

EFAC Contract – Variation 52

Appendix 1

Defined Expression Amendments

1. Amendments to Defined Expressions

The following defined expressions shall be amended as follows:

"Key Personnel" mean those persons fulfilling the Key Roles named in the Specification as being Key Personnel as notified by the Contractor to the Authority in writing prior to the date of the Variation 52 or such other persons as the Parties may agree in writing from time to time.

"Month" means a period which:

- (a) commences on the Monday following the last Friday of a calendar month; and
- (b) ends on the Sunday following the last Friday of the next calendar month~~a calendar Month.~~

2. New Defined Expressions

The following defined expressions shall be added to Clause A1.1 of the Contract:

"Actual Performance Level" means the actual level of performance achieved by the Contractor during a Measurement Period against the relevant Performance Indicator.

"Affected Party" means the Party seeking to claim relief in respect of a Force Majeure Event;

"Amber Green Performance Failure" means, for the relevant Key Performance Indicator, the Contractor's Actual Performance Level is classified as "Amber Green" in Table 2 in Appendix 1 of Schedule E.

"Amber Performance Failure" means, for the relevant Key Performance Indicator, the Contractor's Actual Performance Level is classified as "Amber" in Table 2 in Appendix 1 of Schedule E.

"AME Correction" means the value of an adjustment made by the Contractor in accordance with the Contract to AME Savings which have previously been reported by the Contractor to the Authority (e.g. to correct an error or following a successful appeal by the relevant customer).

"AME Savings" means the cash benefit to the Authority which results from corrections made by the Contractor to tax credit awards in accordance with the Contract and which shall be calculated by the Contractor and reported to the Authority in accordance with Schedule B.

"Audit Agents" means: (i) the Authority's internal and external auditors; (ii) the Authority's statutory or regulatory auditors; (iii) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office; (iv) HM Treasury or the Cabinet Office; any party formally appointed by the Authority to carry out audit or similar review functions; and, (v) successors or assigns of any of the above.

"Authority System" means the Authority's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority or the Contractor in connection

with this Contract which is owned by the Authority or licensed to it by a third party and which interfaces with the Contractor System or which is necessary for the Authority to receive the Services;

"Black Performance Failure" means, for the relevant Key Performance Indicator, the Contractor's Actual Performance Level is classified as "Black" in Table 2 in Appendix 1 of Schedule E.

"Campaign" is either a HRR Campaign or a HRCC Campaign.

"Campaign Plan" means the plan for the Services to be provided in respect of a Campaign and the AME Savings to be achieved by the Contractor which is to be agreed by the Parties in accordance with paragraph B3 of Schedule B.

"Case" means a tax credit award to a person which the Authority has decided to review in accordance with sections 16, 18 or 24 of the Tax Credits Act 2002.

"Caseload" means the number of Cases by Risk Type to be transferred by the Authority to the Contractor for a Campaign.

"Commission" is the Contractor's payment for identification of AME Savings which shall be calculated and paid by the Authority to the Contractor in accordance with Schedule B.

"Commission Rate" has the meaning given to it in paragraph B4.1 of Schedule B.

"Contractor Profit" in relation to a period, the difference between the total amount paid or payable by the Authority to the Contractor under the Contract for the relevant period and total Costs for the relevant period.

"Confirmed AME Savings" is the AME Savings as updated to take account of any applicable AME Corrections and provided in accordance with paragraph B7.1 of Schedule B.

"Confirmed AME Savings Report" has the meaning given to it in paragraph B7.1 of Schedule B.

"Contractor Personnel" means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or any sub-contractor engaged in the performance of the Contractor's obligations under the Contract.

"Contractor System" means the information and communications technology system used by the Contractor in implementing and performing the Services including all software, hardware, telecommunications networks or equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Authority System).

"Correction Plan Failure" means:

- (a) the Contractor fails to submit or resubmit a draft Correction Plan within the timescales set out in paragraph E6.1 or E6.5 of Schedule E;
- (b) the Authority, acting reasonably and following escalation in accordance with paragraph E6.6 of Schedule E and mediation in accordance with Clause H2, notifies the Contractor that it rejects the Contractor's draft Correction Plan, and the Performance Failure(s) giving rise to the Correction Plan has not been remedied; or
- (c) the Contractor fails to materially comply with the Correction Plan approved by the Authority.

"Cost Savings" is the amount calculated in accordance with the formula set out in paragraph B10.3 of Schedule B.

"Cost Savings Payment" is the payment by the Contractor to the Authority of the Authority's share of the Cost Savings which shall be calculated and paid in accordance with paragraph B10 of Schedule B.

"Costs" the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Contractor in providing the Services:

- (a) the cost to the Contractor, calculated per man day, of engaging its personnel, including:
 - (i) base salary paid to the Contractor's personnel;
 - (ii) employer's national insurance contributions;
 - (iii) pension contributions;
 - (iv) car allowances; and
 - (v) any other contractual employment benefits;
 - (vi) staff training;
 - (vii) work place accommodation;
 - (viii) work place IT equipment and tools reasonably necessary to perform the services (but not including items included within limb (b) below); and
 - (ix) reasonable recruitment costs, as agreed with the Authority;
- (b) costs incurred in respect of those Contractor assets used to provide the Services which would be treated as capital costs according to generally accepted accounting principles within the UK;
- (c) depreciation and amortisation; and
- (d) operational and management costs which are not included within (a) or (b) above (e.g. indirect management costs), to the extent that such costs are necessary and properly incurred by the Contractor in the delivery of the Services,

but excluding:

- (i) Overheads, except to the extent that such indirect corporate costs are apportioned to facilities and administration in the provision of personnel and accordingly included in item (a) above;
- (ii) financing or similar costs;
- (iii) maintenance and support costs to the extent that these relate to maintenance and/or support services provided beyond the Term;
- (iv) reimbursable expenses;
- (v) taxation;
- (vi) fines and penalties; and
- (vii) non-cash items (including impairments and movements in provisions).

"Cumulative Actual Costs" means, in respect of a period, the total Costs suffered by the Contractor attributable to that period in accordance with generally accepted accounting principles in the United Kingdom.

"Cumulative Forecast Costs" means, in respect of a period, the sum of the costs attributed to that period in Appendix 2 (Costs Forecast) to Schedule B.

"Declaration of Ineffectiveness" means a declaration of ineffectiveness made pursuant regulation 98 of the Public Contracts Regulations 2015.

"Defects" has the meaning given to it in Clause I7.2.

"Delay Payments" has the meaning given to it in Clause I7.9.

"Failed Decisions" the meaning given to it in paragraph E9.2 of Schedule E.

"Final Resolution Date" means 12 January 2016 (or such other date as the Parties agree in writing) which is the date by which the Contractor is required to have corrected all Defects.

"Financial Report" has the meaning given to it in paragraph B9.3 of Schedule B.

"Financial Model" means the excel spreadsheet entitled "HMRC Monthly Summary Open Book Financials - Sample" (Created: 28 August 2015 at 00:08 and Last Modified: 09 October 2015 21:35) a copy of which has been provided by the Contractor to the Authority in accordance with paragraph B9.4 of Schedule B.

"Force Majeure Event" an act or event which causes the Affected Part to be unable to perform some or all of its obligations under the Contract and which arises directly from events beyond its reasonable control including natural disaster, fire, flood, terrorist attack or an industrial dispute affecting a third party for which a substitute third party is not reasonably available provided that the Party whose performance is affected has taken all steps (if any) which it could reasonably be expected to have taken to prevent such act or event from occurring and/or to avoid or minimise the impact of such act or event.

"Force Majeure Notice" means a written notice served by the Affected Party on the other Party setting out in the information required in Clause A11.2.

"GLP to AME Conversion Tool" is set out in Annex 1 to the document entitled "20141202_AME_Calculation_Guide_Final.doc" a copy of which has been provided by the Authority to the Contractor and which the Authority may amend in its absolute discretion from time to time by notice in writing to the Contractor and, in the event of any dispute, the Authority shall be deemed to hold the master copy.

"Gross Losses Prevented" means value to the Authority of corrections to tax credit awards made by the Contractor in accordance with this Contract.

"HRR Campaign" means a review of Cases placed by the Authority with the Contractor for a post award examination conducted in accordance with section 18 of the Tax Credit Act 2002 and this Contract in order to identify and correct on behalf of the Authority any errors or fraud in the calculation and payment of the tax credit awards.

"HRCC Campaign" means a review of Cases placed by the Authority with the Contractor for a post award in accordance with section 16 of the Tax Credit Act 2002 and this Contract in order to identify and correct on behalf of the Authority any errors or fraud in the calculation and payment of the tax credit awards.

"Interim Commission Payments" are the interim payments based on the AME Savings achieved to be invoiced in accordance with paragraph B5 of Schedule B.

"IT Improvement Plan" has the meaning given to it in Clause I7.1.

"Key Performance Indicators" means the performance indicators set out in Table 2 in Appendix 1 of Schedule E.

"Key Roles" each of the following: "Project Executive"; "Commercial Lead / Vendor Manager"; "Delivery Project Executive"; "Leadership Coach"; "IT Security and Compliance Officer"; and, such other roles as the Parties may from time to time agree shall be classified as such.

"KPI Performance Failure" means a Performance Failure in respect of a Key Performance Indicator.

"Measurement Period" means:

- (a) in respect of Key Performance Indicators and Standard Performance Indicators (other than the Quality SPIs), a week (i.e. Monday to Sunday, save that where the Contract terminates on a day other than a Sunday, the final measurement period shall end on the date on which the Contract terminates); and
- (b) in respect of the Quality Performance Indicator and the Quality SPIs, a Month (save that where the Contract terminates on a day other than the last day of a Month, the final measurement period shall end on the date on which the Contract terminates).

"Open Book Data" means complete and accurate financial and non-financial information which is sufficient to enable the Authority to verify the charges already paid or payable and charges forecast to be paid during the remainder of the Contract Period, including details and all assumptions relating to:

- (a) the Contractor's Costs broken down against each Service, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all hardware and software;
- (b) operating expenditure relating to the provision of the Services including an analysis showing:
 - (i) payments to each of its sub-contractors;
 - (ii) the unit costs and quantity of consumables and bought-in services;
 - (iii) manpower resource costs broken down into the number and grade/role of all Contractor Personnel (free of any contingency);
 - (iv) Overheads;
 - (v) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services;
 - (vi) the Contractor Profit achieved over the Contract Period and on an annual basis;
- (c) confirmation that all methods of Cost apportionment and Overhead allocation are consistent with and not more onerous than such methods applied generally by the Contractor;

- (d) an explanation of the type and value of risk and contingencies associated with the provision of the Services, including the amount of money attributed to each risk and/or contingency; and
- (e) the actual Costs profile by Month.

"Overheads" those amounts which are intended to recover a proportion of the Contractor's indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of personnel and accordingly included within limb (a) of the definition of "Costs" (e.g. travel costs).

"Performance Failure" means that the Contractor's Actual Performance Level for a Performance Indicator is less than the Target Performance Level for that Performance Indicator.

"Performance Indicators" means the Quality Performance Indicator, the Key Performance Indicators and Standard Performance Indicators.

"Performance Monitoring Report" has the meaning given to it in paragraph E7.1 of Schedule E.

"QPI Adjustment" has the meaning given to it in paragraph B6.2(b) of Schedule B.

"QPI Percentage" means the Actual Performance Level achieved by the Contractor during the Measurement Period for a particular Campaign in respect of the Quality Performance Indicator as determined in accordance with paragraph E9 of Schedule E.

"QPI Performance Failure" means a Performance Failure in respect of a Quality Performance Indicator.

"Quality Criteria" means:

- (a) in respect of the Quality Performance Indicator that:
 - (i) all changes of circumstance (with a financial impact) have been applied correctly;
 - (ii) the decision made by the Contractor is correct; and
 - (iii) the Authority's NTC IT system has been updated (and updated correctly); and
- (b) in respect of the Quality SPIs and the Standard Performance Indicator SPI12, that the non-financial elements of the decision have been completed correctly, such non-financial elements to be agreed between the Parties in writing from time to time.

"Quality Performance Indicators" means the performance indicators set out in Table 1 in Appendix 1 of Schedule E.

"Quality SPIs" means Standard Performance Indicators SPI4, SPI5 and SPI6.

"Quarter" means each successive period of three Months commencing on or around 1 March, 1 June, 1 September and 1 December each year.

"Quarterly Balancing Payment" means a balancing liability from one Party to the other calculated and payable in accordance with paragraph B7.4 of Schedule B.

"Quarterly Reconciliation" means the process set out in paragraph B7 of Schedule B to calculate the Quarterly Balancing Payment.

"Quarterly Reconciliation Report" means a written report to be provided by the Contractor to the Authority which sets out for the relevant Quarter and by Campaign:

- (a) the Confirmed AME Savings;
- (b) the total aggregate Interim Commission Payments paid by the Authority to the Contractor;
- (c) the total aggregate Commission payable by the Authority to the Contractor prior to any deductions permitted by the Contract;
- (d) the QPI Percentage for each Month;
- (e) the QPI Adjustment (if any) to be applied to each Month's Commission;
- (f) the total aggregate deductions associated with the relevant Campaign;
- (g) the Service Points accrued for each Month and in total for that Campaign;
- (h) a clear calculation of the Quarterly Balancing Payment, showing all workings;
- (i) the Quarterly Balancing Payment (if any) payable by the Authority to the Contractor; and
- (j) the Quarterly Balancing Payment (if any) payable by the Contractor to the Authority.

"Red Performance Failure" means, for the relevant Key Performance Indicator, the Contractor's Actual Performance Level is classified as "Red" in Table 2 in Appendix 1 of Schedule E.

"Risk Type" means the categorisation given to a Case by the Authority which shall be either: "Work and Hours"; "Undeclared Partner"; "Childcare"; "Child"; or "Income", or such other categories as notified by the Authority to the Contractor from time to time.

"Service Credit" means the amount payable by the Contractor to the Authority at the end of a Campaign as a consequence of one or more KPI Performance Failures during that Campaign, calculated in accordance with Paragraph B8 of Schedule B.

"Service Points" means the points that shall accrue to the Contractor as a consequence of a KPI Failure and which are set out against each Key Performance Indicator in Table 2 in Appendix 1 of Schedule E.

"Stage Payments" means payments made by the Authority to the Contractor in advance of Commission to be earned by the Contractor and which are identified in paragraph B2.1 of Schedule B.

"Standard Performance Indicators" means the performance indicators set out in Table 3 in Appendix 1 of Schedule E.

"SPI Performance Failure" means a Performance Failure in respect of a Standard Performance Indicator.

"Target AME Saving" is the target for AME Savings in respect of a particular Campaign, as agreed in the relevant Campaign Plan.

"Target Performance Level" means the minimum level of performance which the Contractor shall achieve for a Performance Indicator during a Measurement Period as set out in the tables in Appendix 1 of Schedule E.

Confidential

"**Variation 52**" means the variation to the Contract dated on or around 13 October 2015.