[Annex B]

**ADDITIONAL CALL OFF CONTRACT PROVISIONS**

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| **ADDITIONAL CLAUSES AND SCHEDULES** |  |  |
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|  | A2 | Insurance |
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|  | A4 | Termination - Insolvency |
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Unless a clear adjustment to an existing provision of the Call Off Contract (additional Clauses incorporated to the Call Off Contract via the Order Form will have the effect of being inserted sequentially immediately after Clause 37. New definitions for Call Off Schedule 1 will have the effect of being inserted alphabetically into the table therein and associated schedules will have the effect of being inserted sequentially immediately after Call Off Schedule 4.

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**A: TERMED DELIVERY – GOODS**

**A.1 IMPLEMENTATION PLAN**

A.1.1 Formation of Implementation Plan

A.1.1.1 Where the Parties agreed in the Order Form (or elsewhere in this Call Off Contract) that an Implementation Plan (or parts thereof) shall be provided in draft by the Supplier prior to the commencement of the provision of the supply of the Goods, the Supplier’s draft must contain information at the level of detail necessary to manage the implementation stage effectively and as the Customer may require. The draft Implementation Plan shall take account of all dependencies known to, or which should reasonably be known to the Supplier.

A.1.1.2 The Supplier shall submit the draft Implementation Plan to the Customer for Approval (such decision of the Customer to Approve or not shall not be unreasonably delayed or withheld) within such period as specified by the Customer in the Order Form (or elsewhere in this Call Off Contract).

A.1.1.3 The Supplier shall perform each of the Deliverables identified in the Implementation Plan by the applicable date assigned to that Deliverable in the Implementation Plan so as to ensure that each Milestone identified in the Implementation Plan is Achieved on or before its Milestone Date.

A.1.1.4 The Supplier shall monitor its performance against the Implementation Plan and Milestones (if any) and any other requirements of the Customer as set out in this Call Off Contract and report to the Customer on such performance.

A.1.2 Control of Implementation Plan

A.1.2.1 Subject to Clause A.1.2.2, the Supplier shall keep the Implementation Plan under review in accordance with the Customer’s instructions and ensure that it is maintained and updated on a regular basis as may be necessary to reflect the then current state of the supply of the Goods. The Customer shall have the right to require the Supplier to include any reasonable changes or provisions in each version of the Implementation Plan.

A.1.2.2 Changes to the Milestones (if any), Milestone Payments (if any) and Delay Payments (if any) shall only be made in accordance with the Variation Procedure and provided that the Supplier shall not attempt to postpone any of the Milestones using the Variation Procedure or otherwise (except in the event of a Customer Cause which affects the Supplier's ability to achieve a Milestone by the relevant Milestone Date).

A.1.2.3 Where so specified by the Customer in the Implementation Plan or elsewhere in this Call Off Contract, time in relation to compliance with a date, Milestone Date or period shall be of the essence and failure of the Supplier to comply with such date, Milestone Date or period shall be a Material Default unless the Parties expressly agree otherwise.

A.1.3 Rectification of Delay in Implementation

A.1.3.1 If the Supplier becomes aware that there is, or there is reasonably likely to be a Delay under this Call Off Contract:

a) it shall:

(i) notify the Customer as soon as practically possible and no later than within two (2) Working Days from becoming aware of the Delay or anticipated Delay; and

(ii) include in its notification an explanation of the actual or anticipated impact of the Delay; and

(iii) comply with the Customer’s instructions in order to address the impact of the Delay or anticipated Delay; and

(iv) use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay; and

b) if the Delay or anticipated Delay relates to a Milestone in respect which a Delay Payment has been specified in the Implementation Plan, Clause A.1.4 (Delay Payments) shall apply unless the Delay is deemed as resulting from Customer Cause.

A.1.4 Delay Payments

A.1.4.1 If Delay Payments have been included in the Implementation Plan (if any) then, if a Milestone has not been achieved by the relevant Milestone Date the Supplier shall pay to the Customer such Delay Payments (calculated as set out by the Customer in the Implementation Plan) and the following provisions shall apply:

a) The Supplier acknowledges and agrees that any Delay Payment is a price adjustment and not an estimate of the Loss that may be suffered by the Customer as a result of the Supplier’s failure to Achieve the corresponding Milestone;

b) Delay Payments shall be the Customer's exclusive financial remedy for the Supplier’s failure to Achieve a corresponding Milestone by its Milestone Date except where:

(i) the Customer is otherwise entitled to or does terminate this Call Off Contract pursuant to Clause 21 (Customer Termination Rights) except Clause 21.2 (Termination Without Cause), where used; or

(ii) the delay exceeds the period of one hundred (100) days commencing on the relevant Milestone Date;

c) the Delay Payments will accrue on a daily basis from the relevant Milestone Date and shall continue to accrue until the date when the Milestone is Achieved (unless otherwise specified by the Customer in the Implementation Plan);

d) no payment or concession to the Supplier by the Customer or other act or omission of the Customer shall in any way affect the rights of the Customer to recover the Delay Payments or be deemed to be a waiver of the right of the Customer to recover any such damages unless such waiver complies with Clause 28 (Waiver and Cumulative Remedies) and refers specifically to a waiver of the Customer’s rights to claim Delay Payments; and

e) the Supplier waives absolutely any entitlement to challenge the enforceability in whole or in part of this Clause A1 and Delay Payments shall not be subject to or count towards any limitation on liability set out in Clause 17.

**Associated definitions to be inserted into Call Off Schedule 1:**

|  |  |
| --- | --- |
| "Achieve" | 1. means in respect of a Test, to successfully pass such Test without any Test Issues in accordance with the Test Plan and in respect of a Milestone, the issue of a Satisfaction Certificate in respect of that Milestone and "**Achieved**" and "**Achievement**" shall be construed accordingly; |
| “Delay” | 1. means:    1. a delay in the Achievement of a Milestone by its Milestone Date; or    2. a delay in the design, development, testing or implementation of a Deliverable by the relevant date set out in the Implementation Plan; |
| “Delay Payments” | 1. means the amounts payable by the Supplier to the Customer in respect of a delay in respect of a Milestone as specified in the Implementation Plan; |
| "Milestone" | 1. means an event or task described in the Implementation Plan which, if applicable, must be completed by the relevant Milestone Date; |
| "Milestone Date" | 1. means the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved; |
| “Milestone Payment” | 1. means a payment identified in the Implementation Plan to be made following the issue of a Satisfaction Certificate in respect of Achievement of the relevant Milestone; |
| "Satisfaction Certificate" | 1. means the certificate materially in the form of the document contained in Annex 1 to Call Off Schedule B2 (Testing) granted by the Customer when the Supplier has Achieved a Milestone or a Test; |

**Associated Schedule included below**

**CALL OFF SCHEDULE A1: IMPLEMENTATION PLAN, CUSTOMER RESPONSIBILITIES AND KEY PERSONNEL**

1. INTRODUCTION

1.1 This Call Off Schedule specifies:

1.1.1 In Part A, the Implementation Plan in accordance with which the Supplier shall provide the Goods; and

1.1.2 In Part B, the Customer Responsibilities in respect of facilitating the Supplier’s achievement of the Implementation Plan.

PART A: IMPLEMENTATION PLAN

2. GENERAL

2.1 The Implementation Plan is set out below:

2.2 The Milestones to be Achieved are identified below:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Milestone | Deliverables | Duration | Milestone Date | Customer Responsibilities | Milestone Payments | Delay Payments |
| [] | [] | [] | [] | [] | [] | [] |

2.3 The Milestones will be Achieved in accordance with Call Off Schedule B2 (Testing) or the Test Plan annexed to the Implementation Plan

PART B: CUSTOMER RESPONSIBILITIES

3. GENERAL

3.1 The Customer Responsibilities associated with the Milestones identified in the Implementation Plan are set out in the column entitled Customer Responsibilities in the Implementation Plan.

PART C: KEY PERSONNEL

4. GENERAL

4.1 The Supplier has assigned the following Key Personnel to this Call-Off Contract in the Key Roles detailed below:

[ ]

**A.2. INSURANCE**

A.2.1 Notwithstanding any benefit to the Customer of the policy or policies of insurance referred to in Framework Schedule 14 (Insurance), the Supplier shall effect and maintain the following policies of insurance (or extensions to such existing policies of insurance), unless other specific minimum insurance policy levels have been stipulated by the Customer during a Further Competition Procedure and specified in the Order Form:

A.2.1.1 Employers Liability Insurance of at least (£5,000,000);

A.2.1.2 Public Liability Insurance of at least (£1,000,000);

A.2.1.3 Product Liability Insurance of at least (£1,000,000) – applicable to Lot 5 only; and

A.2.1.4 Professional Indemnity Insurance of at least (£1,000,000) – applicable to Lots 1 to 4 inclusive

A.2.2 In respect of all risks which may be incurred by the Supplier arising out of its performance of its obligations under this Call Off Contract, The Supplier shall effect and maintain the policy or policies of insurance referred to in Clause A.2.1 above for six (6) years after the Call Off Expiry Date.

A.2.3 The Supplier shall give the Customer, on request, copies of all insurance policies referred to in Clause A.2.1 or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

A.2.4 If, for whatever reason, the Supplier fails to give effect to and maintain the insurance policies required under Clause A.2.1, the Customer may make alternative arrangements to protect its interests and may recover the premium and other costs of such arrangements as a debt due from the Supplier.

A.2.5 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liability under this Call Off Contract. It shall be the responsibility of the Supplier to determine the amount of insurance cover that will be adequate to enable the Supplier to satisfy any liability in relation to the performance of its obligations under this Call Off Contract.

A.2.6 The Supplier shall ensure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as voided in whole or part. The Supplier shall use all reasonable endeavours to notify the Customer (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or void any insurance, or any cover or claim under any insurance in whole or in part.

**A.3 Termination in Relation to Financial Standing**

A.3.1 The Customer may terminate this Call Off Contract by issuing a Termination Notice to the Supplier where in the reasonable opinion of the Customer there is a material detrimental change in the financial standing and/or the credit rating of the Supplier which:

a) adversely impacts on the Supplier's ability to supply the Goods under this Call Off Contract; or

b) could reasonably be expected to have an adverse impact on the Supplier’s ability to supply the Goods under this Call off Contract.

**A.4 Termination on Insolvency**

A.4.1 The Customer may terminate this Call Off Contract by issuing a Termination Notice to the Supplier where an Insolvency Event affecting the Supplier occurs.

**A.5 Termination on Change of Control**

A.5.1 The Supplier shall notify the Customer immediately if the Supplier undergoes a Change of Control and provided this does not contravene any Law shall notify the Customer immediately in writing of any circumstances suggesting that a Change of Control is planned or in contemplation. The Customer may terminate this Call Off Contract by issuing a Termination Notice to the Supplier within six (6) Months of:

a) being notified in writing that a Change of Control has occurred or is planned or in contemplation; or

b) where no notification has been made, the date that the Customer becomes aware of the Change of Control,

but shall not be permitted to terminate where an Approval was granted prior to the Change of Control

**B: COMPLEX DELIVERY – SOLUTIONS**

**Additional contractual provisions to apply to Customer requirements which include service elements over a specified duration of Call-Off Contract. “A: TERMED DELIVERY – GOODS” provisions are included by default.**

**B.2 TESTING**

B.2.1 The Parties shall comply with the provisions specified in the Test Plan in relation to the procedures to determine whether a Milestone or Test has been Achieved.

**Associated definitions to be inserted into Call Off Schedule 1:**

|  |  |
| --- | --- |
| "Test Issue" | 1. means any variance or non-conformity of the Goods or Deliverables from their requirements as set out in the Call Off Contract; |
| "Test Plan" | 1. means the plan for the Testing of Deliverables and other agreed criteria related to the achievement of Milestones identified in any Implementation Plan; |

**Associated Schedule included below**

CALL OFF SCHEDULE B2: TESTING

1. DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

“Test Strategy” a strategy for the conduct of Testing as described further in Paragraph 3;

2. INTRODUCTION

2.1 This schedule sets out the approach to Testing and the different Testing activities to be undertaken, including the preparation and agreement of the Test Strategy and Test Plans. The primary purpose of Testing shall be to demonstrate to the Customer’s satisfaction that the Goods have been supplied and implemented in accordance with the requirements of this Call Off Contract, and that they are ready for operational use.

3. TEST STRATEGY

3.1 The Supplier shall develop the final Test Strategy as soon as practicable but in any case no later than the date specified in the Implementation Plan (or such other period as the Parties may agree).

3.2 The final Test Strategy shall include:

3.2.1 an overview of how Testing will be conducted in relation to the Implementation Plan;

3.2.2 the process to be used to capture and record Test results and the categorisation of Test Issues;

3.2.3 the procedure to be followed should a Deliverable fail a Test or where a Deliverable produces unexpected results, including a procedure for the resolution of Test Issues;

3.2.4 the procedure to be followed to sign off each Test; and

3.2.5 the process for the production and maintenance of reports relating to Tests.

4. TEST PLANS

4.1 The Supplier shall develop Test Plans for the Approval of the Customer as soon as practicable but in any case no later than twenty (20) Working Days (or such other period as the Parties may agree in the Test Strategy or otherwise) prior to the start date for the relevant Testing as specified in the Implementation Plan.

4.2 Each Test Plan shall include as a minimum:

4.2.1 the relevant Test definition and the purpose of the Test, the Milestone to which it relates, the requirements being Tested;

4.2.2 a detailed procedure for the Tests to be carried out, including:

4.2.3 the timetable for the Tests including start and end dates;

4.2.4 the Testing mechanism and the detailed success criteria ;

4.2.5 dates and methods by which the Customer can inspect Test results;

4.2.6 the mechanism for ensuring the quality, completeness and relevance of the Tests;

4.2.7 the process with which the Customer will review Test Issues and progress on a timely basis; and

4.2.8 the re-Test procedure, the timetable and the resources which would be required for re-Testing.

4.3 The Customer shall not unreasonably withhold or delay its Approval of the Test Plans and the Supplier shall implement any reasonable requirements of the Customer in the Test Plans.

5. TESTING

5.1 When the Supplier has completed the provision of the Goods in respect of a Milestone it shall submit any Deliverables relating to that Milestone for Testing.

5.2 Each party shall bear its own costs in respect of the Testing. However, if a Milestone is not Achieved the Customer shall be entitled to recover from the Supplier, any reasonable additional costs it may incur as a direct result of further review or re-Testing of a Milestone.

5.3 If the Supplier successfully completes the requisite Tests, the Customer shall issue a Satisfaction Certificate as soon as reasonably practical following such successful completion. Notwithstanding the issuing of any Satisfaction Certificate, the Supplier shall remain solely responsible for ensuring that the Services are implemented in accordance with this Contract.

6. TEST ISSUES

6.1 Where a Test Issue is identified by the Supplier, the Parties shall agree how such Test Issue shall be dealt with and any failure to agree by the Parties shall be resolved in accordance with the Dispute Resolution Procedure.

7. TEST QUALITY AUDIT

7.1 Without prejudice to its rights pursuant to Clause 21 (Customer Termination Rights), the Customer or an agent or temporary worker appointed by the Customer may perform on-going quality audits in respect of any part of the Testing.

7.2 If the Customer has any concerns following an audit in accordance with paragraph 7.1 above the Customer will discuss such concerns with the Supplier, giving the Supplier the opportunity to provide feedback in relation to specific activities, and subsequently prepare a written report for the Supplier detailing the same to which the Supplier shall, within a reasonable timeframe, respond in writing.

7.3 In the event of an inadequate response to the written report from the Supplier, the Customer (acting reasonably) may withhold a Satisfaction Certificate until the issues in the report have been addressed to the reasonable satisfaction of the Customer.

8. OUTCOME OF TESTING

8.1 The Customer will issue a Satisfaction Certificate when it is satisfied that a Milestone has been Achieved.

8.2 If any Milestones (or any relevant part thereof) do not pass the Test in respect thereof then:

8.2.1 the Supplier shall rectify the cause of the failure and re-submit the Deliverables (or the relevant part) to Testing, provided that the Parties agree that there is sufficient time for that action prior to the relevant Milestone Date; or

8.2.2 the Parties shall treat the failure as a Supplier’s Default.

ANNEX 1: SATISFACTION CERTIFICATE

To: [insert name of Supplier]

From: Oxfordshire County Council

[insert Date dd/mm/yyyy]

Dear Sirs,

SATISFACTION CERTIFICATE

Milestone:

We refer to the agreement ("Call Off Contract") relating to the provision of the Goods and Services between the Oxfordshire County Council ("Customer") and [insert Supplier name] ("Supplier") dated [insert Call Off Commencement Date dd/mm/yyyy].

The definitions for terms capitalised in this certificate are set out in the Call Off Contract.

We confirm that all of the Milestones have been successfully Achieved by the Supplier in accordance with the Test relevant to those Milestones.

Yours faithfully

[insert Name]

[insert Position]

acting on behalf of [insert name of Customer]

**B.3. SERVICE LEVELS AND SERVICE CREDITS**

B.3.1 The Supplier shall at all times during the Call Off Contract Period provide the Goods and/or Services to meet or exceed the Service Level Performance Measure for each Service Level Performance Criterion specified in the Order Form or Call Off Schedule B3 (Service Levels, Service Credits and Performance Monitoring) where this is used.

B.3.2 The Supplier acknowledges that any Service Level Failure may have a material adverse impact on the business and operations of the Customer and that it shall entitle the Customer to Service Credits if so specified in the Order Form.

B.3.3 The Supplier acknowledges and agrees that any Service Credit is a price adjustment and not an estimate of the Loss that may be suffered by the Customer as a result of the Supplier’s failure to meet any Service Level Performance Measure.

B.3.4 CRITICAL SERVICE LEVEL FAILURE

B.3.4.1 On the occurrence of a Critical Service Level Failure:

B.3.4.1.1 any Service Credits that would otherwise have accrued during the relevant Service Period shall not accrue; and

B.3.4.1.2 the Customer shall be entitled to withhold and retain as compensation for the Critical Service Level Failure a sum equal to any Call Off Contract 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 Clause shall be without prejudice to the right of the Customer to terminate this Call Off Contract and/or to claim damages from the Supplier for Material Default as a result of such Critical Service Level Failure.

B.3.4.2 The Supplier:

B.3.4.2.1 agrees that the application of Clause B.3.4.1 is commercially justifiable where a Critical Service Level Failure occurs; and

B.3.4.2.2 acknowledges that it has taken legal advice on the application of Clause B.3.4.1 and has had the opportunity to price for that risk when calculating the Call Off Contract Charges.

**Associated definitions to be inserted into Call Off Schedule 1:**

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| --- | --- |
| “Compensation for Critical Service Level Failure” | 1. has the meaning given to it in Clause B.3.4.1.2 (Critical Service Level Failure); |
| "Critical Service Level Failure" | 1. means any instance of critical service level failure as defined in this Call Off Contract |
| “Performance Monitoring System” | 1. has the meaning given to it in paragraph 7.1.2 in Part B of Schedule B3 (Service Levels, Service Credits and Performance Monitoring); |
| “Performance Monitoring Reports” | 1. has the meaning given to it in paragraph 9 of Part B of Schedule B3 (Service Levels, Service Credits and Performance Monitoring); |
| “Performance Review Meetings” | 1. has the meaning given to it in paragraph 9.2 of Part B of Schedule B3 (Service Levels, Service Credits and Performance Monitoring); |
| "Service Credits"  “Service Credit Cap” | 1. means any service credits specified in the Order Form, or where this is used Annex 1 to Part A of Call Off Schedule B3 (Service Levels, Service Credits and Performance Monitoring), being payable by the Supplier to the Customer in respect of any failure by the Supplier to meet one or more Service Levels;   means in the period from the Call Off Commencement Date to the end of the first Call Off Contract Year 10% of the Estimated Year 1 Call Off Contract Charges; and  b) during the remainder of the Call Off Contract Period, 10% of the Call Off Contract Charges payable to the Supplier under this Call Off Contract in the period of 12 Months immediately preceding the Month in respect of which Service Credits are accrued; |
| “Service Failure” | 1. means an unplanned failure and interruption to the provision of the Services, reduction in the quality of the provision of the Goods and/or Services or event which could affect the provision of the Goods and/or Services in the future; |
| “Service Level Failure” | 1. a failure to meet the Service Level Performance Measure in respect of a Service Level Performance Criterion; |
| “Service Level Performance Criteria” or “Service Level Performance Criterion” | 1. means the Service Level Performance Criteria specified in the Order Form or, where this is used, in Call Off Schedule B3 (Service Levels, Service Credits and Performance Monitoring); |
| “Service Level Performance Measure” | 1. shall be as set out against the relevant Service Level Performance Criterion in the Order Form or, where this is used, Annex 1 of Part A of Call Off Schedule B3 (Service Levels, Service Credits and Performance Monitoring); |
| "Service Levels" | 1. means any service levels applicable to the provision of the Goods and/or Services under this Call Off Contract specified in the Order Form or, where this is used, in Annex 1 to Part A of Call Off Schedule B3 (Service Levels, Service Credits and Performance Monitoring); |
| “Service Period” | 1. shall have the meaning given to in paragraph 5.1 of Call Off Schedule B3 (Service Levels, Service Credits and Performance Monitoring); |

**Associated Schedule included below**

**CALL OFF SCHEDULE B3: SERVICE LEVELS, SERVICE CREDITS AND PERFORMANCE MONITORING**

1. **SCOPE**
   1. This Call Off Schedule B3 (Service Levels, Service Credits and Performance Monitoring) sets out the Service Levels which the Supplier is required to achieve when providing the Services, the mechanism by which Service Level Failures and Critical Service Level Failures will be managed and the method by which the Supplier's performance in the provision by it of the Services will be monitored.
   2. This Call Off Schedule comprises:
      1. Part A: Service Levels and Service Credits;
      2. Annex 1 to Part A - Service Levels and Service Credits Table;
      3. Annex 2 to Part A – Critical Service Level Failure;
      4. Part B: Performance Monitoring; and
      5. Annex 1 to Part B: Additional Performance Monitoring Requirements

PART A: SERVICE LEVELS AND SERVICE CREDITS

1. GENERAL PROVISIONS
   1. The Supplier shall provide a proactive Call Off Contract manager to ensure that all Service Levels in this Call Off Contract and Key Performance Indicators in the Framework Agreement are achieved to the highest standard throughout, respectively, the Call Off Contract Period and the Framework Period.
   2. The Supplier shall provide a managed service through the provision of a dedicated Call Off Contract manager where required on matters relating to:
      1. Supply performance;
      2. Quality of Goods and/or Services;
      3. Customer support;
      4. Complaints handling; and
      5. Accurate and timely invoices.
   3. The Supplier accepts and acknowledges that failure to meet the Service Level Performance Measures set out in the table in Annex 1 to this Part A of this Call Off Schedule will result in Service Credits being issued to Customers.
2. PRINCIPAL POINTS
   1. The objectives of the Service Levels and Service Credits are to:
      1. ensure that the Services are of a consistently high quality and meet the requirements of the Customer;
      2. provide a mechanism whereby the Customer can attain meaningful recognition of inconvenience and/or loss resulting from the Supplier’s failure to deliver the level of service for which it has contracted to deliver; and
      3. incentivise the Supplier to comply with and to expeditiously remedy any failure to comply with the Service Levels.
3. SERVICE LEVELS
   1. Annex 1 to this Part A of this Call Off Schedule sets out the Service Levels the performance of which the Parties have agreed to measure.
   2. The Supplier shall monitor its performance of this Call Off Contract by reference to the relevant performance criteria for achieving the Service Levels shown in Annex 1 to this Part A of this Call Off Schedule (the “Service Level Performance Criteria”) and shall send the Customer a Performance Monitoring Report detailing the level of service which was achieved in accordance with the provisions of Part B (Performance Monitoring) of this Call Off Schedule.
   3. The Supplier shall, at all times, provide the Services in such a manner that the Service Levels Performance Measures are achieved.
   4. If the level of performance of the Supplier of any element of the provision by it of the Services during the Call Off Contract Period:
      1. is likely to or fails to meet any Service Level Performance Measure or
      2. is likely to cause or causes a Critical Service Level Failure to occur,

the Supplier shall immediately notify the Customer in writing and the Customer, in its absolute discretion and without prejudice to any other of its rights howsoever arising including under Clause B.3 (Service Levels and Service Credits), may:

1. require the Supplier to immediately take all remedial action that is reasonable to mitigate the impact on the Customer and to rectify or prevent a Service Level Failure or Critical Service Level Failure from taking place or recurring; and
2. if the action taken under paragraph a) above has not already prevented or remedied the Service Level Failure or Critical Service Level Failure, the Customer shall be entitled to instruct the Supplier to comply with the Rectification Plan Process; or
3. if a Service Level Failure has occurred, deduct from the Call Off Contract Charges the applicable Service Level Credits payable by the Supplier to the Customer in accordance with the calculation formula set out in Annex 1 of this Part A of this Call Off Schedule; or
4. if a Critical Service Level Failure has occurred, exercise its right to Compensation for Critical Service Level Failure in accordance with Clause B.3.4 (Critical Service Level Failure) (including subject, for the avoidance of doubt the proviso in clause B.3.4.1.2 in relation to Material Breach).
   1. Approval and implementation by the Customer of any Rectification Plan shall not relieve the Supplier of any continuing responsibility to achieve the Service Levels, or remedy any failure to do so, and no estoppels or waiver shall arise from any such Approval and/or implementation by the Customer.
5. SERVICE CREDITS
   1. Annex 1 to this Part A of this Call Off Schedule sets out the formula used to calculate a Service Credit payable to the Customer as a result of a Service Level Failure in a given service period which, for the purpose of this Call Off Schedule, shall be a recurrent period of one Month during the Call Off Contract Period (the “Service Period”).
   2. Annex 1 to this Part A of this Call Off Schedule includes details of each Service Credit available to each Service Level Performance Criterion if the applicable Service Level Performance Measure is not met by the Supplier.
   3. The Customer shall use the Performance Monitoring reports supplied by the Supplier under Part B (Performance Monitoring) of this Call Off Schedule to verify the calculation and accuracy of the Service Credits, if any, applicable to each relevant Service Period.
   4. Service Credits are a reduction of the amounts payable in respect of the Services 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 Annex 1 of Part A of this Call Off Schedule.
6. NATURE OF SERVICE CREDITS
   1. The Supplier confirms that it has modelled the Service Credits and has taken them into account in setting the level of the Call Off Contract Charges. Both Parties agree that the Service Credits are a reasonable method of price adjustment to reflect poor performance.

ANNEX 1 TO PART A: SERVICE LEVELS AND SERVICE CREDITS TABLE

|  | |
| --- | --- |
| Service Level Performance Criterion | Key Indicator | | Service Level Performance Measure | Service Credit for each Service Period |
| Accurate and timely billing of Customer | Accuracy /timelines | | at least 98% at all times | 0.5% Service Credit gained for each percentage under the specified Service Level Performance Measure |
| Access to Customer support | Availability | | at least 98% at all times | 0.5% Service Credit gained for each percentage under the specified Service Level Performance Measure |
| Complaints handling | Availability/timelines | | At least 98% at all times | 0.5% Service Credit gained for each percentage under the specified Service Level Performance Measure |
| Provision of specific Services | Quality | | at least 98% at all times | 2% Service Credit gained for each percentage under the specified Service Level Performance Measure |
| Timely provision of the Services 24 hours a day, 7 days a week, 365 days a year. | Services availability | | at least 98% at all times | 2% Service Credit gained for each percentage under the specified Service Level Performance Measure |

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

|  |  |  |
| --- | --- | --- |
| Worked example: 98% (e.g. Service Level Performance Measure requirement for Service Level Performance Criterion of accurate and timely billing to Customer) - 75% (e.g. actual performance achieved against this Service Level Performance Criterion in a Service Period) | = | 11.5% of the Call Off Contract Charges payable to the Customer as Service Credits to be deducted from the next Valid Invoice payable by the Customer] |

ANNEX 2 TO PART A: CRITICAL SERVICE LEVEL FAILURE

In accordance with the provisions of this Call Off Contract the Supplier is required to provide support service to ensure that the Hyperconverged compute and storage solution provided has uptime availability of 24 hours a day / 7 days per week / 365 days a year basis during the Call Off Contract Period.

A “**Critical Service Level Failure”** means downtime or unavailability of the Hyperconverged compute and storage solution for more than three (3) hours accumulated in any three (3) Month period, or forty -eight (48) hours in any rolling twelve (12) Month period.

PART B: PERFORMANCE MONITORING

1. PRINCIPAL POINTS
   1. Part B 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 ("**Performance Monitoring System**").
   2. Within twenty (20) Working Days of the Call Off Commencement Date the Supplier shall provide the Customer 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.
2. REPORTING OF SERVICE FAILURES
   1. The Customer shall report all failures to achieve Service Levels and any Critical Service Level Failure to the Customer in accordance with the processes agreed in paragraph 7.2 above.
3. PERFORMANCE MONITORING AND PERFORMANCE REVIEW
   1. The Supplier shall provide the Customer with performance monitoring reports (“**Performance Monitoring Reports**”) in accordance with the process and timescales agreed pursuant to paragraph 7.2 above which shall contain, as a minimum, the following information in respect of the relevant Service Period for each Service Level, the actual performance achieved over the Service Level for the relevant Service Period;
      1. a summary of all failures to achieve Service Levels that occurred during that Service Period;
      2. any Critical Service Level Failures and details in relation thereto;
      3. for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence;
      4. 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
      5. such other details as the Customer may reasonably require from time to time.
   2. The Parties shall attend meetings to discuss Performance Monitoring Reports ("**Performance Review Meetings**") on a monthly basis (unless otherwise agreed). The Performance Review Meetings will be the forum for the review by the Supplier and the Customer of the performance monitoring reports. The Performance Review Meetings shall (unless otherwise agreed):
      1. take place within one (1) week of the Performance Monitoring Reports being issued by the Supplier;
      2. take place at such location and time (within normal business hours) as the Customer shall reasonably require unless otherwise agreed in advance;
      3. be attended by the Supplier Representative and the Customer Representative; and
      4. be fully minuted by the Supplier. The prepared minutes will be circulated by the Supplier to all attendees at the relevant meeting and also to the Customer Representative and any other recipients agreed at the relevant meeting. The minutes of the preceding month's Performance Review Meeting will be agreed and signed by both the Supplier Representative and the Customer Representative at each meeting.
   3. The Customer shall be entitled to raise any additional questions and/or request any further information regarding any failure to achieve Service Levels.
   4. The Supplier shall provide to the Customer such supporting documentation as the Customer 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.
4. SATISFACTION SURVEYS
   1. In order to assess the level of performance of the Supplier, the Customer may undertake satisfaction surveys in respect of the Supplier's provision of the Services.
   2. The Customer shall be entitled to notify the Supplier of any aspects of their performance of the Services which the responses to the satisfaction surveys reasonably suggest are not in accordance with the Call Off Contract.

ANNEX 1 TO PART B: ADDITIONAL PERFORMANCE MONITORING REQUIREMENTS

In this Schedule, the following definitions shall apply:

|  |  |
| --- | --- |
| “Project Manager” | 1. shall have the meaning given to it in paragraph 5.1 of Part B of Schedule B3 (Service Levels, Service Credits and Performance Monitoring); |

1. MANAGEMENT OF THE SERVICES
   1. The Supplier and the Customer shall each appoint a Project Manager for the purposes of this Call Off Contract through whom the Services shall be managed at a day-to-day (“**Project Manager**”).
   2. Both parties shall ensure that appropriate resource is made available on a regular basis such that the aims, objectives and specific provisions of this Call Off Contract can be fully realised.

**B.4. PERFORMANCE MONITORING**

B.4.1 Unless otherwise Approved or notified by the Customer, the Supplier shall comply with the monitoring requirements set out in the Order Form or elsewhere in this Call-Off Contract.

B.4.2 The Supplier shall implement all measurement and monitoring tools and procedures necessary to measure, monitor and report on the Supplier’s performance of the provision of the Goods and/or Services against the applicable Service Levels at a level of detail sufficient to verify compliance with the Service Levels.

**B.5. SUPPLIER PERSONNEL**

B.5.1 Supplier Personnel

B.5.1.1 The Supplier shall:

a) provide to the Customer a list of the names of all Supplier Personnel requiring admission to Customer Premises and / or Customer’s 3rd party contractor’s premises (as may be required), specifying the capacity in which they require admission and giving such other particulars as the Customer may reasonably require;

b) retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of the Customer;

c) use all reasonable endeavours to minimise the number of changes in Supplier Personnel;

d) replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever;

e) bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel; and

f) procure that the Supplier Personnel shall vacate the Customer Premises immediately upon the Call Off Expiry Date.

B.5.1.2 If the Customer reasonably believes that any of the Supplier Personnel are unsuitable to undertake work in respect of this Call Off Contract, it may:

a) refuse admission to the relevant person(s) to the Customer Premises; and/or

b) direct the Supplier to end the involvement in the provision of the Goods and/or Services of the relevant person(s).

B.5.1.3 The decision of the Customer as to whether any person is to be refused access to the Customer Premises shall be final and conclusive.

**B.7 Exit Management**

B.7.1 In the event that this Call Off Contract expires or is terminated the Supplier shall, where so requested by the Customer, provide assistance to the Customer to migrate the provision of the Goods to a Replacement Supplier. Such assistance shall include as set out in any Exit Plan.

B.7.2 In complying with its obligation under Clause B.7.1 the Supplier shall:

(a) transfer to the Customer and/or the Replacement Supplier (as notified by the Customer) such of the contracts listed in the Exit Plan (if any) as are notified to the Supplier and/or by the Customer in return for payment of the costs (if any) set out in the Exit Plan in respect of such contracts; and

(b) promptly provide all information concerning the provision of the Goods which may reasonably be requested by the Customer for the purposes of adequately understanding the manner in which the Goods have been provided or for the purpose of allowing the Customer or the Replacement Supplier to conduct due diligence.

B.7.3 On the Call Off Expiry Date, the Supplier shall:

(a) comply with its obligations in Clause 14.7.3 (Termination of licences) in relation to the use of any Customer Software, Customer Background IPR and/or Customer Data licensed to it by the Customer.

(b) immediately deliver to the Customer any Customer Property issued to the Supplier. Such Customer Property shall be handed back to the Customer in good working order (allowance shall be made only for reasonable wear and tear);

(c) return to the Customer any sums prepaid in respect of the Goods not provided by the Call Off Expiry Date; and

(d) use reasonable endeavours to procure that the benefit of manufacturer’s warranty in respect of any Goods is assigned, or otherwise transferred to the Customer.

B.7.4 If the Supplier fails to comply with Clauses B.7.3 (a) and (b), the Customer may recover possession thereof and the Supplier grants a licence to the Customer or its appointed agents to enter (for the purposes of such recovery) any premises of the Supplier or its servants, consultants, agents or Sub-Contractors where any such items may be held.

B.7.5 Where the end of the Call Off Contract Period arises due to termination of this Call Off Contract by reason of Default under Clause 21.1 (Termination on Material Default), the Supplier shall provide all assistance under Clauses B.7.3 (a) to (d) free of charge. Otherwise, the Customer shall pay the Supplier’s reasonable costs of providing the assistance and the Supplier shall take all reasonable steps to mitigate such costs.

B.7.6 On the Call Off Expiry Date:

(a) any licence granted to occupy Customer Premises shall automatically terminate without the need to serve notice; and

(b) the Supplier shall remove any Supplier Equipment together with any other materials used by the Supplier to supply the Goods and shall leave the Customer Premises in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Customer Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier and/or any Supplier Personnel.

B.7.7 The Parties shall comply with their obligations in Schedule B7 (Exit Management)

**Associated Schedule included below**

**CALL OFF SCHEDULE B7: EXIT MANAGEMENT**

1. DEFINITIONS

1.1 In this Call Off Schedule, the following definitions shall apply:

"Exclusive Assets" those Supplier Assets used by the Supplier or a Key Sub-Contractor which are used exclusively in the provision of the Services;

“Exit Information” has the meaning given to it in paragraph 4.1;

"Exit Manager" the person appointed by each Party pursuant to paragraph 3.3 for managing the Parties' respective obligations under this Call Off Schedule;

“Exit Plan” has the meaning given to it in paragraph 5.1

“Net Book Value” the net book value of the relevant Supplier Asset(s) calculated in accordance with the depreciation policy of the Supplier set out in the letter in the agreed form from the Supplier to the Costumer of even date with this Call Off Contract;

"Non-Exclusive Assets" those Supplier Assets (if any) which are used by the Supplier or a Key Sub-Contractor in connection with the Services but which are also used by the Supplier or Key Sub-Contractor for other purposes;

“Registers” the register and configuration database referred to in paragraphs 3.1.1 and 3.1.2;

“Termination Assistance” the activities to be performed by the Supplier pursuant to the Exit Plan, and any other assistance required by the Customer pursuant to the Termination Assistance Notice;

“Termination Assistance Notice” has the meaning given in paragraph 6.1;

“Termination Assistance Notice Period” in relation to a Termination Assistance Notice, the period specified in the Termination Assistance Notice for which the Supplier is required to provide the Termination Assistance as such period may be extended pursuant to paragraph 6.2;

“Transferable Assets” those of the Exclusive Assets which are capable of legal transfer to the Customer;

“Transferable Contracts” the Sub-contracts, licences for Supplier's Software, licences for Third Party Software or other agreements which are necessary to enable the Customer or any Replacement Supplier to perform the Services or replacement services, including in relation to licences all relevant Documentation;

“Transferring Assets” has the meaning given to it in paragraph 9.2.1;

"Transferring Contracts" has the meaning given to it in paragraph 9.2.3.

2. INTRODUCTION

2.1 This Call Off Schedule describes provisions that should be included in the Exit Plan, the duties and responsibilities of the Supplier to the Customer leading up to and covering the Call Off Expiry Date and the transfer of service provision to the Customer and/or a Replacement Supplier.

2.2 The objectives of the exit planning and service transfer arrangements are to ensure a smooth transition of the availability of the Services from the Supplier to the Customer and/or a Replacement Supplier at the Call Off Expiry Date.

3. OBLIGATIONS DURING THE CALL OFF CONTRACT PERIOD TO FACILITATE EXIT

3.1 During the Call Off Contract Period, the Supplier shall:

3.1.1 create and maintain a Register of all:

a) Supplier Assets, detailing their:

i. make, model and asset number;

ii. ownership and status as either Exclusive Assets or Non-Exclusive Assets;

iii. Net Book Value;

iv. condition and physical location; and

v. use (including technical specifications); and

b) Sub-Contracts and other relevant agreements (including relevant software licences, maintenance and support agreements and equipment rental and lease agreements) required for the performance of the Services;

3.1.2 create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Supplier provides the Services, which shall contain sufficient detail to permit the Customer and/or Replacement Supplier to understand how the Supplier provides the Services and to enable the smooth transition of the Services with the minimum of disruption;

3.1.3 agree the format of the Registers with the Customer as part of the process of agreeing the Exit Plan; and

3.1.4 at all times keep the Registers up to date, in particular in the event that Assets, Sub-Contracts or other relevant agreements are added to or removed from the Services.

3.2 The Supplier shall:

3.2.1 procure that all Exclusive Assets listed in the Registers are clearly marked to identify that they are exclusively used for the provision of the Services under this Call Off Contract.

3.3 Each Party shall appoint a person for the purposes of managing the Parties' respective obligations under this Call Off Schedule and provide written notification of such appointment to the other Party within three (3) Months of the Call Off Commencement Date. The Supplier's Exit Manager shall be responsible for ensuring that the Supplier and its employees, agents and Sub-Contractors comply with this Call Off Schedule. The Supplier shall ensure that its Exit Manager has the requisite Customer to arrange and procure any resources of the Supplier as are reasonably necessary to enable the Supplier to comply with the requirements set out in this Call Off Schedule. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination of this Call Off Contract and all matters connected with this Call Off Schedule and each Party's compliance with it.

4. OBLIGATIONS TO ASSIST ON RE-TENDERING OF SERVICES

4.1 On reasonable notice at any point during the Call Off Contract Period, the Supplier shall provide to the Customer and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by the Customer of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence:

4.1.1 details of the Service(s);

4.1.2 a copy of the Registers, updated by the Supplier up to the date of delivery of such Registers;

4.1.3 an inventory of Customer Data in the Supplier's possession or control;

4.1.4 details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;

4.1.5 a list of on-going and/or threatened disputes in relation to the provision of the Services; and

4.1.6 such other material and information as the Customer shall reasonably require,

(together, the “Exit Information”).

4.2 The Supplier acknowledges that the Customer may disclose the Supplier's Confidential Information to an actual or prospective Replacement Supplier or any third party whom the Customer is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that the Customer may not under this paragraph 4.2 disclose any Supplier’s Confidential Information which is information relating to the Supplier’s or its Sub-contractors’ prices or costs).

4.3 The Supplier shall:

4.3.1 notify the Customer within five (5) Working Days of any material change to the Exit Information which may adversely impact upon the provision of any Services and shall consult with the Customer regarding such proposed material changes; and

4.3.2 provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within ten (10) Working Days of a request in writing from the Customer.

4.4 The Supplier may charge the Customer for its reasonable additional costs to the extent the Customer requests more than four (4) updates in any six (6) month period.

4.5 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Supplier shall be such as would be reasonably necessary to enable a third party to:

4.5.1 prepare an informed offer for those Services; and

4.5.2 not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).

5. EXIT PLAN

5.1 The Supplier shall, within three (3) Months after the Call Off Commencement Date, deliver to the Customer an Exit Plan (the “Exit Plan”) which:

5.1.1 sets out the Supplier's proposed methodology for achieving an orderly transition of the Services from the Supplier to the Customer and/or its Replacement Supplier on the expiry or termination of this Call Off Contract;

5.1.2 complies with the requirements set out in paragraph 5.3;

5.1.3 is otherwise reasonably satisfactory to the Customer.

5.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

5.3 Unless otherwise specified by the Customer or Approved, the Exit Plan shall set out, as a minimum:

5.3.1 how the Exit Information is obtained;

5.3.2 the management structure to be employed during both transfer and cessation of the Services;

5.3.3 the management structure to be employed during the Termination Assistance Period;

5.3.4 a detailed description of both the transfer and cessation processes, including a timetable;

5.3.5 how the Services will transfer to the Replacement Supplier and/or the Customer, including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Customer's technology components from any technology components operated by the Supplier or its Sub-Contractors (where applicable);

5.3.6 details of contracts (if any) which will be available for transfer to the Customer and/or the Replacement Supplier upon the Call Off Expiry Date together with any reasonable costs required to effect such transfer (and the Supplier agrees that all Transferable Assets and Transferable Contracts used by the Supplier in connection with the provision of the Goods and/or Services will be available for such transfer);

5.3.7 proposals for the training of key members of the Replacement Supplier’s personnel in connection with the continuation of the provision of the Services following the Call Off Expiry Date charged at rates agreed between the Parties at that time;

5.3.8 proposals for providing the Customer or a Replacement Supplier copies of all documentation:

a) used in the provision of the Services and necessarily required for the continued use thereof, in which the Intellectual Property Rights are owned by the Supplier; and

b) relating to the use and operation of the Services;

5.3.9 proposals for the assignment or novation of the provision of all services, leases, maintenance agreements and support agreements utilised by the Supplier in connection with the performance of the supply of the Services;

5.3.10 proposals for the identification and return of all Customer Property in the possession of and/or control of the Supplier or any third party (including any Sub-Contractor);

5.3.11 proposals for the disposal of any redundant Services and materials;

5.3.12 how each of the issues set out in this Call Off Schedule will be addressed to facilitate the transition of the Services from the Supplier to the Replacement Supplier and/or the Customer with the aim of ensuring that there is no disruption to or degradation of the Services during the Termination Assistance Period; and

5.3.13 proposals for the supply of any other information or assistance reasonably required by the Customer or a Replacement Supplier in order to effect an orderly handover of the provision of the Services.

6. TERMINATION ASSISTANCE

6.1 The Customer shall be entitled to require the provision of Termination Assistance at any time during the Call Off Contract Period by giving written notice to the Supplier (a "Termination Assistance Notice") at least four (4) Months prior to the Call Off Expiry Date or as soon as reasonably practicable (but in any event, not later than one (1) month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:

6.1.1 the date from which Termination Assistance is required;

6.1.2 the nature of the Termination Assistance required; and

6.1.3 the period during which it is anticipated that Termination Assistance will be required, which shall continue no longer than twelve (12) Months after the date that the Supplier ceases to provide the Services.

6.2 The Customer shall have an option to extend the period of Termination Assistance beyond the period specified in the Termination Assistance Notice provided that such extension shall not extend for more than six (6) Months after the date the Supplier ceases to provide the Services or, if applicable, beyond the end of the Termination Assistance Period and provided that it shall notify the Supplier to such effect no later than twenty (20) Working Days prior to the date on which the provision of Termination Assistance is otherwise due to expire. The Customer shall have the right to terminate its requirement for Termination Assistance by serving not less than (20) Working Days' written notice upon the Supplier to such effect.

7. TERMINATION ASSISTANCE PERIOD

7.1 Throughout the Termination Assistance Period, or such shorter period as the Customer may require, the Supplier shall:

7.1.1 continue to provide the Services (as applicable) and, if required by the Customer pursuant to paragraph 1, provide the Termination Assistance;

7.1.2 in addition to providing the Services and the Termination Assistance, provide to the Customer any reasonable assistance requested by the Customer to allow the Services to continue without interruption following the termination or expiry of this Call Off Contract and to facilitate the orderly transfer of responsibility for and conduct of the Services to the Customer and/or its Replacement Supplier;

7.1.3 use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in paragraph 7.1.2 without additional costs to the Customer;

7.1.4 provide the Services and the Termination Assistance at no detriment to the Service Level Performance Measures, save to the extent that the Parties agree otherwise in accordance with paragraph 7.3; and

7.1.5 at the Customer's request and on reasonable notice, deliver up-to-date Registers to the Customer.

7.2 Without prejudice to the Supplier’s obligations under paragraph 7.1.3 , if it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in paragraph 7.1.2 without additional costs to the Customer, any additional costs incurred by the Supplier in providing such reasonable assistance which is not already in the scope of the Termination Assistance or the Exit Plan shall be subject to the Change Control Procedure.

7.3 If the Supplier demonstrates to the Customer's reasonable satisfaction that transition of the Services and provision of the Termination Assistance during the Termination Assistance Period will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular Service Level Performance Measure(s), the Parties shall vary the relevant Service Level Performance Measure(s) and/or the applicable Service Credits to take account of such adverse effect.

8. TERMINATION OBLIGATIONS

8.1 The Supplier shall comply with all of its obligations contained in the Exit Plan.

8.2 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Assistance and its compliance with the other provisions of this Call Off Schedule), the Supplier shall:

8.2.1 cease to use the Customer Data;

8.2.2 provide the Customer and/or the Replacement Supplier with a complete and uncorrupted version of the Customer Data in electronic form (or such other format as reasonably required by the Customer);

8.2.3 erase from any computers, storage devices and storage media that are to be retained by the Supplier after the end of the Termination Assistance Period all Customer Data and promptly certify to the Customer that it has completed such deletion;

8.2.4 return to the Customer such of the following as is in the Supplier's possession or control:

a) all copies of the Customer Software and any other software licensed by the Customer to the Supplier under this Call Off Contract;

b) all materials created by the Supplier under this Call Off Contract in which the IPRs are owned by the Customer;

c) any parts of the IT environment and any other equipment which belongs to the Customer;

d) any items that have been on-charged to the Customer, such as consumables; and

e) all Customer Property issued to the Supplier under Clause H (Customer Property), where used. Such Customer Property shall be handed back to the Customer in good working order (allowance shall be made only for reasonable wear and tear);

f) any sums prepaid by the Customer in respect of Services not Delivered by the Call Off Expiry Date;

8.2.5 vacate any Customer Premises;

8.2.6 remove the Supplier Equipment together with any other materials used by the Supplier to supply the Services and shall leave the Sites in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Sites or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier and/or any Supplier Personnel;

8.2.7 provide access during normal working hours to the Customer and/or the Replacement Supplier for up to twelve (12) Months after expiry or termination to:

a) such information relating to the Services as remains in the possession or control of the Supplier; and

b) such members of the Supplier Personnel as have been involved in the design, development and provision of the Services and who are still employed by the Supplier, provided that the Customer and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to requests for access under this paragraph b)

8.3 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Assistance and its compliance with the other provisions of this Call Off Schedule), each Party shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party and shall certify that it does not retain the other Party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any Services or Termination Services or for statutory compliance purposes.

8.4 Except where this Call Off Contract provides otherwise, all licences, leases and authorisations granted by the Customer to the Supplier in relation to the Services shall be terminated with effect from the end of the Termination Assistance Period.

9. ASSETS, SUB-CONTRACTS AND SOFTWARE

9.1 Following notice of termination of this Call Off Contract and during the Termination Assistance Period, the Supplier shall not, without the Customer's prior written consent:

9.1.1 terminate, enter into or vary any Sub-Contract;

9.1.2 (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Supplier Assets or acquire any new Supplier Assets; or

9.1.3 terminate, enter into or vary any licence for software in connection with the Services.

9.2 Within twenty (20) Working Days of receipt of the up-to-date Registers provided by the Supplier pursuant to paragraph 7.1.5, the Customer shall provide written notice to the Supplier setting out:

9.2.1 which, if any, of the Transferable Assets the Customer requires to be transferred to the Customer and/or the Replacement Supplier (“Transferring Assets”);

9.2.2 which, if any, of:

a) the Exclusive Assets that are not Transferable Assets; and

b) the Non-Exclusive Assets, the Customer and/or the Replacement Supplier requires the continued use of; and

9.2.3 which, if any, of the Transferable Contracts the Customer requires to be assigned or novated to the Customer and/or the Replacement Supplier (the “Transferring Contracts”),

in order for the Customer and/or its Replacement Supplier to provide the Services from the expiry of the Termination Assistance Period. Where requested by the Customer and/or its Replacement Supplier, the Supplier shall provide all reasonable assistance to the Customer and/or its Replacement Supplier to enable it to determine which Transferable Assets and Transferable Contracts the Customer and/or its Replacement Supplier requires to provide the Services or replacement services.

9.3 With effect from the expiry of the Termination Assistance Period, the Supplier shall sell the Transferring Assets to the Customer and/or its nominated Replacement Supplier for a consideration equal to their Net Book Value, except where the cost of the Transferring Asset has been partially or fully paid for through the Call Off Contract Charges at the Call Off expiry Date, in which case the Customer shall pay the Supplier the Net Book Value of the Transferring Asset less the amount already paid through the Call Off Contract Charges.

9.4 Risk in the Transferring Assets shall pass to the Customer or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title to the Transferring Assets shall pass to the Customer or the Replacement Supplier (as appropriate) on payment for the same.

9.5 Where the Supplier is notified in accordance with paragraph 9.2.2 that the Customer and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Supplier shall as soon as reasonably practicable:

9.5.1 procure a non-exclusive, perpetual, royalty-free licence (or licence on such other terms that have been agreed by the Customer) for the Customer and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which

9.5.2 procure a suitable alternative to such assets and the Customer or the Replacement Supplier shall bear the reasonable proven costs of procuring the same.

9.7 The Supplier shall as soon as reasonably practicable assign or procure the novation to the Customer and/or the Replacement Supplier of the Transferring Contracts. The Supplier shall execute such documents and provide such other assistance as the Customer reasonably requires to effect this novation or assignment.

9.8 The Customer shall:

a) accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and

b) once a Transferring Contract is novated or assigned to the Customer and/or the Replacement Supplier, carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.

9.9 The Supplier shall hold any Transferring Contracts on trust for the Customer until such time as the transfer of the relevant Transferring Contract to the Customer and/or the Replacement Supplier has been effected.

9.10 The Supplier shall indemnify the Customer (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Customer (and/or Replacement Supplier) pursuant to paragraph 9.7 in relation to any matters arising prior to the date of assignment or novation of such Transferring Contract.

10. CHARGES

10.1 Except as otherwise expressly specified in this Call Off Contract, the Supplier shall not make any charges for the services provided by the Supplier pursuant to, and the Customer shall not be obliged to pay for costs incurred by the Supplier in relation to its compliance with, this Call Off Schedule including the preparation and implementation of the Exit Plan, the Termination Assistance and any activities mutually agreed between the Parties to carry on after the expiry of the Termination Assistance Period.

11. APPORTIONMENTS

11.1 All outgoings and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Customer and the Supplier and/or the Replacement Supplier and the Supplier (as applicable) as follows:

11.1.1 the amounts shall be annualised and divided by 365 to reach a daily rate;

11.1.2 the Customer shall be responsible for (or shall procure that the Replacement Supplier shall be responsible for) or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and

11.1.3 the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.

11.2 Each Party shall pay (and/or the Customer shall procure that the Replacement Supplier shall pay) any monies due under paragraph 11.1 as soon as reasonably practicable.

**B.9 INSTALLATION WORKS**

**Insert the following as a new Clause 38:**

**38. INSTALLATION WORKS**

38.1 Where the Customer has specified Installation Works in the Order Form and the Supplier reasonably believes it has completed the Installation Works it shall notify the Customer in writing. Following receipt of such notice, the Customer shall inspect the Installation Works and shall, by giving written notice to the Contractor:

38.1.1 accept the Installation Works, or

38.1.2 reject the Installation Works and provide reasons to the Supplier if, in the Customer’s reasonable opinion, the Installation Works do not meet the requirements set out in the Order Form.

38.2 If the Customer rejects the Installation Works in accordance with Clause 38.1.2, the Supplier shall immediately rectify or remedy any defects and if, in the Customer’s reasonable opinion, the Installation Works do not, within five (5) Working Days of such rectification or remedy, meet the requirements set out in the Order Form, the Customer may terminate this Call Off Contract for Material Breach.

38.3 The Installation Works shall be deemed to be completed when the Supplier receives a notice issued by the Customer in accordance with Clause 38.1.1 Notwithstanding the acceptance of any Installation Works in accordance with Clause 38.1.1, the Supplier shall remain solely responsible for ensuring that the Goods and the Installation Works conform to the Order Form. No rights of estoppel or waiver shall arise as a result of the acceptance by the Customer of the Installation Works.

38.4 Throughout the Call Off Contract Period, the Supplier shall have at all times all licences, approvals and consents necessary to enable the Supplier and the Staff to carry out the Installation Works.

**B.10 KEY PERSONNEL**

**Insert the following as a new Clause 39:**

39. KEY PERSONNEL

39.1 The Parties have agreed to the appointment of the Key Personnel.

39.2 The Supplier shall procure that any Sub-Contractor shall not remove or replace any Key Personnel during the Call Off Contract Period without Approval.

39.3 Unless otherwise agreed by the Customer in writing, the Supplier shall provide the Customer with at least one (1) Month's written notice of its intention to replace any member of Key Personnel.

39.4 The Customer shall not unreasonably delay or withhold its decision to Approve the removal or appointment of a replacement for any relevant Key Personnel by the Supplier or Sub-Contractor.

39.5 The Supplier acknowledges and agrees that the persons designated as Key Personnel from time to time are essential to the proper provision of the Goods to the Customer. The Supplier shall ensure that the role of any Key Personnel is not vacant for any longer than ten (10) Working Days and that any replacement shall be as qualified and experienced or more qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.

39.6 The Customer may also require the Supplier to remove any Key Personnel that the Customer considers in any respect unsatisfactory. The Customer shall not be liable for the cost of replacing any Key Personnel.

**B.11 SUPPLIER EQUIPMENT**

**Insert the following as a new Clause 40:**

40. SUPPLIER EQUIPMENT

40.1 Unless otherwise stated in the Order Form (or elsewhere in this Call Off Contract), the Supplier shall provide all the Supplier Equipment necessary for the supply of the Services.

40.2 The Supplier shall not deliver any Supplier Equipment nor begin any work on the Sites without obtaining Approval.

40.3 The Supplier shall be solely responsible for the cost of carriage of the Supplier Equipment to the Sites and/or any Customer Premises, including its off-loading, removal of all packaging and all other associated costs. Likewise on the Call Off Expiry Date the Supplier shall be responsible for the removal of all relevant Supplier Equipment from the Sites and/or any Customer Premises, including the cost of packing, carriage and making good the Sites and/or the Customer Premises following removal.

40.4 All the Supplier's property, including Supplier Equipment, shall remain at the sole risk and responsibility of the Supplier, except that the Customer shall be liable for loss of or damage to any of the Supplier's property located on Customer Premises which is due to the negligent act or omission of the Customer.

40.5 Subject to any express provision of the BCDR Plan to the contrary, the loss or destruction for any reason of any Supplier Equipment shall not relieve the Supplier of its obligation to supply the Goods in accordance with this Call Off Contract, including the Service Level Performance Measures.

40.6 The Supplier shall maintain all Supplier Equipment within the Sites and/or the Customer Premises in a safe, serviceable and clean condition.

40.7 The Supplier shall, at the Customer's written request, at its own expense and as soon as reasonably practicable:

40.7.1 remove from the Sites any Supplier Equipment or any component part of Supplier Equipment which in the reasonable opinion of the Customer is either hazardous, noxious or not in accordance with this Call Off Contract; and

40.7.2 replace such Supplier Equipment or component part of Supplier Equipment with a suitable substitute item of Supplier Equipment.

40.8 Where a failure of Supplier Equipment or any component part of Supplier Equipment causes [two (2)] or more Service Failures in any [twelve (12) Month period], the Supplier shall notify the Customer in writing and shall, at the Customer’s request (acting reasonably), replace such Supplier Equipment or component part thereof at its own cost with a new item of Supplier Equipment or component part thereof (of the same specification or having the same capability as the Supplier Equipment being replaced).

**Associated definition to be inserted into Call Off Schedule 1:**

|  |  |
| --- | --- |
| "Supplier Equipment" | 1. means the Supplier's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from the Customer) in the performance of its obligations under the Call Off Contract; |