



Home Office

AUTHORITY: The Secretary of State for the Home Department

SCHEDULE 12
SUBCONTRACTORS

NEXT GENERATION OUTSOURCED VISA SERVICES

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SCHEDULE 12

SUBCONTRACTORS

1. INTRODUCTION

- 1.1 This Schedule sets out the provisions regarding the Supplier's ability to appoint and change Supplier Subcontractors; the approval by the Authority of Material Subcontractors and the requirements of any Material Subcontract.
- 1.2 Section 3 of this Schedule applies to all Supplier Subcontractor. Section 4 applies additionally to Material Subcontractors.
- 1.3 In this Schedule, unless the contrary intention appears, each capitalised term will have the meaning set out in Schedule 1 (Definitions).
- 1.4 A full list of Supplier Subcontractors is provided at Annex 12-1 to this Schedule 12 (Subcontractors)

2. OBJECTIVES

- 2.1 The objectives of this Schedule are to ensure that:
 - 2.1.1 the Supplier retains the overall responsibility for fulfilling the Service Requirements, notwithstanding any permitted subcontracting to Supplier Subcontractors;
 - 2.1.2 appropriate terms of this Agreement are flowed-down to Supplier Subcontractors;
 - 2.1.3 the Authority is entitled to require the Supplier to remove underperforming Supplier Subcontractors; and
 - 2.1.4 the Authority's prior consent is sought before a Material Subcontractor is appointed or removed.

3. SUPPLIER SUBCONTRACTORS

3.1 Supplier Subcontracts

The Supplier will remain liable at all times for all acts or omissions of the Supplier Subcontractors (including Material Subcontractors) arising out of or in connection with the Agreement and, in particular, any act or omission which would be a Default under the Agreement had it been done by the Supplier under the Agreement, notwithstanding the fact that it was done by the Supplier Subcontractor.

3.2 Supplier Subcontractor Flow Down

3.2.1 The Supplier shall ensure that each Supplier Subcontract imposes or confers (as applicable) on that Supplier Subcontractor:

- (a) the terms, conditions and obligations of this Agreement as they apply to the Supplier and the Supplier Personnel that are relevant to the performance by that the Supplier Subcontractor of its obligations to the Supplier;
- (b) all of the Authority's rules, guidelines and the Authority Policies that are relevant to the Supplier Subcontractor's fulfilment of the Services Requirements or the Supplier Subcontractor's access to or use of Confidential Information, the Authority Data, Applicant Data or resources or facilities provided by the Authority;
- (c) the security policies and standards of the Agreement including Schedule 4 (**Security**), as they apply to the Supplier;
- (d) any regulatory requirements (including rights of access and audit) which may apply to the Supplier Personnel in the fulfilment of the Services Requirements;
- (e) appropriate rights and obligations in respect of security, data protection and confidentiality;
- (f) the right for the Authority (and, where possible, a Successor Supplier) to take an assignment or novation of the Supplier Subcontract (or part of the Supplier Subcontract, where relevant), on a Termination or Services Removal for any reason (a "**Subcontract Transfer Right**");
- (g) the right of termination without cause by the Supplier on 12 months' notice (to enable the Supplier to terminate the Subcontract in circumstances of a Termination for Convenience);
- (h) the grant of a licence to the Authority to use, or an assignment to the Authority of all title to, Material and/or Software created by the Supplier Subcontractor (or its employees, workers or agents) in the course of fulfilling the Services Requirements under the Supplier Subcontract, including any Intellectual Property Rights therein, on the same terms as the Authority would enjoy were the same created by the Supplier under the terms of this Agreement; and
- (i) an indemnity in favour of the Authority in respect of any Claim by any employee, worker or agent of the Supplier Subcontractor that he or she has an employment relationship with the Authority,

(together, the "**Subcontract Flow-Down Provisions**")

3.2.2 The Supplier shall, as soon as is reasonably practicable, and before a Supplier Subcontract is executed, notify the Authority of any proposed Supplier

Subcontractor that refuses to agree to any of the Subcontract Flow-Down Provisions. The Supplier shall also notify the Authority, as soon as is reasonably practicable, of any amendment to an existing Supplier Subcontract which materially affects a Subcontract Flow-Down provision. In each case, and subject to Section 3.2.3, the Parties shall discuss the implications of such Supplier Subcontract not having a relevant Subcontract Flow-Down Provision and shall agree, acting in good faith, the appropriate action (if any) to be taken to avoid or minimise the effects of such omission.

- 3.2.3 If the proposed Subcontractor refuses to grant a Subcontract Transfer Right or requires an additional fee for the granting of a Subcontract Transfer Right, the Supplier shall notify the Authority and the Authority shall, at its option, either:
- (a) require the Supplier to agree to such Subcontract Transfer Right, in which case the Authority shall pay the fee levied by the Subcontractor, provided that the Supplier has used its Commercially Reasonable Efforts to reduce such fee;
 - (b) agree with the Supplier a commercially reasonable workaround, which may include the Supplier using an alternative Subcontractor; or
 - (c) waive the obligation to obtain a Subcontract Transfer Right.
- 3.2.4 The Supplier shall, as soon as is reasonably practicable, notify the Authority of any proposed new Supplier Subcontract or material amendment to an existing Supplier Subcontract and, if requested, the Supplier shall provide the Authority with a copy of such proposed new Supplier Subcontract or amendment to an existing Supplier Subcontract. If a Supplier Subcontract is shared with other customers of the Supplier, the Supplier may redact confidential information relating to such other customers, provided that it uses Commercially Reasonable Efforts to seek to obtain the waiver of applicable confidentiality restrictions. For the purposes of this Section 3.2.4, a “material amendment” to a Supplier Subcontract is one which affects any of the terms that address any of the matters set out in Sections 3.2.1
- 3.2.5 At the request of the Authority (such request not to be exercised more than once in any six-month period), the Supplier shall provide the Authority with a list of the Supplier Subcontracts, together with a summary of key terms of such Supplier Subcontracts which shall include, as a minimum a summary of the Subcontract Flow-Down Provisions. If such summary does not provide the level of detail to satisfy the Authority, the Authority may request, and the Supplier shall provide to the Authority, a copy of a Supplier Subcontract.
- 3.2.6 The Supplier shall, on an annual basis, update Annex 12-1 to this Schedule 12 (**Subcontractors**) and submit an updated Annex 12-1 in accordance with the Schedule 14 (**Management Systems and Reporting**).

- 3.2.7 The Supplier shall not insert any express contractual provisions into any Supplier Subcontract which would prevent a Supplier Subcontractor contracting directly with the Authority or a Successor Supplier.

3.3 Leases for Visa Application Centres

- 3.3.1 The Supplier shall use Commercially Reasonable Efforts to ensure that each lease for a Visa Application Centre (a “**VAC Lease**”) contains:

- (a) the right for the Authority (and, where possible, a Successor Supplier) to take an assignment or novation of the VAC Lease on a Termination or Services Removal for any reason; and
- (b) the right of termination without penalty by the Supplier on twelve (12) months’ notice (to enable the Supplier to terminate the VAC Lease in circumstances of a Termination for Convenience);

(together, the “**Lease Flexibility Rights**”);

- 3.3.2 If the proposed landlord refuses to grant a Lease Flexibility Right, the Supplier shall notify the Authority and the Authority may agree to waive the obligation to obtain a Lease Flexibility Right.

- 3.3.3 As part of the process for agreeing VAC locations and the associated impact on the Infrastructure Charges as set out in Section 5 in Schedule 6 (**Pricing, Payment and Invoicing**), the Supplier shall notify the Authority if the lease costs of a VAC Lease with the Lease Flexibility Rights are disproportionately priced compared to a VAC Lease without such Lease Flexibility Rights, in which case the Authority, at its option, shall either:

- (a) waive the obligation to obtain the Lease Flexibility Rights; or
- (b) require the Supplier to obtain the VAC Lease containing one or more of the Lease Flexibility Rights, in which case the Parties shall adjust the relevant Monthly Infrastructure Charge based upon the actual Lease Costs incurred by the Supplier.

3.4 Ability of Supplier Subcontractor to perform

- 3.4.1 The Supplier shall immediately notify the Authority if, in good faith, the Supplier has doubts concerning a Supplier Subcontractor’s ability to render future performance of services in fulfilment of the Services Requirements, and the Supplier cannot take reasonable steps to eliminate the effect on the fulfilment of the Services Requirements, because:

- (a) of changes in such Supplier Subcontractor's ownership, management, financial condition or otherwise;
- (b) there have been material representations by or concerning such Supplier Subcontractor's ability; or
- (c) the Supplier believes, in its reasonable judgement, that the Supplier Subcontractor (or its personnel) is a threat to the health, safety or security of the Authority (or the Authority Personnel) or Visa Applicants.

3.4.2 The Supplier shall:

- (a) immediately notify the Authority if an act or omission of a Supplier Subcontractor (including a Material Subcontractor) causes a problem or delay that has a material impact on the Supplier's ability to fulfil the Services Requirements;
- (b) implement plans to circumvent any such problem or delay including taking into account the Authority's comments; and

3.5 Replacement of Supplier Subcontractors

3.5.1 If the Authority has reasonable grounds for concern about the performance of any Supplier Subcontractor, the following procedure shall apply:

- (a) the Authority shall notify the Supplier of such concerns, stating its reasons;
- (b) the Supplier shall have five (5) Working Days or such other reasonable period as the Parties shall agree in which to investigate matters stated in the notice and discuss its findings with the Authority; and
- (c) following such discussion, if the Authority is not satisfied and has reasonable grounds to require the replacement of the Supplier Subcontractor, the Supplier shall in accordance with an agreed plan (including a reasonable timetable) agreed between the Parties cease using such Supplier Subcontractor to provide the Supplier's Solution and shall implement the plan to ensure that the Services Requirements continue to be fulfilled.

3.5.2 In the event that paragraph 3.5.1(c) above applies, all costs incurred by the Supplier in replacing the relevant Supplier Subcontractor, including the payment of any breakage costs incurred by the Supplier and/or the Subcontractor, shall be to the Supplier's account.

3.5.3 For the avoidance of doubt, the Authority will not have the right under Section 3.5.1 above to require the Supplier, or any Supplier Subcontractor, to terminate a member of the Supplier Personnel's employment.

3.6 Management of Supplier Subcontractors

The Parties' rights and responsibilities with respect to the management and governance of Supplier Subcontractors are set out in Schedule 8 (**Governance and Contract Management**).

4. MATERIAL SUBCONTRACTORS

4.1 Approval of Material Subcontractors

4.1.1 The Parties agree that the subcontractors listed and described as such in Annex 12-1 to this Schedule are approved by the Authority as Material Subcontractors as at the Effective Date.

4.1.2 Save for the Material Subcontractor identified in Section 4.1.1 above, the Supplier shall obtain the Authority's prior written approval (which the Authority may not unreasonably withhold or delay) to appoint any Material Subcontractor during the Contract Term. The Supplier shall submit to the Authority a request for such consent which specifies:

- (a) the components of the Supplier's Solution that the Supplier proposes to subcontract and the scope of the proposed subcontract;
- (b) the type of contract between the Supplier and the subcontractor, including any terms and conditions material to, or inconsistent with, the terms and conditions of this Agreement;
- (c) information on the Supplier's selection process including the identity, background and qualifications of the proposed subcontractor;
- (d) the way in which the Supplier proposes to manage a new Material Subcontractor;
- (e) the termination provisions including, in particular, whether the proposed subcontractor's termination rights will be wider than the Supplier's under this Agreement; and
- (f) the exit management provisions including provisions for returning Authority Data and assuring that all Authority Data is removed from the proposed subcontractor's systems on termination or expiry of the proposed subcontract.

4.1.3 Prior to appointing any Material Subcontractor, and as part of the Authority's approvals process for such appointment, the Parties shall consider whether or not the Authority:

- (a) has any doubts concerning a proposed Material Subcontractor's ability to render future performance, whether because of a proposed Material Subcontractor's

ownership, management, financial condition or otherwise, or due to material misrepresentations by such proposed Material Subcontractor or concerning such proposed Material Subcontractor's ability; and/or

- (b) believes, in its reasonable judgement, that the proposed Material Subcontractor (or its personnel) is a threat to the health, safety or security of the Authority, the Authority Personnel or Visa Applicants.

4.1.4 Any subcontractor proposed by the Supplier to replace a Material Subcontractor, or the Supplier replacing a Material Subcontractor, or the Supplier removing a Material Subcontractor shall require the Authority's prior written consent (which the Authority may not unreasonably withhold or delay). Any replacement of a Material Subcontractor under this Section 4.1.4 shall be in accordance with Sections 4.1.2 and 4.1.3 above. The provisions of this Section 4.1.4 shall apply to any replacement or removal of a Material Subcontractor irrespective of whether it applies to one or more Posts, Countries or Regions.

4.1.5 If a Supplier Subcontractor is reclassified as a Material Subcontractor during the Contract Term, the Supplier shall seek the Authority's prior written approval in accordance with Section 4.1.2 and enter into a Material Subcontract in accordance with Section 4.2.

4.2 Provisions in relation to Material Subcontractors

4.2.1 Subject always to Section 3.1, the Supplier shall ensure that (unless otherwise agreed in writing between the Parties) each Material Subcontract used exclusively in the fulfilment of the Services Requirements contains back-to-back provisions with the Agreement in order to ensure that each Material Subcontract embodies and contains the key terms of the Agreement including, in particular:

- (a) the Subcontract Flow-Down Provisions;
- (b) service levels no less onerous than the equivalent Performance Standards;
- (c) the right of termination without cause by the Supplier on twelve (12) months' notice for each Material Subcontract (to enable the Supplier to terminate the Material Subcontract in circumstances of a Termination for Convenience);
- (d) the right of the Authority (and, where possible, a Successor Supplier) to take an assignment or novation of the Material Subcontract (or part of the Material Subcontract, where relevant), on a Termination or Services Removal for any reason;
- (e) obligations no less onerous than those contained in this Agreement in respect of confidentiality, privacy, data security, data protection, audit and rights of access and Intellectual Property Rights;

- (f) no right to subcontract or assign the Material Subcontractor's rights or transfer its obligations without seeking the Supplier's and the Authority's prior consent; and
- (g) a representation that the Material Subcontractor is the employer of its employees.

4.2.2 The Supplier shall use Commercially Reasonable Efforts to procure that each Material Subcontractor shall (in terms reasonably acceptable to the Authority) indemnify the Authority against any Losses arising as a result of any decision of any competent statutory, legal or regulatory authority that the Authority is the employer of such individual.

4.2.3 The Supplier shall use Commercially Reasonable Efforts to ensure that the Authority is named as a third party beneficiary under the terms of each Material Subcontract and that a term is expressly included that provides that:

- (a) where permitted by the applicable Law, the Authority has the right to enforce any term of the Material Subcontract; and
- (b) the Supplier and the Material Subcontractor may not agree to rescind or vary such Material Subcontract without obtaining the prior written consent of the Authority.

4.2.4 The Supplier shall provide the Authority with a copy of the proposed Material Subcontract to enable the Authority to verify that its requirements in relation to Material Subcontracts have been met and, if requested by the Authority, permit the Authority to participate in negotiations with the proposed Material Subcontractor.

4.2.5 The Supplier shall notify the Authority of any change affecting the Material Subcontract or Material Subcontractor which may have a material impact on the fulfilment of the Services Requirements, together with all reasonable information to enable the Authority to consider the likely impact of the change, and the Parties shall discuss and seek to agree ways in which any adverse impact may be minimised.

4.2.6 The Supplier shall not terminate any Material Subcontract, or allow it to expire without renewal, without having first consulted with the Authority and discussed the Supplier's transition plans, with any potential impact on the fulfilment of the Services Requirements being considered in accordance with the Change Control Procedure. For this purpose, the Supplier shall notify the Authority at least six (6) months before a Material Subcontract is due to expire. Unless otherwise agreed by the Authority, the termination, renewal or replacement of a Material Subcontract shall not entitle the Supplier to increase the Service Charges or modify the Service Levels.

- 4.2.7 The Supplier shall seek a written assurance from any Material Subcontractor that all Authority assets are returned to the Supplier prior to termination or expiry of the Material Subcontract .
- 4.2.8 The Supplier will require all Material Subcontractors to undertake that all Authority Data held electronically will be deleted from all systems prior to termination or expiry of the Material Subcontractor.

ANNEX 12-1

SUBCONTRACTORS

Subcontractor	Scope of Subcontract	Confirm if Material Y/N	Territory
	Region – Africa		
None			
	Region – EuroMed		
'Redacted'	'Redacted'	'Redacted'	'Redacted'
'Redacted'	'Redacted'	'Redacted'	'Redacted'
'Redacted'	'Redacted'	'Redacted'	'Redacted'
'Redacted'	'Redacted'	'Redacted'	'Redacted'
	Region –		