

**ESN Royal London Hospital Proof of Concept**

**Contract Ref: C25949**

**March 2024**

**Call-Off Schedule 14 (Service Levels)**

1. **Introduction**

**1.1 The Buyer will specify in the Order Form at Further Competition whether Part A or Part B to this Schedule applies or may opt to adopt the Supplier’s offer or Core Terms by omitting this Schedule.**

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

|  |  |
| --- | --- |
| **“Achieved Service Level”**  **“Agreed Service Time”**  **“Available”**  **“Call-Off Contract Year”**  **“Critical Service Level Failure”**  **“Downtime”**  **“Imposed Carrier Downtime”**  **“Incident”**  **“Incident Resolution Time”**  **“Planned Downtime”**  **“Provisioning”**  **“Resolution”** | means the actual level of performance of a Service achieved by the Supplier in relation to a Service Level Performance Criteria for a Service Period;  means the period during which the Supplier ensures the Services are Available to the Buyer;  a Service shall be “Available” when the Buyer’s end users are able to access and use all its functions at a level that enables them to carry out their normal duties. Availability shall be construed accordingly;  means a consecutive period of twelve (12) Months commencing on the Call-Off Start Date or each anniversary thereof;  a) Specified by the Buyer where the Buyer selects Part A to this Call-Off Schedule 14; or b) any instance of critical service level failure specified in Annex 2 to Part B of this Schedule where the Buyer selects Part B to this Schedule;  means any period of time within the Agreed Service Time during which a Service is not Available, excluding Planned Downtime  means time during which the Supplier is prevented from supplying the Services due to unavailability of an underlying telecommunications service from a third-party provider on which the Services are dependent. In any instance where the Supplier claims Imposed Carrier Downtime, the Supplier must be able to provide evidence to the satisfaction of the Buyer that the interruption to the Services was in fact due in its entirety to unavailability of the underlying service;  means an unplanned incident or interruption to Services, reduction in the quality of the Services or event which could affect the Services in the future;  means the time taken by the Supplier to Resolve an Incident, as set out in this Schedule;  means the time agreed in advance in writing by the Supplier and Buyer within the Agreed Service Time when a Service is not Available;  means the time taken from the placement of an Order for a Service or part thereof until the Service is Available to the Buyer and Provision shall be construed accordingly;  means an action taken by or on behalf of the Supplier to fully repair the root cause of an Incident or to implement a workaround, such that the Services are returned to being Available. Resolve and Resolved shall be construed accordingly; |
| **"Service Credits"** | 1. any service credits specified in the Annex to Part A of this Schedule being payable by the Supplier to the Buyer in respect of any failure by the Supplier to meet one or more Service Levels; ​​or 2. any service credits specified in the Annex to Part B of this Schedule being payable by the Supplier to the Buyer in respect of any failure by the Supplier to meet one or more Service Levels; |
| **"Service Credit Cap"** | 1. in the period from the Call-Off Start Date to the end of the first Call-Off Contract Year £2,000. ; and 2. during the remainder of the Call-Off Contract Period, thirty five percent (35%) of the Charges payable to the Supplier under this Call-Off Contract in the period of twelve (12) Months immediately preceding the Service Period in respect of which Service Credits are accrued;   **unless** otherwise stated in the Order Form during a Further Competition; |
| **“Service Desk”**  **“Service Failure Threshold”**  **“Service Levels”** | means the single point of contact set up and operated by the Supplier to log, monitor and escalate Incidents and Incident Resolutions;  means the level of performance of a Service which becomes unacceptable to the Buyer, including as set out in each Service Level Performance Criteria and where the Supplier fails to provide the Services in accordance with this Contract;  means any service levels applicable to the provision of the Services under this Call-Off Contract specified in Call-Off Schedule 14 (Service Levels); |
| **"Service Level Failure"** | means a failure to meet the Service Level Threshold in respect of a Service Level Performance Criterion; |
| **"Service Level Threshold"**  **“Service Period”**  **“Unavailable”** | shall be as set out against the relevant Service Level in Annex 1 to Part A of this Schedule, or Annex 1 of Part B of this Schedule depending upon which option is selected by the Buyer;.  means a recurrent period of one month during the Call-Off Contract Period, unless otherwise specified in the Order Form;  in relation to a Service, means that the Service is not Available; |

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 Threshold for each Service Level.
   2. The Supplier acknowledges that any Service Level Failure shall entitle the Buyer to the rights set out in Part A or Part B of this Schedule, as appropriate, 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 Buyer as a result of the Supplier’s failure to meet any Service Level Threshold.
   3. The Supplier shall send Performance Monitoring Reports to the Buyer detailing the level of service which was achieved in accordance with the provisions of Part C (Performance Monitoring) of this Schedule.
   4. A Service Credit shall be the Buyer’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 Failure 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 Buyer being required to make a compensation payment to one or more third parties; and/or
      3. the Buyer is entitled to or does terminate this Contract pursuant to Clause 10.4 of the Core Terms (CCS and Buyer Termination Rights).
   5. Not more than once in each Contract Year, the Buyer may, on giving the Supplier at least three (3) Months’ notice, change the weighting of Service Level Threshold 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 Buyer's 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 Buyer 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 4 shall be without prejudice to the right of the Buyer to terminate this Contract and/or to claim damages from the Supplier for material Default.

**Part A: Short Form 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 Threshold; or
  2. is likely to cause or causes a Critical Service Failure to occur,

the Supplier shall immediately notify the Buyer in writing and the Buyer, 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 Buyer 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 Buyer; 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 Buyer 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 1 to Part A of this Schedule.

**Annex 1 : Short Form Services Levels and Service Credits Table**

**REDACTED**

1.1 A Critical Service Level Failure will be deemed to have occurred if the performance of the Services falls below the same Service Failure Threshold on three (3) occasions in any six (6) consecutive Service Periods.

1.2 In the event of a Critical Service Level Failure, the Buyer shall be entitled to terminate this Call-Off Contract for material Default.

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

[Example:

|  |  |  |
| --- | --- | --- |
| Formula: x% (Service Level Threshold) - x% (actual Service Level performance) | = | x% of the Charges payable to the Buyer as Service Credits to be deducted from the next Invoice payable by the Buyer |
| Worked example: 98% (e.g. Service Level Threshold 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 Buyer as Service Credits to be deducted from the next Invoice payable by the Buyer] |

## 

## PART B Annex 2: Critical Service Level Failure

1. **CRITICAL SERVICE LEVEL FAILURE**
   1. A Critical Service Level Failure will be deemed to have occurred if the performance of the Services falls below the same Service Failure Threshold on three (3) occasions in any six (6) consecutive Service Periods.
   2. In the event of a Critical Service Level Failure, the Buyer shall be entitled to terminate this Call-Off Contract for material Default.

## Part C: Performance Monitoring

1. **Performance Monitoring and Performance Review**
   1. Part C to this Call-Off Schedule provides the methodology for monitoring the provision of the Services:
      1. to ensure that the Supplier is complying with the Service Levels; and
      2. for identifying any failures to achieve Service Levels in the performance of the Supplier and/or provision of the Services (may also be referred to as a "Performance Monitoring System").
   2. Within twenty (20) Working Days of the Start Date the Supplier shall provide the Buyer 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.
   3. The Supplier shall report all failures to achieve Service Levels and any Critical Service Level Failure to the Buyer in accordance with the processes agreed in Paragraph 1.2 of Part C of this Call-Off Schedule above.
   4. The Supplier shall provide the Buyer with performance monitoring reports ("Performance Monitoring Reports") in accordance with the process and timescales agreed pursuant to paragraph 1.2 of Part C 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 Buyer may reasonably require from time to time.
   5. 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 Buyer 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 Buyer shall reasonably require;
      2. be attended by the Supplier's Representative and the Buyer’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 Buyer’s Representative and any other recipients agreed at the relevant meeting.
   6. The minutes of the preceding Month's Performance Review Meeting will be agreed and signed by both the Supplier's Representative and the Buyer’s Representative at each meeting.
   7. The Supplier shall provide to the Buyer such documentation as the Buyer 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 Buyer may undertake satisfaction surveys in respect of the Supplier's provision of the Deliverables. The Buyer 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.

**PART C ANNEX 1: ADDITIONAL PERFORMANCE MONITORING REQUIREMENTS**

**Not Used**