

Call-Off Schedule 19 (Scottish Law)

[Buyer Guidance: Where Schedules refer to legislative requirements or Central Government policy that do not apply in Scotland, where this Schedule is used, Buyers may wish to take legal advice on amendments that may be required to the Schedules to reflect Scots Law and Scottish Government policy. For example, in Joint Schedule 5 (Sustainability) certain legislative and policy requirements do not apply in Scotland.]

1. When you should use this Schedule

- 1.1 This Call-Off Schedule 19 may be included to adapt the General Terms and Schedules so that the Call-Off Contract is under Scottish Law.

2. Changes to the General Terms

- 2.1 Clause 4 (*Pricing and Payments*):
 - 2.1.1 Clause 4.4 – The Clause shall be deleted and replaced with "The Buyer must pay the Supplier the Charges within thirty (30) days of receipt by the Buyer of a valid, undisputed invoice, in cleared funds using the payment method and details stated in the invoice or in the Award Form."
 - 2.1.2 Clauses 4.5.1 and 4.6 – Each Clause shall be deleted and replaced with "Not used".
 - 2.1.3 Clause 4.10 – The Clause shall be deleted and replaced with "The Supplier must ensure that all Subcontractors are paid, in full, within thirty (30) days of receipt of a valid, undisputed invoice. If this does not happen, the Buyer can publish the details of the late payment or non-payment."
- 2.2 Clause 6.12 (*Record keeping and reporting*) – The Clause shall be deleted and replaced with "Not used".
- 2.3 Clause 8 (*Supply Chain*):
 - 2.3.1 Clause 8.1 (*Appointing Subcontractors*):
 - (a) Clause 8.1.1(c) – "assign, novate or transfer its rights and/or obligations under the Sub-Contract that relate exclusively to the Contract to the Buyer or a Replacement Supplier." shall be replaced by "novate, transfer or enter into assignation of its rights and/or obligations under the Sub-Contract that relate exclusively to the Contract to the Buyer or a Replacement Supplier."
 - (b) Clause 8.1.2 – The Clause shall be deleted and replaced with "Not used".

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- 2.3.2 Clause 8.2 (*Mandatory provisions in Sub-Contracts*):
 - (a) Each of Clauses 8.2.1 and 8.2.2 shall be deleted and replaced with "Not used".
 - (b) Clause 8.2.3(b)(ii) shall be deleted and replaced with "require the Supplier to pay all Subcontractors in full, within thirty (30) days of receiving a valid, undisputed invoice; and".
 - (c) Clause 8.2.3(b)(iii) shall be deleted in its entirety and replaced with "Not used".
 - (d) Clause 8.2.4 shall be deleted and replaced with "Not used".
- 2.4 Clause 9 (*Rights and protection*):
 - 2.4.1 Clause 9.7 – “All third party warranties and indemnities covering the Deliverables must be assigned for the Buyer’s benefit by the Supplier for free.” shall be replaced by “The Supplier must enter into assignation of all third party warranties and indemnities covering the Deliverables for the Buyer’s benefit for free.”.
- 2.5 Clause 22 (*Other people’s rights in a contract*):
 - 2.5.1 Clause 22.1 shall be amended as follows:
 - (a) "Contracts (Rights of Third Parties) Act 1999 ("**CRTPA**")" shall be replaced by "Contract (Third Party Rights) (Scotland) Act 2017 ("**CTPRSA**")".
 - (b) The reference to "Clauses 4.10, 8.2.3 and 8.2.4" shall be deleted.
 - 2.5.2 Clause 22.2 – References to "CRTPA" shall be replaced by "CTPRSA".
 - 2.5.3 Clause 22.3 – "Except for the provisions of Clauses 4.10, 8.2.3 and 8.2.4, no Third Party Beneficiary may enforce," shall be deleted and replaced with "No Third Party Beneficiary may enforce,".
- 2.6 Clause 26 (*Transferring responsibilities*):
 - 2.6.1 Clause 26.1 – “The Supplier cannot assign, novate or in any other way dispose of the Contract or any part of a Contract without the Relevant Authority's written consent.” shall be replaced by “The Supplier cannot enter into assignation, novation or any other way of disposition of the Contract or any part of a Contract without the Relevant Authority's written consent.”.
 - 2.6.2 Clause 26.3 – “The Relevant Authority can assign, novate or transfer its Contract or any part of it to any Crown Body, public or private sector body which performs the functions of the Relevant Authority.” shall be replaced by “The Relevant Authority can enter into assignation, novation or transfer its Contract or any part of it to

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any Crown Body, public or private sector body which performs the functions of the Relevant Authority.”.

2.7 Clause 38 (*Resolving Disputes*):

2.7.1 Clause 38.2 – add the following wording: “The governing law and jurisdiction provisions of CEDR’s Model Mediation Agreement shall be deemed to be amended to refer to the laws of Scotland and the Court of Session.”

2.7.2 Clause 38.3 The term “Courts of England and Wales” shall be amended to read “*Court of Session*”

2.7.3 Clause 38.4 – Conduct of Arbitration.

(a) The words “*under the London Court of International Arbitration rules current at the time of the Dispute*” shall be deleted.

(b) The seat or legal place of the arbitration shall be amended so that it takes place in “*Edinburgh*” as opposed to “*London*”.

(c) Add the following wording “*The arbitration shall be conducted in accordance with the Arbitration (Scotland) Act 2010 subject to disapplication in whole or in part of any of the default rules of the Scottish Arbitration Rules comprising Schedule 1 to that Act as the Parties may agree.*”

2.8 Clause 39 (*Which Laws apply*) – the words “*English Law*” shall be replaced by “*the Law of Scotland*”.

3. Changes to the Joint Schedules

3.1 Joint Schedule 1 (*Definitions*) shall be amended as follows:

3.1.1 Part (f) of the definition of “Auditor” shall be replaced by “successors or any party that of any of the above that have entered into assignation with any party listed above”.

3.1.2 The definition of “CRTPA” shall be replaced by ““CTPRSA” the Contract (Third Party Rights) (Scotland) Act 2017”.

3.1.3 The definition of EIR shall be amended to add “or the Environmental Information (Scotland) Regulations 2004”.

3.1.4 In the definition of “Dispute” the reference to “*English law*” shall be replaced by “*the Law of Scotland*” and the reference to the “*English courts*” shall be replaced by the “*courts of Scotland*”.

3.1.5 The definition of FOIA shall be amended to add, after “the Freedom of Information Act 2000” the words “or the Freedom of Information (Scotland) Act 2002”.

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- 3.1.6 In the definition of "Insolvency Event" – the word "Assignment" replaced by "Assignment".
- 3.1.7 Part (d) of the definition of "Insolvency Event" will be deleted and replaced with "that person has been served with a charge for payment which has expired, and a creditor has been granted an attachment order by a court, which is executed in relation to the property of that person, or such other process is enforced or pursued against the whole or any part of that person's property". In part (f) of the definition, (f)(iv) will be deleted in its entirety.
- 3.1.8 In part (a) of the definition of "Intellectual Property Rights" the words "Know-How" and "trade secrets" refer to pre-existing know-how and trade secrets only.
- 3.1.9 In the definition of "Losses" the word "*tort*" shall be replaced with "*delict*".
- 3.1.10 The definition of "Transparency Information" shall be deleted and replaced with the following wording:

"means:

 - (a) any information permitted or required to be published by the Public Contract (Scotland) Regulations 2015 or Scottish Procurement Policy Notes, subject to any exemptions set out in the Public Contract (Scotland) Regulations 2015, Section 94 of the Procurement Act 2023 and any regulations published under it or Scottish Procurement Policy Notes (as applicable) which shall be determined by the Buyer taking into account Joint Schedule 4 (*Commercially Sensitive Information*);
 - (b) any information about the Contract, including the content of the Contract requested and required to be disclosed under FOIA or the EIRs, and any changes to the Contract agreed from time to time, subject to any relevant exemptions, which shall be determined by the Buyer taking into account Joint Schedule 4 (*Commercially Sensitive Information*); and
 - (c) any information which is published in accordance with guidance issued by the Scottish Ministers, from time to time;"

[Guidance: If the Buyer wishes to publish or disclose any other information into the public domain which isn't currently included in the definition of "Transparency Information" above, the Buyer must add a description of such information into the definition. For example, this would be required if the Buyer is choosing to publish information relating to the performance of the Supplier against any KPI or publish any

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information contained in any Performance Monitoring Reports (in which case the Buyer should also take into account the Commercially Sensitive Information listed in Joint Schedule 4 (Commercially Sensitive Information) (if any)).]

3.1.11 In the definition of "Working Day" the words "or public holiday in England and Wales" shall be replaced by "when banks in Edinburgh are open for business".

3.2 Joint Schedule 4 (*Commercially Sensitive Information*) shall be amended as follows:

3.2.1 Paragraph 1.1 – "or under any PPN" shall be deleted and replaced with "or under any relevant Scottish Procurement Policy Note".

3.2.2 Paragraph 1.3 shall be deleted and replaced as follows: "Without prejudice to the Relevant Authority's obligation to disclose information in accordance with the FOIA, the EIRs, any Scottish Procurement Policy Note or Clause 19 (When you can share information), the Relevant Authority will, in its sole discretion, acting reasonably, seek to apply the relevant exemption set out in the FOIA , the EIRs, any Scottish Procurement Policy Note or Section 94 of the Procurement Act 2023 and any regulations published under it, to the following information

No.	Date	Item(s)	Duration of Confidentiality
	[insert date]	[insert details]	[insert duration]

3.3 Joint Schedule 6 (*Key Subcontractors*): Where Joint Schedule 6 (*Key Subcontractors*) is selected, Paragraph 1 (*Restrictions on certain subcontractors*) shall be amended as follows:

3.3.1 Paragraph 1.6.2 – The reference to "CRTPA" shall be deleted and replaced with "CTPRSA".

3.3.2 Paragraph 1.6.4 shall be replaced by "a provision enabling the Supplier to enter into assignation, novation or otherwise transfer any of its rights and/or obligations under the Key Sub-Contract to CCS and/or the Buyer;".

3.4 Joint Schedule 8 (*Guarantee*): Where a Guarantee is selected, the following provisions of Joint Schedule 8 (*Guarantee*) shall be amended as follows:

3.4.1 Throughout the whole Schedule and Annex 1 – Form of Guarantee delete all references to "deed of Guarantee" merely express as "Guarantee".

3.4.2 The following provisions of Joint Schedule 8 (*Guarantee*), Annex 1 - Form of Guarantee shall be amended as follows:

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- (a) WHEREAS (B) “deed” replaced by “contract”
- (b) Clause 1.5 shall be replaced by “references to a person are to be construed to include that the Guarantee has person's that it may enter into assignation with or transferees or successors in title, whether direct or indirect;”
- (c) Clause 4.1 Delete references to “England and Wales” when referring to addresses.
- (d) Clause 12 – the word “*assignment*” shall be amended to “assignation”.
- (e) Clause 14 – “Contract (Rights of Third Parties) Act 1999” shall be amended to “Contract (Third Party Rights) (Scotland) Act 2017”.
- (f) Clause 16 Governing Law (add “and Jurisdiction”). References to “Courts of England” to be replaced by “Courts of Scotland”. References to “English” to be replaced by “Scottish”. References to “England and Wales” to be replaced by “Scotland”.
- (g) Alter execution strip to read as follows:

IN WITNESS WHEREOF these presents consisting of this and the preceding [---] pages, together with the schedule in [---] parts [and plan], are executed as follows:

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SUBSCRIBED for and on behalf of
[NAME OF COMPANY] by [a
director][the secretary][an authorised
signatory] in the presence of a witness
on the [DATE] day of [MONTH][YEAR]
at [PLACE OF SUBSCRIPTION]:

Signature _____

Name (block
capitals) _____

[Director][Secretar
y]
[Authorised
Signatory]

Witness
signature _____

Witness name

(block capitals)

Witness
address

4. Changes to Call-Off Schedules

- 4.1 Call-Off Schedule 1 (*Intellectual Property Rights*) shall be amended as follows:

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- 4.1.1 Throughout the whole Schedule delete all references to "assignment" and replace with "assignation".
- 4.1.2 Throughout the whole Schedule delete all references to "assign in writing" and replace with "enter into an assignation in writing".
- 4.1.3 Throughout the whole Schedule delete all references to "must promptly assign to the Buyer" and replace with "must promptly enter into an assignation to the Buyer".

[Guidance: The Form of Confidentiality Undertaking in Annex 2 of Call-Off Schedule 1 (Intellectual Property Rights) is governed by, and reflects, English Law. Buyers will need to consider if this is suitable for the procurement. Buyers will need to update the Form of Confidentiality Undertaking if it intends for a different governing law to apply to the Form of Confidentiality Undertaking, such as the laws of Scotland.]

- 4.2 Call-Off Schedule 2 (*Staff Transfer*) shall be amended as follows:

- 4.2.1 Part D (Pensions), Paragraph 1 – definition of "Best Value Direction" shall be deleted and replaced with "the statutory guidance published by the Scottish Government on 10 August 2006 under section 52 of the Local Government in Scotland Act 2003 on 'The treatment of employment issues when exercising a power to enter into a contract;".
- 4.2.2 Part D (Pensions), Paragraph 6 (Other people's rights) – references to "CRTPA" shall be replaced with "CTPRSA".

[Buyer Guidance: The pension schemes referenced in Part D of Call-Off Schedule 2 (Staff Transfer) may not apply where this Schedule is used. Buyers may wish to take advice as to whether these provisions are appropriate, or an alternative is required.]

- 4.3 Call-Off Schedule 6 (*ICT Services*): Where Call-Off Schedule 6 (*ICT Services*) is selected, it shall be amended so that Paragraph 3.1.4 (*Buyer due diligence requirement*) shall be replaced by "existing contracts (including any licences, support, maintenance and other contracts relating to the Operating Environment) referred to in the Due Diligence Information which may be novated to, entered into assignation with or managed by the Supplier under the Contract and/or which the Supplier will require the benefit of for the provision of the Deliverables."
- 4.4 Call-Off Schedule 10 (*Exit Management*): Where Call-Off Schedule 10 (*Exit Management*) is selected, it shall be amended as follows:
 - 4.4.1 Paragraph 2.4.2 (Supplier must always be prepared for contract exit) shall be amended to read "procure that all licences for Third Party Software and all Sub-Contracts shall be able to enter into assignation and/or capable of novation (at no cost or restriction to the Buyer) at the request of the Buyer to the Buyer (and/or its nominee) and/or any Replacement Supplier upon the Supplier

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ceasing to provide the Deliverables (or part of them) and if the Supplier is unable to do so then the Supplier shall promptly notify the Buyer and the Buyer may require the Supplier to procure an alternative Subcontractor or provider of Deliverables.”.

- 4.4.2 Throughout the whole Schedule delete all references to "assignment" and replace with "assignation".
- 4.4.3 Paragraph 8.2.3 (*Assets, Sub-contracts and Software*): "...the Buyer requires to be assigned or novated to the Buyer..." shall be replaced by "the Buyer requires an assignation to be entered into or novated to the Buyer...".
- 4.4.4 Paragraph 8.6 shall be replaced by "The Supplier shall as soon as reasonably practicable enter into an assignation or procure the novation of the Transferring Contracts to the Buyer and/or the Replacement Supplier. The Supplier shall execute such documents and provide such other assistance as the Buyer reasonably requires to effect this novation or assignation.".
- 4.4.5 Paragraph 8.7.2 shall be replaced by "once a Transferring Contract is novated or an assignation entered into with the Buyer and/or the Replacement Supplier, 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.".
- 4.4.6 Paragraph 8.9 shall be replaced by "The Supplier shall indemnify the Buyer (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 as a result of assignation or novation to the Buyer (and/or Replacement Supplier) pursuant to Paragraph 8.6 in relation to any matters arising prior to the date of assignation or novation of such Transferring Contract. Clause 23 (*Other people's rights in a contract*) shall not apply to this Paragraph 8.9 which is intended to be enforceable by third party beneficiaries by virtue of the CTPRSA.".
- 4.4.7 Paragraph 11: "CRTPA" shall be replaced with "CTPRSA".
- 4.4.8 Paragraph 1.4.4 of Annex 1 (*Scope of Termination Assistance*) shall be replaced by "key support contact details for third party supplier personnel under contracts which are to be novated or an assignation entered into to the Buyer pursuant to this Schedule,".
- 4.5 Call-Off Schedule 12 (*Clustering*) – Where Cluster Members want to join with the Buyer to contract collectively under the Call-Off Contract, the following provisions of Call-Off Schedule 12 (*Clustering*) will be amended as follows:

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- 4.5.1 Paragraph 3.4 shall be amended to read "Each of the Service Recipients will acquire a third-party right for the purposes of the CTPRSA and may enforce the relevant provisions of the Contract pursuant to CTPRSA".
- 4.5.2 Paragraph 3.6.2 shall be amended so that reference to "CRTPA" is replaced with "CTPRSA".
- 4.6 Call-Off Schedule 14 (*Performance Levels*): Where Call-Off Schedule 14 (*Performance Levels*) is selected shall be amended as follows:
- 4.6.1 Paragraph 1.1 (*Definitions*) – definition of "Measurement Period" shall be deleted and replaced with "Not used".
- 4.6.2 Paragraph 2 (*What happens if you don't meet the Key Performance Indicators*):
- (a) Paragraph 2.3 – "to enable the Buyer to Assess the Supplier's performance against each Key Performance Indicator in each Measurement Period" shall be deleted.
- (b) Paragraph 2.4.2(b) – The Paragraph shall be deleted and replaced with "has arisen due to a Prohibited Act or wilful Default by the Supplier".
- 4.6.3 Annex to Part A (*Key Performance Indicators and Service Credits Table*) of Call-Off Schedule 14 (*Performance Levels*):
- (a) Guidance – The Guidance headed "Key Performance Indicators ("KPIs") and the Procurement Act 2023" and "Commercial Playbooks and KPIs" shall be deleted.
- (b) Service Credits Table – The table headed "Key Performance Indicators (KPIs)" shall be deleted in its entirety and replaced with the table below.

Key Performance Indicators (KPIs)				
Key Performance Indicator Performance Criterion	Key Indicator	KPI Performance Measure	KPI Threshold	Service Credit for each Service Period
[Accurate and timely billing of Buyer	Accuracy /Timelines	at least 98% at all times	[]	0.5% Service Credit gained for each percentage under the specified KPI Performance Measure

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Access to Buyer support	Availability	at least 98% at all times	[]	0.5% Service Credit gained for each percentage under the specified KPI Performance Measure
[Social Value KPI 1]	[]	[]	[]	[]
[Social Value KPI 2]	[]	[]	[]	[]
[Social Value KPI 3]	[]	[]	[]	[]

- (c) Guidance – delete Guidance and table with heading "Mapping of levels of performance under the KPI Performance Measures to ratings under Regulation 29(5) of the Procurement Regulations 2024".

4.6.4 Part B: Performance Monitoring of Schedule 14 (*Performance Levels*), Paragraph 1 (*Performance Monitoring and Performance Review*):

- (a) Paragraph 1.2 – "The Supplier shall provide the Buyer with performance monitoring reports ("**Performance Monitoring Reports**") in accordance with the process agreed pursuant to Paragraph 1.1 of Part B of this Schedule and with such frequency as shall be agreed between the Parties pursuant to Paragraph 1.1 to enable the Buyer to assess the Supplier's performance against each Key Performance Indicator in each Measurement Period. The Performance Monitoring Reports shall contain, as a minimum, the following information in respect of the relevant Service Period just ended:" shall be deleted and replaced with "The Supplier shall provide the Buyer with performance monitoring reports ("**Performance Monitoring Reports**") in accordance with the process and timescales agreed pursuant to Paragraph 1.1 of Part B of this Schedule which shall contain, as a minimum, the following information in respect of the relevant Service Period just ended:".
- (b) Paragraph 1.2.1 shall be deleted and replaced with "for each Key Performance Indicator, the actual performance

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achieved over the Key Performance Indicator for the relevant Service Period;".

(c) Paragraph 1.6 shall be deleted and replaced with "Not used".

(d) Paragraph 1.7 shall be deleted and replaced with "Not used".

4.7 Call-Off Schedule 22 (*Lease Terms*): Where Call-Off Schedule 22 (*Lease Terms*) is selected, it shall be amended so that Paragraph 8.5 (*Limits of Use*) shall be replaced by "The Buyer must not allow to exist any lien, assignation nor mortgage pledge or otherwise deal with the Equipment in a manner inconsistent with either the Supplier's interest or the Owner's interest in the Equipment."

[Buyer Guidance: Insert any other amendments to the Call-Off Schedules where Scottish Law applies]

5. All Schedules

5.1 The following wording shall be read in to each of the Schedules to the Contract, before Paragraph **Error! Bookmark not defined.**: "This is a schedule referred to in the foregoing agreement between [name of party] and [name of party] dated [date].".

6. References to Legislation

6.1 Subject to Paragraph 6.2, where legislation applicable to England and Wales only is expressly mentioned in the Call-Off Contract it shall have the effect of substituting the equivalent legislation applicable in Scotland.

6.2 References to the Procurement Act 2023 (and any Regulations made under it) that are applicable to "devolved Scottish authorities" (as that term is defined in the Procurement Act 2023) pursuant to Section 115A of the Procurement Act 2023 shall have effect notwithstanding the terms of Paragraph 6.1.