAL PRINCIPLES AND REQUIREMENTS

3.1 The BCDC Plan shall:

(a) set out how the business continuity and disaster capability elements of the Plan link to each other;

(b) detail how the BCDC Plan links and interoperates with any overarching and/or connected disaster capability or business continuity plan of the Authority and any of its other Related Service Providers in each case as notified to the Supplier by the Authority from time to time;

(c) identify the responsibilities (if any) that the Authority has agreed it will assume in the event of the invocation of the BCDC Plan; and

(d) provide details of how the invocation of any element of the BCDC Plan may impact upon the operation of the Services and any services provided to the Authority by a Related Service Provider;

(e) contain an obligation upon the Supplier to liaise with the Authority and (at the Authority's request) any Related Service Provider with respect to issues concerning business continuity and disaster capability where applicable;

(f) set out key contact details (including roles and responsibilities) for the Supplier (and any Sub-contractors) and for the Authority;

(g) provide for the provision of technical advice and assistance to key contacts at the Authority as notified by the Authority from time to time to inform decisions in support of the Authority's business continuity plans.

(h) contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multi-channels (including but without limitation a web-site (with FAQs), e-mail, phone and fax) for both portable and desktop configurations, where required by the Authority;

(i) provide for documentation of processes, including business processes, and procedures;

(j) contain a risk analysis, including:

(i) failure or disruption scenarios and assessments and estimates of frequency of occurrence;

(ii) identification of any single points of failure within the Services and processes for managing the risks arising therefrom;

(iii) identification of risks arising from the interaction of the Services with the services provided by a Related Service Provider; and

(iv) a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;

(k) identify the procedures for reverting to "normal service";

(l) set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to ensure that there is no more than the accepted amount of data loss and to preserve data integrity;

3.2 The BCDC Plan shall be designed so as to ensure that:

(a) the Services are provided in accordance with this Agreement at all times during and after the invocation of the BCDC Plan;

(b) the adverse impact of any Disaster, service failure, or disruption on the operations of the Authority is minimal as far as reasonably possible;

(c) it complies with the relevant provisions of ISO/IEC 27002 and all other industry standards from time to time in force;

(d) there is a process for the management of disaster capability testing detailed in the BCDC Plan; and

(e) it complies and is consistent with the requirements set out in the Ecosystem BCDC Plan.

3.3 The BCDC Plan shall be upgradeable and sufficiently flexible to support any changes to the Services or to the business processes facilitated by and the business operations supported by the Services.

3.4 The Supplier shall not be entitled to any relief from its obligations under the Performance Indicators 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 Agreement.

4 BUSINESS CONTINUITY PLAN - PRINCIPLES AND CONTENTS

4.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes and operations facilitated by the Services remain supported and to ensure continuity of the business operations supported by the Services including, unless the Authority expressly states otherwise in writing:

(a) the alternative processes (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the Services; and

(b) the steps to be taken by the Supplier upon resumption of the Services in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.

4.2 The Business Continuity Plan shall:

(a) address the various possible levels of failures of or disruptions to the Services;

(b) set out the services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Services (such services and steps, the "**Business Continuity Services**");

(c) 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 in respect of other Services during any period of invocation of the Business Continuity Plan; and

(d) clearly set out the conditions and/or circumstances under which the Business Continuity Plan is invoked.

5 DISASTER CAPABILITY PLAN - PRINCIPLES AND CONTENTS

5.1 The Disaster Capability Plan shall be designed so as to ensure that upon the occurrence of a Disaster the Supplier ensures continuity of the business operations of the 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.

5.2 The Disaster Capability Plan shall be invoked only upon the occurrence of a Disaster.

5.3 The Disaster Capability Plan shall include the following:

(a) the technical design and build specification of the Disaster Capability System;

(b) details of the procedures and processes to be put in place by the Supplier in relation to the Disaster Capability System and the provision of the Disaster Capability Services and any testing of the same including but not limited to the following:

(i) data centre and disaster capability site audits;

(ii) backup methodology and details of the Supplier's approach to data back-up and data verification;

(iii) identification of all potential disaster scenarios;

(iv) risk analysis;

(v) documentation of processes and procedures;

(vi) hardware configuration details;

(vii) network planning including details of all relevant data networks and communication links;

(viii) invocation rules;

(ix) Service recovery procedures; and

(x) steps to be taken upon resumption of the Services to address any prevailing effect of the failure or disruption of the Services;

(c) any applicable Performance Indicators with respect to the provision of the Disaster Capability Services and details of any agreed relaxation to the Performance Indicators in respect of other Services during any period of invocation of the Disaster Capability Plan;

(d) details of how the Supplier shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Capability Plan is invoked;

(e) access controls to any disaster capability sites used by the Supplier in relation to its obligations pursuant to this Schedule; and

(f) testing and management arrangements.

6 REVIEW AND AMENDMENT OF THE BCDC PLAN

6.1 The Supplier shall review the BCDC Plan (and the risk analysis on which it is based):

(a) on a regular basis and as a minimum once every six (6) months;

(b) within three (3) calendar months of the BCDC Plan (or any part) having been invoked pursuant to Paragraph 8; and

(c) where the Authority requests any additional reviews (over and above those provided for in Paragraphs 6.1(a) and 6.1(b)) by notifying the Supplier to such effect in writing, whereupon the Supplier shall conduct such reviews in accordance with the Authority's written requirements. Prior to starting its review, the Supplier shall provide an accurate written estimate of the total costs payable by the Authority for the Authority's approval. The costs of both Parties of any such additional reviews shall be met by the Authority except that the Supplier shall not be entitled to charge the Authority for any costs that it may incur above any estimate without the Authority's prior written approval.

6.2 Each review of the BCDC Plan pursuant to Paragraph 6.1 shall be a review of the procedures and methodologies set out in the BCDC Plan and shall assess their suitability having regard to any change to the Services 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 BCDC Plan or the last review of the BCDC 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 BCDC Plan. The review shall be completed by the Supplier within the period required by the BCDC Plan or, if no such period is required, within such period as the Authority shall reasonably require. The Supplier shall, within twenty (20) Working Days of the conclusion of each such review of the BCDC Plan, provide to the Authority a report (a **"Review Report"**) setting out:

(a) the findings of the review;

(b) any changes in the risk profile associated with the Services; and

(c) the Supplier's proposals (the **"Supplier's Proposals"**) for addressing any changes in the risk profile and its proposals for amendments to the BCDC Plan following the review detailing the impact (if any and to the extent that the Supplier can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any services or systems provided by a third party.

6.3 Following receipt of the Review Report and the Supplier's Proposals, the Authority shall:

(a) review and comment on the Review Report and the Supplier's Proposals as soon as reasonably practicable; and

(b) notify the Supplier in writing that it approves or rejects the Review Report and the Supplier's Proposals no later than twenty (20) Working Days after the date on which they are first delivered to the Authority.

6.4 If the Authority rejects the Review Report and/or the Supplier's Proposals:

(a) the Authority shall inform the Supplier in writing of its reasons for its rejection; and

(b) the Supplier shall then revise the Review Report and/or the Supplier's Proposals as the case may be (taking reasonable account of the Authority's comments and carrying out any necessary actions in connection with the revision) and shall re-submit a revised Review Report and/or revised Supplier's Proposals to the Authority for the Authority's approval within 20 Working Days of the date of the Authority's notice of rejection. The provisions of Paragraph 6.3 and this Paragraph 6.4 shall apply again to any resubmitted Review Report and Supplier's Proposals, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

6.5 The Supplier shall as soon as is reasonably practicable after receiving the Authority's approval of the Supplier's Proposals (having regard to the significance of any risks highlighted in the Review Report) 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 Services.

7 TESTING OF THE BCDC PLAN

7.1 The Supplier shall test the BCDC Plan on a regular basis (and in any event not less than once in every Contract Year). Subject to Paragraph 7.2, the Authority may require the Supplier to conduct additional tests of some or all aspects of the BCDC Plan at any time where the Authority considers it necessary, including where there has been any

change to the Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the BCDC Plan.

7.2 If the Authority requires an additional test of the BCDC Plan, it shall give the Supplier written notice and the Supplier shall conduct the test in accordance with the Authority's requirements and the relevant provisions of the BCDC Plan. The Supplier's costs of the additional test shall be borne by the Authority unless the BCDC Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.

7.3 The Supplier shall undertake and manage testing of the BCDC Plan in full consultation with the Authority and shall liaise with the Authority in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Authority in this regard. Each test shall be carried out under the supervision of the Authority or its nominee.

7.4 The Supplier shall ensure that any use by it or any Sub-contractor of “live” data in such testing is first approved with the Authority. Copies of live test data used in any such testing shall be (if so required by the Authority) destroyed or returned to the Authority on completion of the test.

7.5 The Supplier shall, within twenty (20) Working Days of the conclusion of each test, provide to the Authority a report setting out:

(a) the outcome of the test;

(b) any failures in the BCDC Plan (including the BCDC Plan's procedures) revealed by the test; and

(c) the Supplier's proposals for remedying any such failures.

7.6 Following each test, the Supplier shall take all measures requested by the Authority, (including requests for the re-testing of the BCDC Plan) to remedy any failures in the BCDC Plan and such remedial activity and re-testing shall be completed by the Supplier, at no additional cost to the Authority, by the date reasonably required by the Authority and set out in such notice.

7.7 For the avoidance of doubt, the carrying out of a test of the BCDC Plan (including a test of the BCDC Plan’s procedures) shall not relieve the Supplier of any of its obligations under this Agreement.

7.8 The Supplier shall also perform a test of the BCDC Plan in the event of any major reconfiguration of the Services or as otherwise reasonably requested by the Authority.

8 INVOCATION OF THE BCDC PLAN

8.1 In the event of a complete loss of service or in the event of a Disaster, the Supplier shall immediately invoke the BCDC Plan (and shall inform the Authority promptly of

such invocation). In all other instances the Supplier shall invoke or test the BCDC Plan only with the prior consent of the Authority.

8.2 Where the BCDC Plan is invoked, the Supplier shall grant to the Authority priority treatment in respect of the Services compared to the best terms offered by the Supplier to any customer who purchases the same or similar services to the Services. In particular, the Supplier warrants, represents and undertakes that no other customer to whom the Supplier supplies, or offers to supply, services shall be in a position to prevent the Authority from receiving the entire benefit of the processes and procedures within the BCDC Plan.

8.3 Upon the Authority's written request, the Supplier shall obtain a written statement from an independent audit agent and which is signed and confirmed by the Supplier, certifying that the Supplier has been in compliance with paragraph 8.2 since the Effective Date or last certification.

8.4 If the Supplier does not provide such written statement within 30 days of having received the Authority's request or provides a statement which does not confirm compliance, irrespective of the reason, the Supplier shall be deemed to be non-compliant with paragraph 8.2 and the Authority shall be entitled to immediately treat such non-compliance as a Supplier Termination Event.