



Defence  
Infrastructure  
Organisation

## **Call-Off Schedule 5**

### **Pricing**

### **Built Estate**

**REF: RM6089**

Version 1.0 Dated 1 Jun 21

## **Call-Off SCHEDULE 5**

### **PRICING**

#### **1. APPROACH TO PRICING**

- 1.1 This Schedule sets out the arrangements for the pricing of the Deliverables, including
  - 1.1.1 for the Baseline Monthly Payment (for Core Services, included Non-Core Services and Non-Core Planned Preventative Maintenance, and the Inclusive Repair Threshold); and
  - 1.1.2 Work Orders (including for Billable Works), and
  - 1.1.3 Recompense Requests.
- 1.2 Billable Works pricing and payment is described in detail in Call-Off Schedule 4A (Billable Works).
- 1.3 Mobilisation Milestone Payments are described in Call-Off Schedule 13 (Mobilisation).
- 1.4 Details of the prices applicable to each of the Services listed in Schedule 28 (Call-Off Specification) will be listed in Schedule 29 (Rates and Prices).

#### **2. THE INCLUSIVE REPAIR THRESHOLD**

- 2.1 The intent of the Inclusive Repair Threshold is to provide a mechanism through which the high volume of low value repair tasks can be completed without delay and with minimal process.
- 2.2 The costs of individual Reactive Maintenance Works below the Inclusive Repair Threshold of [Redacted – Commercially Sensitive] are included in the Baseline Monthly Payment. The Inclusive Repair Threshold applies per event and not, for example, per trade. The fixed price for Deliverables relating to Reactive Maintenance Works below the Inclusive Repair Threshold is set out in Call-Off Schedule 29 (Rates and Prices).
- 2.3 The Supplier shall supply and install all Replacement Equipment associated with Deliverables within the Inclusive Repair Threshold at its own cost.
  - 2.3.1 For the avoidance of doubt, this includes the replacement of entire Assets (at Level 4, where so defined) as well as component parts of Assets where replacement is appropriate in accordance with Good Industry Practice.
  - 2.3.2 A repair under the Inclusive Repair Threshold is to a singular Asset for a given event and not to a group or bundle of Assets.

- 2.4 Where the costs of Deliverables that are scoped within the Inclusive Repair Threshold, exceed the Inclusive Repair Threshold, the Supplier shall be entitled to claim the sum that exceeds the Inclusive Repair Threshold.
- 2.5 The Supplier shall not repeatedly repair the same Asset, if its replacement is within the Inclusive Repair Threshold and offers better value.
- 2.6 Where works fall into the following categories, they are exclusions to the Inclusive Repair Threshold:
  - 2.6.1 vandalism and/or misuse and/or abuse of an Asset where this can be proven by the Supplier and agreed by the Building Custodian;
  - 2.6.2 damage or failure if due to continued use by the Buyer or building user after fault has been diagnosed and the Supplier has advised the Buyer not to use the Asset;
  - 2.6.3 the building user not following the Buyer or manufacturer's operating procedural standards;
  - 2.6.4 other suppliers repairing Assets, not authorised by the Supplier repairing Assets;
  - 2.6.5 water or cleaning fluid damage due to incorrect cleaning procedures by building users;
  - 2.6.6 damage or failure due to electrical supplies being interrupted or altered by others;
  - 2.6.7 operator error by a building user, where this can be proven by the Supplier.
- 2.7 A report of the schedule of necessary works arising from events listed in Paragraph 2.6 above shall be provided to the Buyer on a monthly basis and the undertaking of such works and Charges in relation to such works shall be subject to the provisions set out in Call-Off Schedule 4A (Billable Works).
- 2.8 For the avoidance of doubt, the replacement of Assets that the Buyer agrees are beyond economic repair, and assets that the Buyer agrees are to be replaced at the end of their life cycle, are to be treated as within the Inclusive Repair Threshold, and Billable Works if above the Inclusive Repair Threshold.
- 2.9 There will be occasions when it is difficult for the Buyer to agree a Billable Work in a timely manner. In such circumstances, the Supplier shall continue to maintain the Assets in accordance with the Contract.
- 2.10 The Buyer recognises that there may be some Backlog Maintenance. This Backlog Maintenance shall be managed as follows:
  - 2.10.1 the Buyer shall establish a fund to address any Backlog Maintenance;

- 2.10.2 the Supplier or Buyer may identify a prioritised Backlog Maintenance programme within the twelve (12) months following In Service Date (ISD) for agreement with the Buyer;
- 2.10.3 the management and rectification of Backlog Maintenance shall be through the Billable Works process.

*Illustrative examples of the application of the Inclusive Repair Threshold (IRT) and related pricing clauses are below.*

- a) A fault is reported in a CCTV system. Investigation suggests that water ingress has damaged both the control box and three in-line amplifiers. This is one event impacting a single level 3 asset, covered by the IRT.*
- b) A double-glazed window is leaking, and needs replacing. Other similar windows in the same building and in other buildings on the same site experience a similar issue throughout the next year. This is not one event and the assets cannot be bundled. The IRT shall apply to each such window.*
- c) The air conditioning in a building has broken down. At the Building Custodian's request, a portable air con unit has been hired, until the condenser can be fixed. The IRT shall apply to the one event – the hire of the portable unit and the repair.*
- d) An internal door has been kicked in, following a fight between two of the building's occupants. The Building Custodian has reported the fight to the USyO, confirms that the door has sustained wilful damage and that the door needs replacing. The cost of the replacement will be funded by the Buyer.*
- e) A routine inspection of a building, a month after the ISD, reveals that a couple of fire doors in the building do not meet building regulations. Because the doors were not safe and legal at ISD, and the discovery of this condition is within the time period allowed for identification of Backlog Maintenance, the Buyer will fund their replacement.*
- f) A site inspection six (6) months after ISD reveals that there are a couple of new buildings on a site, which were not included within the Level 2 asset data provided by the Buyer at Call-Off. As the Level 2 data was warranted, the Supplier can raise a change request and the contract price can be varied to add in the cost of the Core services to those buildings.*
- g) A boiler is not working and needs to be replaced. An equivalent model can be sourced and installed within the IRT. If a higher spec replacement could offer additional benefits, but would cost a further £2000 above the IRT, then the Buyer may consider a Billable Work for this, on the Supplier's recommendation. The cost of this would require a contribution from the Supplier to the extent of the IRT, with the remainder funded by the Buyer.*

### **3. CALLING OFF NON-CORE SERVICES**

- 3.1 Non-Core Services may be called off by the Buyer at any time, however it is intended that this will generally be agreed as an annual programme, with the timings aligned with the Buyer's ABC financial processes.
- 3.2 Any Non-Core Service will be priced using the fixed unit price in Schedule 29 (Rates and Prices) as a not-to-exceed figure. It is expected that the actual volume and detail of the work required will allow for reasonable discounts to be agreed.

## PART A - FIXED FEE AND WORK ORDER PRICING

This part of this schedule shall apply where the fixed pricing option is selected in the Order Form.

### 1. CALCULATION OF THE CHARGES

1.1 The Charges shall be:

1.1.1 calculated on the basis of the rates and prices specified in Call-Off Schedule 29 (Rates and Prices) and subject to Indexation as defined in Paragraph 5.

1.1.2 paid in respect of Service Months for full and proper performance by the Supplier of its obligations under the Call-Off Contract;

1.1.3 paid by way of monthly payments ("**Monthly Payments**") which shall be calculated in accordance with Paragraph 1.2 below; and

1.1.4 adjusted as required by Schedule 6b (TUPE price adjustments), and Recompense Requests.

1.2 Subject to paragraphs 1.3 and 1.4, the Monthly Payment (MP<sub>n</sub>), in respect of a Service Month "n" shall be calculated in accordance with the following formula:

$$MP_n = BMP_n + PTC_{n-1} + PC$$

where:

MP<sub>n</sub> is the Monthly Payment to be determined in respect of the Service Month "n";

BMP<sub>n</sub> is the Baseline Monthly Payment for Service Month "n" which is calculated in accordance with Paragraph 2 below;

PTC<sub>n-1</sub> is the Pass Through Costs due in respect of the Previous Service Month which is calculated in accordance with Paragraph 3 below;

PC is the Performance Credit as per Schedule 14 (Performance Management). For ease of administration, it shall be assumed on a monthly basis that the Acceptable Level of Performance has been achieved and the Fixed Profit shall be paid accordingly. At the end of each Service Period (each quarter), there will be a reconciliation. The PC earned over the quarter will be calculated according to actual performance, to include the earning of Fixed and Variable Profit and to account for any Performance Failures or Persistent Performance Failures, as per the Performance Credit Model in Schedule 14. The PC will then be adjusted for that month to make the correction in payment that is due.

1.3 Following the final Service Month during the Contract Period a balancing payment will be calculated to account for:

1.3.1 the Credit calculated in respect of the final Service Period, according to Schedule 14 (Performance Management);

1.3.2 the Pass Through Costs incurred within the final Service Month;

1.3.3 any Call-Off Contract pricing payable in respect of the final Service Month; and

1.3.4 the total price for Work Orders which have been completed in the final Service Month,

1.3.5 Any outstanding and agreed Recompense Requests,

and such balancing payment will be paid to, or deducted from, the sums due to the Supplier following the assessment of the Supplier's performance in the final Service Month.

1.4 The Baseline Monthly Payment shall include all costs and expenses relating to the Deliverables and/or the Supplier's performance of its obligations under this Call-Off Contract and no further amounts shall be payable by the Buyer to the Supplier in respect of such performance except in relation to any amounts which are expressly recoverable as part of a Work Order payment, or Pass Through Cost, or any Billable Works the Supplier is entitled to undertake without a Work Order in accordance with Call-Off Schedule 4A (Billable Works).

## **2. BASELINE MONTHLY PAYMENT**

2.1 The baseline monthly payment ("Baseline Monthly Payment") payable in respect of a Service Month shall be set by reference to Schedule 29 (Rates and Prices) and shall comprise:

2.1.1 The total price for delivering the Core Services and Overhead for the year;

2.1.2 The total price for the Inclusive Repair Threshold for the year;

2.1.3 Added Non-Core Services (including Non-Core PPM) for the year in question;

2.1.4 With the total of the above divided into twelve (12) equal payments.

## **3. PASS THROUGH COSTS**

3.1 Where the Order Form indicates that the Supplier is entitled to claim Pass Through Costs for certain Buyer-identified specialist suppliers, then:

3.1.1 only those types of Pass Through Costs set out in the Order Form shall be recoverable;

3.1.2 the Pass Through Costs shall only be recoverable where they are incurred in accordance with the guidelines that the Buyer may issue to the Supplier from time to time;

3.1.3 the Supplier shall not be entitled to charge any additional amount on top of the Pass Through Costs including any margin, mark up or uplift costs, as such costs are expected to be already included within the Core management fee; and

3.1.4 any claim for Pass Through Costs shall be supported by such documentation as the Buyer may request from time to time.

#### **4. WORK ORDERS**

4.1 The price and payment for Work Orders shall use the principles set out in Schedule 4A (Billable Works) for Billable Works and Recompense Events.

4.2 Work Orders may also be raised for Non-Core Services that have not been incorporated into the annual programme and hence the Monthly Baseline Payment.

4.3 Each Work Order shall be invoiced and paid according to the detail set out in the Work Order and in accordance with the principles specified in Call-Off Schedule 4A (Billable Works)

#### **5. INDEXATION**

5.1 Any amounts or sums in this Call-Off Contract which are expressed in the Order Form to be "subject to Indexation" and /or are described in Paragraph 5.2 below, shall be adjusted in accordance with the provisions of this Paragraph 5 to reflect the effects of inflation.

5.2 Indexation shall apply to the following:

5.2.1 The upper threshold of the Inclusive Repair Threshold (IRT)

5.2.2 The fixed price for the IRT

5.2.3 The fixed price for the provision of all Core services for each year as set out in the Call-Off Schedule 29 (Rates and Prices)

5.2.4 The prices for each Non-Core and Non-Core PPM service as listed in Schedule 29 (Rates and Prices).

5.2.5 The Value Band Thresholds.

5.3 The Fixed Prices for the provision of all Deliverables referred to in paragraph 5.2 above for each year as set out in Call-Off Schedule 29 (Rates and Prices) do not include provisions for increases or decreases in the market price of the Deliverables being procured. Any such variation in prices shall be calculated in accordance with the following formulae:

Contract Award to ISD



$$V = (P \times (O_i/O_0) - P)$$

*Where:*

V represents the variation of price

P represents the Fixed Price as stated in Call-Off Schedule 29 at contract award

O represents the index D7BT – Consumer Price Index (CPI)

O<sub>0</sub> represents the average OUTPUT CPI figure for the base period quarter prior to contract award

O<sub>i</sub> represents the average OUTPUT CPI figure for the quarter prior to ISD

ISD to the following April

$$V = (P \times (O_i/O_0) - P)$$

*Where:*

V represents the variation of price

P represents the Fixed Price stated in Call-Off Schedule 29 as adjusted at ISD

O represents the index D7BT – Consumer Price Index (CPI)

O<sub>0</sub> represents the average OUTPUT CPI figure for the base period quarter prior to ISD

O<sub>i</sub> represents the average OUTPUT CPI figure for the quarter prior to the following April

Annually Thereafter

$$V = (P \times (O_i/O_0) - P)$$

*Where:*

V represents the variation of price

P represents the Fixed Price stated in Call-Off Schedule 29 as adjusted at the April following ISD and subsequently annually thereafter.

O represents the index D7BT – Consumer Price Index (CPI)

O<sub>0</sub> represents the average OUTPUT CPI figure for the base period quarter prior to April initially following ISD, annually thereafter

O<sub>i</sub> represents the average OUTPUT CPI figure for the quarter prior to the following April

- 5.4 The index referred to in paragraph 5.3 above shall be taken from the consumer price inflation tables.
- 5.5 Indices published with a 'B' or 'F' marker, or a suppressed value, in the last 3 years are not valid for variation of price clauses and shall not be used. Where the price index has an 'F' marker or suppression applied to it during the term of the Call-Off Contract, the Buyer and the Supplier shall agree an appropriate replacement index or indices. The replacement index or indices shall cover, to the maximum extent possible, the same economic activities as the original index or indices.
- 5.6 In the event that any material changes are made to the indices e.g. a revised statistical base date during the period of the Call-Off Contract before final adjustment of the contract price, then the re-basing methodology outlined by the Office for National Statistics (ONS, the series providers) to match the original index to the new series shall be applied.
- 5.7 In the event the agreed index or indices cease to be published e.g. because of a change in the Standard Industrial Classification, the Buyer and the Supplier shall agree an appropriate replacement index or indices, which shall cover to the maximum extent possible the same economic activities as the original index or indices. The methodology outlined by the ONS used for rebasing indices (as in para 5.6 above) shall then be applied.
- 5.8 Notwithstanding the above, any extant index agreed in the Call-Off Contract shall continue to be used if it is available and subject to ONS revisions policy. Payments calculated using the extant index shall not be amended retrospectively as a result of any change to the index.
- 5.9 The Supplier shall notify the Buyer of any significant changes in the purchasing / service delivery plan on the basis of which these provisions were drawn up and agreed, or of any other factor having a material bearing on the operation of these provisions such as to cause a significant divergence from their intended purpose, in order that both parties may consider whether any change in this provision would be appropriate.
- 5.10 Prices shall be adjusted taking into account the effect of the above formula as soon as possible after publication of the relevant indices or at a later date if so, agreed between the Buyer and the Supplier. Where an index value is subsequently amended, the Buyer and the Supplier shall agree a fair and reasonable adjustment to the Price, as necessary.
- 5.11 Except as set out in this Schedule, 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 Subcontractors of the performance of their obligations.
- 5.12 Where Indexation applies, the relevant adjustment shall be made:
- 5.12.1 from Contract Award to the agreed ISD;
  - 5.12.2 from ISD to the next April; and

5.12.3 annually thereafter each April

5.13 The Supplier shall perform the calculation detailed in paragraph 5.3 above to determine the adjustment to the prices for the period under review. On completion of the calculation the Supplier shall submit its claim for adjustment to the Buyer for verification and approval providing such information to the Buyer as may reasonably be required to support the proposed adjustment.

5.14 The Buyer shall review the calculations and claim for adjustment to the Fixed Price for the period under review submitted in accordance with paragraph 5.13 and shall, within 10 Working Days, either:

5.14.1 confirm agreement to the adjustment calculated by the Supplier; or

5.14.2 advise an alternative calculation of the price adjustment and the reasons for such alternative view.

5.15 Where the Buyer confirms agreement of the adjustment calculated by the Supplier in accordance with paragraph 5.14.1 the Supplier shall communicate acceptance in writing and amend the Fixed Prices in Call-Off Schedule 29 (Rates and Prices).

5.16 Where the Buyer advises an alternative calculation, in accordance with paragraph 5.14.2, the Buyer and Supplier shall enter into discussions to reach agreement of such alternative calculation. Where no such agreement can be reached within 10 Working Days the matter shall be submitted for resolution in accordance with the Dispute Resolution Procedure.

5.17 When, in accordance with paragraph 5.16, agreement is reached on the calculation of the adjustment to the Fixed Price the provision of paragraph 5.15 shall apply.

5.18 If the Payment Index has not been published for the relevant period as required for this calculation, then the last published value of the index available at the adjustment date shall be used; any corrections following late publication of the relevant period's index shall be made retrospectively as a Recompense Request.

## **6. PRICING FOR VARIATIONS**

6.1 The Charges may be amended using the Variation Procedure in Call-Off Schedule 15 (Contract Management). Any such amendment shall be aligned with and shall use the rates and prices set out in Schedule 29 (Rates and Prices), unless otherwise agreed. The Buyer has the right to amend the portfolio of its sites and building and adjust the contract price accordingly by removing the price associated with that Level 2 Asset that is set out in Call-Off Schedule 29 (Rates and Prices).

6.2 The Supplier is responsible for ensuring that a Service and/or Asset data validation exercise is undertaken from Contract Effective Date and completed by no later than twelve (12) months following the ISD, to verify the Due Diligence Information to Level 2. All costs associated with this shall be

borne by the Supplier. Call-Off Pricing revisions for any / all inaccuracies in the Due Diligence Information beyond this date, and for any information provided about Level 3 and 4 assets at any time, are not permitted.

- 6.3 Notwithstanding Clause 2.8 within the Core Terms, where inaccuracies in the Service or Asset data provided by the Buyer prior to signature of a Call-Off Contract are identified by the Supplier during the Mobilisation Period and not later than twelve (12) months following the ISD, could not reasonably been discovered prior to entering into the Contract, the following shall apply:

6.3.1 Where Mandatory Services under the Contract have been priced at Asset Level 2 in accordance with the maximum Framework Price unit-of-measure rate (i.e. the capped rate) under Framework Schedule 3, the Supplier may, using the Variation Procedure, request an adjustment to the Contract pricing where the Supplier can present written evidence that the Standard Service Pricing classification for the Service, which was provided by the Buyer prior to entering into the Contract, was incorrect;

6.3.2 Where Mandatory Services under a Contract have been priced beneath the maximum Framework Price unit-of-measure rate under Framework Schedule 3 (i.e. a more competitive rate has been submitted by the Supplier based on data provided at Call Off) , the Supplier may, using the Variation Procedure, request an adjustment to the Contract pricing where the Supplier can present written evidence that the warranted Level 2 Due Diligence Information provided by the Buyer prior to entering into the Contract contained inaccuracies that led to incorrect pricing by the Supplier. Where a variation is agreed the Call Off price shall not exceed the capped unit-of-measure rates provided at Framework.

## **7. CHANGES TO MINIMUM/LIVING WAGE**

- 7.1 Where the Supplier can provide evidence in the form of an Impact Assessment that a percentage increase to the Mandatory Wage in a given period has significantly impacted on its costs more than is provided for by Indexation in paragraph 5, the Supplier may request an increase in the Charges by using the Variation process under Clause 24 of the Core Terms.

- 7.2 Suppliers must include in their Impact Assessment evidence of the:

7.2.1 Supplier Staff affected by the Mandatory Wage Increase and the Services that they provide;

7.2.2 affected Supplier Staff current hourly rate of pay; and

7.2.3 the number of hours worked by each of the affected Supplier Personnel.

- 7.3 The Buyer is not required to accept the Variation request under this Paragraph 7 and must not accept any variation request that:

- 7.3.1 exceeds the difference between the Payment Index (as set out in the Order Form) and the current Mandatory Wage rate increase for each member of the Supplier Personnel affected by the Mandatory Wage increase;
- 7.3.2 seeks to increases in the Charges which go beyond the Services affected by the Mandatory Wage increase; and
- 7.3.3 increases the Charges in respect of those Supplier Personnel on an hourly rate already in excess of the Mandatory Wage (whether or not to maintain differentials between the affected Supplier Personnel and higher paid Supplier Personnel).

## **8. INVOICING**

- 8.1 In addition to its obligations in Clause 4 in the Core Terms (Price and payments) and paragraph 9 of this Call-Off Schedule the Supplier shall ensure that each invoice it prepares in relation to the Charges:
  - 8.1.1 specifies the period and/or Mobilisation Milestone to which the invoice relates;
  - 8.1.2 specifies the Deliverables and/or Billable Works and/or other works and/or services and/or Establishment to which the invoice relates;
  - 8.1.3 sets out the calculations used to reach the amount of the Charges that are being invoiced;
  - 8.1.4 separately itemises any expense or taxes said to be payable by the Buyer;
  - 8.1.5 specifies the Supplier's VAT code; and
  - 8.1.6 for Billable Works, is categorised in accordance with New Rules of Measurement (NRM) 3 as defined in Call-Off Schedule 4A (Billable Works).

## **9. PAYMENT AND RECOVERY OF SUMS DUE**

- 9.1 Clause 4.4 of the Core Terms is superseded by this paragraph.
- 9.2 Payments to the Supplier under this Contract will be made by electronic transfer and prior to submitting any claims for payment, the Supplier will be required to register their details (Supplier on-boarding) on the Contracting, Purchasing and Finance (CP&F) electronic procurement tool.
- 9.3 The Supplier shall submit an invoice with supporting documents to the Buyer within 10 Working Days of the start of each Service Month. Each invoice shall show in detail the Charges that the Supplier considers that it is entitled to for the preceding Service Month (including, where applicable, Charges for Billable Works and Recompense Requests) and the basis upon which those Charges have been calculated by the Supplier. Each invoice shall comply with the requirements of this Call-Off Contract.

- 9.4 The due date for payment to the Supplier in respect of any invoice properly issued to the Buyer pursuant to this paragraph 9 (the “Due Date”) shall be the day that a valid invoice is received from the Supplier.
- 9.5 The Buyer shall review any invoice and supporting documents submitted by the Supplier in accordance with this Call-Off Schedule 5 and shall, not later than 5 calendar days after the Due Date, issue a notice (a “Payment Notice”) to the Supplier stating the amount that the Buyer considers to be due or to have been due to the Supplier on the Due Date and the basis on which that sum has been calculated. If the Buyer does not issue a Payment Notice in accordance with this clause, the Buyer shall, subject to any Pay Less Notice under paragraph 9.9 below, pay the Supplier the sum stated as due in the Supplier’s invoice. The sum stated in the Payment Notice or failing the issue of a Payment Notice, the sum stated in the Supplier’s invoice shall be the “Notified Sum”.
- 9.6 The final date for payment of each Notified Sum shall be 30 days from the relevant Due Date (the “Final Date for Payment”).
- 9.7 The Buyer shall, subject to paragraph 9.9, pay the Supplier each Notified Sum by the relevant Final Date for Payment.
- 9.8 Where the Buyer fails to pay a Notified Sum on or before the relevant Final Date for Payment, the Supplier shall be entitled to receive simple interest on the amount unpaid from the Final Date for Payment until payment is received. The interest rate shall be the prevailing rate of statutory interest and defined in the Late Payment of Commercial Debts (Interest) Act 1998 on the Final Date for Payment.
- 9.9 Not later than 5 calendar days before the Final Date for Payment of any sum due under this Call-Off Contract (the “Prescribed Period”), the Buyer may give a written notice (“Pay Less Notice”) to the Supplier which shall specify the sum that the Supplier considers to be due on the date the Pay Less Notice is served and the basis upon which that sum is calculated.
- 9.10 The approval for payment of a valid and undisputed invoice by the Buyer shall not be construed as acceptance by the Buyer of the performance of the Supplier’s obligations nor as a waiver of its rights and remedies under this Contract.
- 9.11 Notwithstanding paragraphs 9.7 and 9.8, if the Supplier becomes subject to an Insolvency Event after the Prescribed Period, the Buyer shall not be required to pay the Supplier the notified sum on or before the Final Date for Payment.
- 9.12 Without prejudice to any other right or remedy, and subject to compliance with paragraph 9.9, the Buyer reserves the right to set off any amount owing at any time from the Supplier to the Buyer against any amount payable by the Buyer to the Supplier under the Contract or under any other contract with the Buyer, or with any other Government Department.

## **10. FINANCIAL REPORTS**

- 10.1 The Supplier shall submit to the Buyer financial reports in the form and frequency specified in Call-Off Schedule 15 (Contract Management).
- 10.2 Acting reasonably, the Buyer may request the Supplier to provide Open Book Data at any time. Open Book Data may also be requested as part of the information required to inform an Audit.

## **11. VALUE ADDED TAX (VAT)**

- 11.1 The Charges and Management Charges exclude any UK output VAT and any similar EU (or non-EU) taxes chargeable on the supply of the Deliverables by the Supplier to the Buyer.
- 11.2 If the Supplier is required by UK VAT law to be registered for UK VAT (or has registered voluntarily) in respect of his business activities at the time of any supply, and the circumstances of any supply are such that the Supplier is liable to pay the tax due to HMRC, the Buyer will pay to the Supplier in addition to any sum due under Clause 4.4 of the Core Terms (or any other sum due to the Supplier) a sum equal to the output VAT chargeable on the tax value of the supply of the Deliverables, and all other payments under this Contract according to the law at the relevant tax point. In the event of any doubt about the applicability of the tax in such cases, the Buyer may require the Supplier to obtain and pass to the Buyer a formal ruling from HMRC.
- 11.3 The Supplier is responsible for the determination of VAT liability. The Supplier is to consult his local VAT office in cases of doubt. The Supplier will notify the Buyer Authorised Representative of the Buyer's VAT liability under this Contract, and any changes to it, when the liability is other than at the standard rate of VAT.
- 11.4 Where a supply of the Deliverables comes within the scope of UK VAT, but the Supplier is not required by UK VAT law to be registered for UK VAT (and has not registered voluntarily), the Buyer will be responsible for assessing and paying over directly to HMRC any UK output VAT due in respect of the Deliverables.
- 11.5 Where the Deliverables are deemed to be supplied to the Buyer outside the UK, the Supplier may be required by the laws of the country where the supply takes place to register there for EU (or non- EU) turnover or similar tax. In that event, the Buyer will pay to the Supplier in addition to any sum due under Clause 4.4 in the Core Terms (and any other sum due to the Supplier under this Contract) sum equal to the tax the Supplier is liable to pay to the tax authorities of the country in question in relation to Deliverables.
- 11.6 For the avoidance of doubt, the Buyer will not be required to pay any sum in respect of the Supplier's input VAT (and / or similar EU and non-EU input taxes) in relation to the Deliverables supplied under this Contract.

## 12. CUSTOMS DUTY DRAWBACK

- 12.1 The Charges will be inclusive of any UK Customs and Excise or other duty payable. The Supplier will not be entitled to make, nor will the Supplier make any claim for drawback of UK import duty on any Deliverables supplied which may be for shipment overseas.

## 13. PAYMENTS DUE ON TERMINATION (CLAUSE 10.3.2)

*This paragraph 13 supplements Clause 10 of the Core Terms.*

- 13.1 Clause 10 of the Core Terms is without prejudice to any other right or remedy in equity, common law, under statute or pursuant to this Contract.
- 13.2 Upon termination of the Contract by the Buyer in accordance with Clause 10.3.2 of the Core Terms (and for the avoidance of doubt including partial termination under Clause 10.8 of the Core Terms where the partial termination is pursuant to the Buyer's rights under Clause 10.3.2 of the Core Terms, in which case the amounts below will, where necessary, be adjusted on a fair and reasonable basis to reflect such part of the Contract as the Buyer has terminated), the amount that is due for payment will be as set out below:
- 13.2.1 the Charges for Deliverables prior to the date of termination which have been properly provided by the Supplier in accordance with the terms of the Contract provided always that the Supplier shall have no entitlement to be paid for any Goods, plant, spare parts, equipment, materials and any other similar items forming part of the Deliverables unless and until ownership of such items has transferred to the Buyer;
  - 13.2.2 any reasonable and proven direct costs incurred by the Supplier for removing Supplier Equipment from the Sites;
  - 13.2.3 if applicable, any reasonable and proved unrecovered investment costs directly applicable to the provision of the Deliverables which the Supplier has previously reported to and agreed with the Buyer in accordance with Call-Off Schedule 15 (Contract Management); and
  - 13.2.4 other costs reasonably incurred in expectation of completing the whole of its obligations under the Contract, and
  - 13.2.5 any amounts retained by the Buyer excluding deductions made or other amounts withheld on a permanent basis or to which the Buyer has subsequently become permanently entitled,

provided that such amounts shall only be recoverable if and to the extent that the Supplier has used all reasonable endeavours to minimise them. The amounts described in the foregoing paragraphs shall be the Supplier's sole entitlement in the event of termination of the Contract pursuant to



Clause 10.3.2 of the Core Terms or partial termination of the Contract under 10.8 of the Core Terms.

13.3 Following a termination as provided for in paragraph 13.2 of this Call-Off Schedule 5 (Pricing), the Supplier shall submit an invoice with supporting documents to the Buyer as soon as reasonably practicable and in any event within three (3) months of the date of such termination. Such invoice shall comply with the requirements of this Call-Off Contract.

13.4 Paragraph 9 of this Call-Off Schedule 5 (Pricing) shall apply to any invoice submitted pursuant to this paragraph 13, save that the “Service Month” in paragraph 9.4 shall be replaced in all instances with “calendar month”.

#### **14. PAYMENT DUE ON BUYER TERMINATION (CLAUSE 10.4.1)**

*This paragraph 14 supplements Clause 10 of the Core Terms.*

14.1 Upon termination of the Contract by the Buyer in accordance with Clause 10.4.1 of the Core Terms the following shall apply:

14.1.1 following the completion of the Replacement Deliverables for the rest of the Contract Period and completion of any defects in them (or of instructions not to rectify the same) an account of the following shall within three (3) months be set out in a statement prepared by the Buyer:

- (a) the total amount of costs (including any reasonable administration costs) reasonably incurred by the Buyer including those incurred pursuant to Clause 10.5.1 of the Core Terms and of any losses caused to the Buyer and for which the Supplier is liable, whether arising from termination or otherwise;
- (b) the total amount of payments made to the Supplier; and
- (c) the total amount which would have been payable to the Supplier for the Deliverables in accordance with this Contract (provided always that the Supplier shall have no entitlement to be paid for any Goods, plant, spare parts, equipment, materials and any other similar items forming part of the Deliverables unless and until ownership of such items has transferred to the Buyer);

If the sum of the amounts stated under paragraph 14.1.1(a) and 14.1.1(b) exceeds the amount stated under paragraph 14.1.1(c), the difference shall be a debt payable by the Supplier to the Buyer or, if that sum is less, by the Buyer to the Supplier.

14.1.2 If within a period of six (6) months from the date of termination of the Contract the Buyer decides not to procure Replacement Deliverables, the Buyer shall forthwith notify the Supplier. Within

a reasonable time from the date of such notification, the Buyer shall send to the Supplier a statement setting out:

- (a) the total value of Charges for Deliverables properly executed at the date of termination ascertained in accordance with this Contract, together with any amounts due to the Supplier under this Contract not included in such total value (provided always that the Supplier shall have no entitlement to be paid for any Goods, plant, spare parts, equipment, materials and any other similar items forming part of the Deliverables unless and until ownership of such items has transferred to the Buyer); and
- (b) the total amount of costs (including any reasonable administration costs) reasonably incurred by the Buyer including those incurred pursuant to Clause 10.5.1 of the Core Terms and of any losses caused to the Buyer and for which the Supplier is liable, whether arising from termination or otherwise;

After taking into account amounts previously paid to the Supplier under this Contract, if the amount stated under paragraph 14.1.2(b) exceeds the amount stated under paragraph 14.1.2(a), the difference shall be a debt payable by the Supplier to the Buyer or, if the paragraph 14.1.2(b) amount is less, by the Buyer to the Supplier.

## **15. PAYMENTS DUE ON SUPPLIER TERMINATION (CLAUSE 10.6.1)**

*This paragraph 15 supplements Clause 10 of the Core Terms.*

15.1 Upon termination of the Contract by the Supplier in accordance with Clause 10.6.1 of the Core Terms the Supplier shall as soon as reasonably practicable and in any event within three (3) months of the date of such termination prepare and submit to the Buyer an account together with a fully itemised and costed schedule and such other evidence as the Buyer may reasonable require setting out:

15.1.1 the total value of Charges for Deliverables ascertained in accordance with the Contract prior to the date of termination which have been properly provided by the Supplier in accordance with the terms of the Contract including all outstanding Charges for Deliverables due to the Supplier ascertained in accordance with the Contract (provided always that the Supplier shall have no entitlement to be paid for any Goods, plant, spare parts, equipment, materials and any other similar items forming part of the Deliverables unless and until ownership of such items has transferred to the Buyer);

15.1.2 any reasonable and proven direct costs incurred by the Supplier for removing Supplier Equipment from the Sites;

15.1.3 if applicable, any reasonable and proven unrecovered investment costs directly applicable to the provision of the Deliverables which

the Supplier has previously reported to and agreed with the Buyer in accordance with Call-off Schedule 15 (Contract Management);

15.1.4 other Costs reasonably incurred in expectation of completing the whole of its obligations under the Contract, and

15.1.5 any amounts retained by the Buyer excluding deductions made or other amounts withheld on a permanent basis or to which the Buyer has subsequently become permanently entitled.

15.2 After taking into account amounts previously paid to the Supplier under the Contract and subject to Clause 11, the Buyer shall pay to the Supplier (or vice versa) the amount properly due in respect of the account within 30 days of submission of the account with the required evidence and strictly provided that:

15.2.1 such amounts shall only be recoverable if and to the extent that the Supplier has used all reasonable endeavours to minimise them; and

15.2.2 the maximum value of any payment to the Supplier shall be limited to the total sum that would have been payable by the Buyer to the Supplier if the Contract had not been terminated.

15.3 Paragraph 9 of this Call-Off Schedule 5 (Pricing) shall apply to any invoice submitted pursuant to this paragraph 15, save that the “Service Month” in paragraph 9.4 shall be replaced in all instances with “calendar month”.

15.4 The amounts described in the foregoing paragraphs shall be the Supplier’s sole entitlement in the event of termination of the Contract pursuant to Clause 10.6.1 of the Core Terms.