

**CONTRACT FOR PRISONER AND NON-PRISONER FOOD SUPPLY**

**SCHEDULE 15**

**CHARGES AND INVOICING**

## Charges and Invoicing

### 1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

<b>“Commodity Cost”</b>	means the charge for the Products comprising a Product Case;
<b>“European Standard”</b>	in relation to an electronic invoice means the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870;
<b>“Indexation”</b>	the adjustment of an amount or sum in accordance with Paragraph 3 of Part C;
<b>“Indexation Review Point”</b>	has the meaning given to it at Paragraph 3.2 of Part C;
<b>“Movement Rate Cost”</b>	means per Product Case the employment and transportation costs, any other ancillary costs (including any Services) of the processing, preparation, packing and delivery of Product Cases and shall be fixed for each Supply Year;
<b>“Procurement Card System”</b>	means a system and processes for payment of ordered Products using a third-party procurement card i.e., a credit facility made available by the third party using online processes;
<b>“Procurement Card”</b>	means the account facility (i.e., a ‘virtual card’) used to make payment to the Supplier using the Procurement Card System;
<b>“Relevant Index”</b>	means the index that will apply in respect of the adjustment of a particular element of the Charges, as set out in Paragraph 3.4 of Part C;
<b>“Relevant Index Report”</b>	means a report relating to a proposed Change to the Charges issued by the Supplier at the Indexation Review Point detailing: <ul style="list-style-type: none"><li>(a) the change in the Relevant Index;</li><li>(b) actual costs associated with the proposed Change; and</li><li>(c) Supporting Documentation and any other such evidence that the Authority may require from time to time;</li></ul>
<b>“Supplier Profit Margin”</b>	means the profit margin (expressed as a percentage) applied by the Supplier to the provision of the Products and Services as set out in the Financial Model in the Supplier Solution;
<b>“Supporting Documentation”</b>	sufficient information in writing to enable the Authority reasonably to assess whether the Charges, and other sums

due from the Authority detailed in the information are properly payable.

## **PART A: PRICING**

### **1 APPLICABLE PRICING MECHANISM**

- 1.1 Subject to Paragraph 2.4 below, the Charges for the Products and Services shall be fixed and shall be calculated by applying the Unit Prices for each Product Case in respect of the quantities of such Product Case, receipted by the relevant Authorised User. Save in respect of additional delivery charges payable pursuant to Clauses 6.11 and 6.22 of the Agreement these Unit Prices shall be the sole source of remuneration for the Supplier under the Agreement. The Supplier shall have no recourse to the Authority for any additional costs, fees, charges, taxes, duties or expenses associated with the performance of this Agreement.
- 1.2 Subject to Paragraph 1.5, the Unit Price for each Product Case shall comprise:
- 1.2.1 a Commodity Cost; and
  - 1.2.2 a Movement Rate Cost,
- allocated to that Product item and Product Case.
- 1.3 The Unit Prices shall apply to all Sites.
- 1.4 The Supplier shall not apply a profit margin to any Charges under this Agreement in excess of the Supplier Profit Margin.
- 1.5 Any changes to the Charges shall be in accordance with Paragraph 2 of Part C below.
- 1.6 Save in respect of additional delivery charges payable pursuant to Clauses 6.11 and 6.22 of the Agreement, the Charges include all packaging, labelling, transport, travel, accommodation, subsistence and other expenses incurred in connection with the provision of the Products and Services (including without limitation, any courier expenses).
- 1.7 Where any Charges are or may become subject to any pricing requirements of any voluntary and/or statutory pricing regulation schemes, the Parties shall comply with such pricing requirements as required by Law from time to time and specifically as required by the statutory pricing regulation scheme (and any future regulation) or to the extent applicable to the Supplier from time to time as an industry member of a voluntary scheme, including any reductions in price by reason of the application of such schemes.

### **2 CATALOGUE AND PRICING**

- 2.1 As at the date of this Agreement, the Unit Prices, as submitted in the Supplier Tender are set out in Annex 1 as applicable to the Online Ordering System.
- 2.2 The Unit Prices shall be reflected in the Catalogue in force from time to time during the Term. Once agreed, the Unit Prices specified in the Catalogue shall supersede the Unit Prices in Annex 1.
- 2.3 The Supplier shall be responsible for updating the Catalogue and seeking approval of the Authority to such updates in accordance with the Catalogue Change Procedure.
- 2.4 Each Unit Price shall be fixed unless and until revised in accordance with the following processes, as set out in this Schedule:
- 2.4.1 revisions to the Commodity Cost on a Quarterly basis; and
  - 2.4.2 revisions to the Movement Rate Cost at the beginning of a Supply Year.
- 2.5 It shall be the responsibility of the Supplier to ensure that the Catalogue reflects the then agreed Unit Prices. In the event that the Catalogue does not reflect the then agreed Unit Prices the Supplier shall reconcile any incorrect payment which has taken place with the correct Unit Price and, at the Authority's discretion, either:

- 2.5.1 adjust the amount of a payment being made in respect of the Products at a Site specified by the Authority; or
- 2.5.2 address any overpayment made in respect of the Products in the next amount payable by the Authority under Paragraph 2 of Part D.

## **PART B: CHARGING MECHANISMS**

### **1 IMPLEMENTATION COSTS**

- 1.1 Subject to the provisions of Paragraph 1 of Part C (in relation to the deduction of Delay Payments), in consideration of the Implementation Activities, the Authority shall pay the Supplier the Implementation Costs. Implementation Costs shall be made up of Milestone Payments, which shall be payable by the Authority following Acceptance of the relevant Key Milestone and in accordance with this Paragraph 1 (*Implementation Costs*) and the Agreed Implementation Plan.
- 1.2 Each Milestone Payment shall comprise the actual costs incurred by the Supplier in carrying out the relevant Key Milestone, provided that such costs have been reasonably and properly incurred by the Supplier and are in proportion with, and in no event materially greater than, the estimated Milestone Payments set out in Annex 1 of Schedule 13 (*Implementation*).
- 1.3 In order to determine the Milestone Payment payable in respect of a Key Milestone, the Parties shall comply with the following procedure:
- 1.3.1 Following completion of a Key Milestone, the Supplier shall confirm to the Authority in writing the actual costs incurred by the Supplier in completing that Key Milestone (if any), accompanied by documentary evidence demonstrating that such costs have been reasonably and properly incurred, alongside any additional evidence that the Authority may reasonably require to verify such costs.
- 1.3.2 Having regard to the conditions set out in Paragraph 1.2 above, the Authority shall either:
- (a) approve the Milestone Payment requested by the Supplier in accordance with Paragraph 1.3.1 (either in the Acceptance Certificate or otherwise); or
- (b) reject the Milestone Payment requested by the Supplier in accordance with Paragraph 1.3.1, providing reasoning for such rejection and a determination (in its reasonable discretion) of the Milestone Payment that shall be payable in respect of the relevant Key Milestone (either in the Acceptance Certificate or otherwise).
- 1.3.3 Following receipt by the Supplier of the Acceptance Certificate, the Supplier may submit an invoice to the Authority for the Milestone Payment approved or determined by the Authority in accordance with Paragraph 1.3.2, and the Authority shall pay such invoice in accordance with Part D of this Schedule 15.
- 1.4 Each invoice relating to a Milestone Payment shall be supported by an Acceptance Certificate and any other supporting documentation that the Authority may reasonably require.

### **2 PAYMENT OF CHARGES**

- 2.1 Charges shall be invoiced by the Supplier for each Service Period in arrears and following Delivery of the relevant Products in accordance with the requirements of Part D.

### **3 SUBSTITUTE PRODUCTS AND ALTERNATIVE PRODUCTS**

- 3.1 If the Supplier provides an Alternative Product or Substitute Product which is a Product in the Catalogue at the relevant time, the Commodity Cost for such Alternative Product or Substitute Product shall be as set out in the Catalogue, provided it is equal to or less than the price of the originally ordered Product, and where this is not the case then the Commodity Cost shall be pro-rated in accordance with Paragraph 3.2.1 below.
- 3.2 If the Supplier provides a Substitute Product or Alternative Product which is not in the Catalogue at the relevant time:

- 3.2.1 the Commodity Cost for the Substitute Product or Alternative Product shall be equal to or less than Commodity Cost for the original Product. The Commodity Cost shall be pro-rated to account for any differentials in Product Case size, for example as shown in the table below (for a Substitute Product):

Product	Substitute Product
Catalogue Baked Beans (brand X)	Substitute Baked Beans (brand Y)
Product Case: 6 x 1 x 3.09kg	Product Case: 6 x 1 x 4kg
Case Weight: 18.54kg	Case Weight: 24kg
Price per Unit of Measure: £0.485	
Commodity Cost: £9.00	Commodity Cost: £11.65

- 3.2.2 the Movement Rate Cost for the Substitute Product or Alternative Product shall remain the same as for the original Product, unless the Product Case size is smaller than for the original Product. If the Product Case size is smaller than that of the original Product, the Movement Rate Cost shall be pro-rated in accordance with the ratio of the Product Case size of the Substitute Product or Alternative Product (as the case may be) to the Product Case size of the original Product. In the example given above, the Movement Rate Cost will be calculated as 53.7% of the Movement Rate Cost for the Product it is substituting, as shown in the table below:

Product	Substitute Product
Catalogue Baked Beans (brand X)	Substitute Baked Beans (brand Y)
Product Case: 6 x 1 x 3.09kg	Product Case: 24 x 1 x 415g
Case Weight: 18.54kg	Case Weight: 9.96kg
Price per Unit of Measure: £0.485	
Commodity Cost: £9.00	Commodity Cost: £4.83
Movement Rate: £1.50	Movement Rate: £0.80

## 4 REPLACEMENT AND NEW PRODUCT

- 4.1 If replacement Products are added to the Catalogue, the corresponding Unit Price shall be added to the Catalogue. Once incorporated in the Catalogue the Unit Price for the replacement Products shall be subject to variation in accordance with this Schedule 15 (*Charges and Invoicing*). Any updates to the Catalogue shall be managed in accordance with the Catalogue Change Procedure.

## 5 INVOICING ARRANGEMENT FOR SERVICE CREDITS

- 5.1 Service Credits shall be applied to the Supplier in accordance with the provisions of Schedule 3 (*Performance Levels*).
- 5.2 The value in pounds sterling of each Service Credit shall be as set out in Schedule 3 (*Performance Levels*).
- 5.3 The Authority shall invoice the Supplier each Quarter in arrears for Service Credits accrued during the Months of the immediately preceding Quarter, such invoice to be paid by the Supplier within thirty (30) days from receipt.



## **PART C: ADJUSTMENTS TO THE CHARGES**

### **1 DELAY PAYMENTS**

- 1.1 Subject to Paragraph 11 of Schedule 13 (Implementation), and Clause 37 (Authority Cause) if any or all Key Milestone(s) have not been Accepted on or before the Planned Supply Commencement Date the Supplier shall pay a Delay Payment to the Authority at the daily rate (per Working Day) of ten thousand pounds (£10,000) from (and including) the Planned Supply Commencement Date to (and including) the date on which the Key Milestone(s) are Accepted or as otherwise agreed by the Authority (provided that any part Working Days Delay shall be counted as a full Working Day for the purposes of calculating the Delay Payment).
- 1.2 Where there is a Delay as set out in Paragraph 1.1 of this Part C above, the Supplier shall:
- 1.2.1 as soon as it becomes aware of such Delay notify the Authority and the Authority may at its discretion agree to extend any Milestone Date (provided that the Parties agree that any such extension to a Milestone Date shall not vary the Planned Supply Commencement Date); and
- 1.2.2 within five (5) Working Days (or such other period agreed by the Authority) of notifying the Authority in accordance with Paragraph 1.2.1, pay to the Authority in cleared funds on account of the Delay Payment.
- 1.3 The Parties agree that Delay Payment is a genuine pre-estimate of the Losses which the Authority will incur as a result of any failure by the Supplier to obtain the Acceptance of the Key Milestones by the Planned Supply Commencement Date. Delay Payments are stated exclusive of VAT.

### **2 CHANGES TO CHARGES**

- 2.1 The Parties shall apply Indexation to the Charges submitted in the Supplier Tender to reflect any change in the Relevant Index between the point of submission of the Supplier Tender and the commencement of the Pilot Period (as defined in Schedule 13 (Implementation Plan), in accordance with Paragraphs 2.7 and 2.8 below.
- 2.2 The Parties shall apply Indexation to the Charges (as adjusted in line with Paragraph 2.1 as the case may be) to reflect any change in the Relevant Index between the commencement of the Pilot Period and the Supply Commencement Date, in accordance with Paragraphs 2.7 and 2.8 below.
- 2.3 Any Changes to the Charges not permitted in this Paragraph 2, shall be developed and agreed by the Parties in accordance with Schedule 22 (*Change Control Procedure*).
- 2.4 Any Change to the Charges shall only be agreed on the basis that the Supplier's profit margin on such Charges shall in no event exceed the Supplier Profit Margin.
- 2.5 Any Changes to the Charges shall only be permitted in line with this Paragraph 2. In the event that the Parties are unable to agree in good faith any adjustment to the Charges in accordance with Paragraph 2, then the Authority may refer the matter to the Dispute Resolution Procedure and the supply of the relevant Products to which the Charges review relates shall be provided without such Change being applied while the Dispute is being resolved, and for the avoidance of doubt, no increase to the Charges shall apply in relation to any such Products during the period up to the date upon which the matter is resolved through the Dispute Resolution Procedure.
- 2.6 The Authority may request that any Impact Assessment presents Charges without Indexation for the purposes of comparison.

#### **2.7 Changes to the Commodity Cost**

- 2.7.1 With effect from the Supply Commencement Date, the Parties shall be permitted to revise (increase or decrease) the Commodity Costs of any Product Case at each Indexation Review Point in line with Paragraphs 2.7.2 and 2.7.3 below.
- 2.7.2 The Commodity Cost shall be varied according to the actual costs change to the Supplier, provided that such costs change shall be capped at the change in the Relevant Index in the relevant reported three (3)-month period.
- 2.7.3 The Supplier shall provide the Authority with the Relevant Index Report and its proposals for Changes to the Commodity Cost no later than the relevant Indexation Review Point. The Parties shall consider such proposed Changes to the Commodity Costs at the Quarterly Contract Review Meeting. The outcome of such shall be documented in a Change Authorisation Note, and the Catalogue updated accordingly in accordance with the Catalogue Change Procedure.

## **2.8 Changes to the Movement Rate Cost**

- 2.8.1 The Parties shall be permitted to revise (increase or decrease) the Movement Rate Cost with effect from the anniversary of the Supply Commencement Date and the commencement of each subsequent Supply Year during the Term in accordance with Paragraphs 2.8.2 and 2.8.3 below.
- 2.8.2 The Movement Rate Costs shall be varied according to the actual costs change to the Supplier, provided that such costs change shall be capped at the change in the Relevant Index in the relevant reported twelve (12)-month period.
- 2.8.3 The Supplier shall provide the Authority with the Relevant Index Report and its proposals for Changes to the Movement Rate Cost no later than the relevant Indexation Review Point. The outcome of such shall be documented in a Change Authorisation Note, and the Catalogue updated accordingly in accordance with the Catalogue Change Procedure.

## **2.9 Changes to Service Credits value**

Any changes to the value of Service Credits shall be dealt with in accordance with Paragraph 4.2 of Part A of Schedule 3 (*Performance Levels*) and shall not be adjusted in accordance with the Indexation provisions in this Schedule 15.

## **3 Indexation**

- 3.1 For the purposes of calculating Indexation for the Relevant Index Report, Indexation shall be:
- (a) calculated and take effect from the Indexation Review Point; and
  - (b) determined by multiplying the relevant amount or sum of the relevant element of the Charges by the percentage increase or decrease in the Relevant Index.
- 3.2 The Indexation Review Point shall be as follows:
- 3.2.1 for the purposes of Paragraph 2.1, the date on which the Relevant Index is published for the period commencing from the date on which the Supplier Tender was submitted and ending on the commencement of the Pilot Period;
  - 3.2.2 for the purposes of Paragraph 2.2, the date on which the Relevant Index is published for the period commencing from the commencement of the Pilot Period and ending on the Supply Commencement Date;
  - 3.2.3 for the purposes of Paragraph 2.7, the date on which the Relevant Index is published for the three (3) months ending on the relevant Quarter Day;
  - 3.2.4 for the purposes of Paragraph 2.8 and any other Charges subject to Indexation, the date on which the Relevant Index is published for the twelve (12) months ending on each anniversary of the Supply Commencement Date.

3.3 In the event that a Relevant Index ceases to exist the Parties shall agree, acting reasonably, a suitable replacement for that Relevant Index.

3.4 The Relevant Index is set out in the table below:

Description	Relevant Index
Commodity Cost	The Office for National Statistics CPI 01 Food & Non-Alcoholic Beverages Index
Movement Rate Cost - Labour	The Office for National Statistics Average Weekly Earnings Index
Movement Rate Cost - Transport	The Office for National Statistics CPI 07 Transport Index
Movement Rate Cost - Other costs	The Office for National Statistics CPI 01-12 All Items Index

3.5 Except as set out in this Schedule or pursuant to any Change agreed between the Parties, neither the Charges nor any other costs, expenses, fees or charges shall be adjusted to take account of any inflation, change to exchange rate, change to interest rate or any other factor or element which might otherwise increase the cost to the Supplier or Sub-contractors of the performance of their obligations.

#### **4 Reconciliation**

4.1 In the event that the Indexation Review Point is a date later than the end date of the relevant period being reviewed, or where the Changes to the Charges is subject to dispute, the Supplier shall:

4.1.1 calculate the difference between the Charges due or paid from the end date of the relevant period being reviewed (i.e., the Supply Commencement Date, the relevant Quarter Day or the anniversary of the Supply Commencement Date), to the Indexation Review Point or where relevant, the point at which the dispute is resolved; and

4.1.2 where the difference results in the Authority overpaying or underpaying for any Charges during that period, notify the Authority of such overpayment.

4.2 Where an overpayment or underpayment is identified by the Supplier in accordance with Paragraph 4.1 above, the Parties shall review such overpayment or underpayment and, where the Parties agree to such overpayment or underpayment, this shall be reflected as either a credit to the Authority or an addition to the Charges in the next invoice due and payable by the Authority.

## **PART D: INVOICING AND PAYMENT TERMS**

### **1 SUPPLIER INVOICES**

- 1.1 The Authority shall accept for processing any electronic invoice that complies with the European Standard, provided that it is valid and undisputed.
- 1.2 If the Supplier proposes to submit for payment an invoice that does not comply with the European Standard the Supplier shall:
- (a) comply with the requirements of the Authority's e-invoicing system;
  - (b) prepare and provide to the Authority for approval of the format a template invoice within ten (10) Working Days of the Effective Date which shall include, as a minimum the details set out in Paragraph 1.3 together with such other information as the Authority may reasonably require to assess whether the Charges that will be detailed therein are properly payable; and
  - (c) make such amendments as may be reasonably required by the Authority if the template invoice outlined in (b) is not approved by the Authority.
- 1.3 The Supplier shall ensure that each invoice is submitted in the correct format for the Authority's e-invoicing system, or that it contains the following information:
- (a) the date of the invoice;
  - (b) a unique invoice number;
  - (c) the Service Period or other period(s) to which the relevant Charge(s) relate;
  - (d) the correct reference for this Agreement;
  - (e) the dates between which the Products which are the subject of each of the Charges detailed on the invoice were performed;
  - (f) a description of the Products;
  - (g) the total Charges gross and net of any applicable deductions and, separately, any VAT or other sales tax payable in respect of each of the same;
  - (h) details of any deductions that shall apply to the Charges detailed on the invoice;
  - (i) reference to any reports required by the Authority in respect of the Products to which the Charges detailed on the invoice relate (or in the case of reports issued by the Supplier for validation by the Authority, then to any such reports as are validated by the Authority in respect of the Products);
  - (j) a contact name and telephone number of a responsible person in the Supplier's finance department in the event of administrative queries;
  - (k) the banking details for payment to the Supplier via electronic transfer of funds (i.e. name and address of bank, sort code, account name and number); and
  - (l) where the Products have been structured into separate service lines, the information at (a) to (k) of this Paragraph 1.3 shall be broken down in each invoice per product line.
- 1.4 Payment of the Unit Price shall be made by the relevant Authorised User where the Order and delivery of the Products matches the invoice issued by the Supplier.
- 1.5 Payment will be made using the Procurement Card System on the basis of the Order and invoice. The Supplier shall issue a consolidated list of completed transactions per Service

Period which will be reconciled against the Authority's Procurement Card transaction information as an administrative check.

- 1.6 The relevant Authorised User shall have permitted approvals in respect of payment of the Unit Price of a Product Case ordered. The approvals will determine level of expenditure an Authorised User can make.
- 1.7 In the event that an Order and the delivery of the Products do not match the invoice issued by the Supplier, the relevant Authorised User will contact the Supplier to resolve such discrepancies (e.g., providing a Substitute Product or Alternative Product or providing a refund or credit note) and where the matter cannot be resolved, it shall be escalated to the Dispute Resolution Procedure.
- 1.8 Each invoice shall at all times be accompanied by Supporting Documentation. Any assessment by the Authority as to what constitutes Supporting Documentation shall be conclusive and the Supplier undertakes to provide to the Authority any other documentation reasonably required by the Authority (including any Open Book Data) from time to time to substantiate an invoice.
- 1.9 The Supplier shall submit all invoices and Supporting Documentation through the Authority's electronic system, as made available by the Authority for this purpose, or if that is not possible to:

**NEWPORT SSCL**

**HM PRISON & PROBATION SERVICE**

**PO Box 741**

**NEWPORT NP10 8FZ**

**APinvoices-NMS-U@gov.sscl.com**

with a copy (again including any Supporting Documentation) to such other person and at such place as the Authority may notify to the Supplier from time to time.

- 1.10 All Supplier invoices shall be expressed in sterling or such other currency as shall be permitted by the Authority in writing.
- 1.11 The Authority shall regard an invoice as valid only if it complies with the provisions of this Part D. Where any invoice does not conform to the Authority's requirements set out in this Part D, the Authority shall promptly return the disputed invoice to the Supplier and the Supplier shall promptly issue a replacement invoice which shall comply with such requirements.
- 1.12 If the Authority fails to consider and dispute an invoice in accordance with Paragraphs 1.8 to 1.11, within ten (10) Working Days the invoice shall be regarded as valid and undisputed for the purpose of Paragraph 2.1.

## **2 PAYMENT TERMS**

- 2.1 Subject to the relevant provisions of this Schedule, the Authority shall make payment to the Supplier within thirty (30) days of verifying that the invoice is valid and undisputed.
- 2.2 Unless the Parties agree otherwise in writing, all Supplier invoices shall be paid in sterling by electronic transfer of funds to the bank account that the Supplier has specified on its invoice.

## ANNEX 1: UNIT PRICES

The text has been redacted under the exemptions set out by the Freedom of Information Act

## **ANNEX 2: CATALOGUE**

The Parties shall agree the Catalogue during the Implementation Period.