

Report title

Supplier relief due to COVID-19

Report to

Corporate Services DB
Commissioner's Board

Date

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Report by

Assistant Director of Technical and Commercial

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Summary

This report explains the work undertaken by LFB officers to date and the implications for the London Fire Commissioner regarding supplier relief due to COVID-19, particularly in relation to the procurement and finance guidance note provided by the GLA in light of the Cabinet Office's Procurement Policy Note PPN 02 entitled "Procurement Policy Note - Supplier relief due to COVID-19 Action Note PPN 02/20 March 2020".

LFB officers have liaised with the GLA regarding their approved guidance on supplier relief due to COVID-19, and have progressed the relief work according to GLA guidance. We have developed an assessment framework which has assisted us in identifying our suppliers which may be at risk of financial hardship or business discontinuity due to COVID-19. Following correspondence from 10 suppliers, we have issued a letter to them requesting their detailed requirements and proposals for relief. We have drafted a deed of variation to effect future contractual changes in relation to supplier relief. The assessment framework has also been further developed to include provisions for monitoring and assurance during the implementation phases of agreed relief.

Having progressed with the above work, we have now received specific relief requests from suppliers for payment in advance i.e. payment before completing delivery of their services. Hence, this report details the recommendations and next steps for the London Fire Commissioner, including the delegated approvals, which are required to implement the appropriate relief measures.

Recommended decisions

It is recommended that the London Fire Commissioner:

1. Approves that payments in advance to qualified suppliers for supplier relief may be approved by the Assistant Director, Technical and Commercial, conditionally on the supplier delivering by a later date to be agreed by the Assistant Director in line with Greater London Authority guidance included in Appendix 1.
2. Approves that the monthly payments to G Burley and Close Bros made via KBR, and the monthly payments to Babcock Training Ltd are re-negotiated by the Assistant Director,

Technical and Commercial, in accordance with the payment mechanism within those contracts (i.e. subject to actual work delivered) and further discussions with those suppliers are held with the intent of agreeing a suitable work delivery plan, and any further non financial relief approved under this report.

3. Approves that other non financial relief may be approved by the Assistant Director, Technical and Commercial in accordance with the guidance provided by the GLA and the Cabinet Office's Procurement Policy Note PPN 02.
4. Approves that the Assistant Director, Technical and Commercial, in consultation with the General Counsel, formalises the approved changes to contracts using the deed of variation in Appendix 5.

Background

1. On 20 March 2020, the Cabinet Office published a Procurement Policy Note (PPN) which addresses the subject of supplier relief due to COVID-19. The PPN is included in Appendix 2.

Purposes of the PPN 02

2. The purpose of this PPN is to provide guidance for public bodies regarding supplier relief due to COVID-19 in order to ensure service continuity during and after the current coronavirus, COVID-19 outbreak. The PPN advises that contracting authorities must act to ensure suppliers 'at risk' from financial hardship or business discontinuity are in a position to resume normal contract delivery once the outbreak is over. In particular, the purposes of such supplier relief are to ensure cash flow in the supply chain, that staff are paid and that firms critical to the contracting authority remain in business during and after the current COVID-19 outbreak.

Scope

3. The scope of this PPN includes the London Fire Commissioner as a contracting authority within local government and the wider public sector. The PPN states it "is applicable to all contracting authorities, including central government, departments, executive agencies, non-departmental public bodies, local authorities, NHS bodies and the wider public sector (excluding Devolved Administrations)." This PPN covers goods, services and works contracts being delivered in the UK.
4. There are two broad types of supplier relief: financial and non financial. Financial relief may include paying the supplier in the event of a delayed delivery. Non financial relief may include relaxation of KPI regimes, standards or extending deadlines.

What we have done so far

5. To date, LFB officers have completed the following work in relation to supplier relief due to COVID-19.
6. We have discussed supplier relief due to COVID-19 with the GLA and have received their procurement and finance guidance note, which is included in Appendix 1. This guidance note was approved by the Mayor's Chief of Staff and a summary note was provided to the GLA Corporate Investment Board (CIB). LFB officers have followed this guidance, principally we are considering requests from suppliers for advance payments for services which will be delivered later than originally scheduled.

7. In accordance with the GLA procurement and finance guidance note and the Cabinet Office's Procurement Policy Note PPN 02, LFB officers have identified contractors from our contract portfolio which we believe may be at risk of financial distress or business discontinuity due to COVID-19. We developed a framework to identify suppliers at risk, assess their initial eligibility for relief and those who initially qualify, as well as identifying what relief may be appropriate. The framework also includes future management and monitoring tasks to assist in the implementation phase of any approved relief measures in order to provide assurance to the London Fire Commissioner throughout that future stage. A total of 9 suppliers have been identified as initially qualifying for supplier relief (see below and refer to Appendix 3 for further details). In addition to those 9, KBR have written to us and have therefore been included in our correspondences.
8. We have drafted a template letter for issuing to suppliers at risk requesting each supplier to provide their requirements and proposals for supplier relief due to COVID-19. (A copy of the letter has been included in Appendix 4).
9. We have been contacted directly by 10 suppliers regarding relief due to COVID-19 and we have therefore issued the letter requesting them to provide their detailed requirements and proposals. These are:
 - G Burley - for the provision of grounds maintenance services
 - Close Brothers – for the provision of building fabric services
 - Babcock Training Ltd – for the provision of Training
 - (Compass) ESS Government Services – for the provision of catering
 - Kier FM – for the provision of facilities management services (mechanical, electrical, plumbing) in south and central London
 - Apex Lifts – for the provision of lift maintenance
 - Gradient – for the provision of Asbestos management services
 - blu-3 (UK) Limited- PFI Stations
 - Servest - for the provision of facilities management services (mechanical, electrical, plumbing) in north London
 - KBR (though not identified as being at risk)
10. A contract variation template has also been developed for future use in implementing approved relief measures. This makes clear that the changes relate only to the COVID-19 situation, include a review provision or time limit, and that it is the London Fire Commissioner's sole decision when business will return to normal. (The contract variation has been included in Appendix 5).
11. Accounts Payable have issued reminders to staff to ensure the prompt receipting of goods and services on POMS to assist in efficient payments to suppliers. A communication to suppliers has also been issued requesting all invoices to be either in PDF format or via the electronic invoice system where already in place. This enables all invoices received to be

processed remotely, which facilitates the continuation of the Accounts Payable service during the current period.

12. Three suppliers (G Burley, Close Bros and Babcock Training Ltd) have requested payment in advance of service delivery. These have been specifically included in the recommendations above in this report, for approval to be given to the Assistant Director, Technical and Commercial to re-negotiate payments, reschedule the delivery of services and manage the formal contract change process which will include securing additional obligations on the suppliers, such as provision of open book data to verify payments to staff and subcontractors.
13. All grounds maintenance services (via the contract with G Burley) and some building fabric services (via the contract with Close Bros) which were deemed as non essential were suspended due to COVID-19. However, the contractual monthly standard payments for these contracts are paid via KBR, and following advice from General Counsel, the London Fire Commissioner's contractual obligations in both cases, are to pay for services actually delivered. Therefore, General Counsel have advised that the payments should be re-negotiated and options for future delivery discussed with both suppliers.
14. With regards to Babcock Training Services, a total of 425 training courses that were due to take place in March and April have been cancelled due to COVID-19. The majority of the courses were cancelled following LFB's direction to reduce the number of attendees, but some were also cancelled due to delegates, or trainers, being required to self isolate.
15. The above requests for advance payment have been incorporated within the recommendations of this report. The requests for payments in advance are for services which will be delivered at a later date than were planned prior to COVID-19, and therefore do not constitute additional spends or increases to existing budgets. They represent expenditure which would have been incurred and which have already been provided for within existing budgets.
16. LFB Property officers have worked with the suppliers to assist with the additional pressures as a result of COVID-19 and to enable compliance with social distancing recommendations. This has included extending SLAs for lower priority works to enable repairs to be batched and visits to be co-ordinated with less frequency as well as assisting suppliers with coping with demand whilst having a reduced workforce. Reasonable consideration is also being given to mitigate KPI failures that are seen to be linked to the additional pressures from the pandemic.
17. In relation to the canteen at 169 Union Street, the position is dynamic and is being discussed with the contractor, ESS Compass. In the last week in March 2020, ESS Compass closed the canteen for a short period but then re-opened through a direct agreement with the COVID-19 London Strategic Coordination Group, who were funding a minimum number of meals for their staff. This made it viable for the canteen to continue to operate. This arrangement ceased from 26 May 2020. The volume of current business is being monitored by ESS Compass so it can be determined if there is enough business volume throughput in order to continue operating. A conference call has been scheduled to discuss this further and Compass has asked LFB for more information on expected use of the building so an informed decision can be made. The situation will continue to be monitored.

Other functional bodies in the GLA

18. The GLA has issued a procurement and finance guidance note regarding PPN 02 and supplier relief. The guidance note was signed off by the Mayor's Chief of Staff and a summary note

went to CIB for approval. The GLA are not going through formal sign off when advance payments are agreed with the supplier, provided such payments are consistent with the guidance. The GLA guidance is included in Appendix 1.

19. To summarise, the GLA guidance note states:

"The GLA aims to embrace the spirit of the guidance (i.e. PPN 02) to seek to ensure that cash continues to reach suppliers *where their provision of goods or services have been prevented or hindered significantly by COVID-19*. In practice this might mean: paying suppliers in advance of confirmation that goods and services have been received; or paying for services where we know delivery will be delayed. Where it is known that goods and services can no longer be delivered to schedule, payment in advance may be approved conditionally on the supplier delivering by a later date agreed by the GLA. The relief does not include payments exceeding those set out in contracts. It is to be made, also, on the basis that goods/services and the benefits the GLA was due to receive will still be forthcoming at a later date. Such payments must therefore, fall within the maximum amounts set out in the relevant contract and envelope of existing budgets and approvals)."

20. In the note further states:

"The Mayor's Office, the GLA Corporate Management Team (CMT) and the Society of London Treasurers (SLT) have discussed and agreed the following approach:

- (a) It is not necessary for [the GLA] Financial Services to coordinate a prescriptive, centrally managed process for the implementation of this guidance. It is important however, for them to be informed when relief is provided and on what terms, please notify your Finance Business Partner.
- (b) Directorates are best placed to decide which of their suppliers are likely to be at risk.
- (c) Directorates should make contact with suppliers as they see fit to discuss whether they require such relief.
- (d) Directorates should ask suppliers to provide a description explaining why the relief is necessary because of COVID-19.
- (e) In discussing this relief with suppliers, Directorates should ensure compliance with the actions suggested by Government."

21. TfL's approach to supplier relief due to COVID-19 is that it will not be provided to suppliers. The main reason for this is that TfL's monthly revenue reduced by over 90% due to COVID-19, and some support staff have been furloughed as from 27 April 2020. Supplier relief is therefore considered unaffordable by TfL in the circumstances.

Qualifying factors

22. The Cabinet Office's Procurement Policy Note PPN 02 advises that in order for suppliers to qualify for supplier relief:

- The supplier should be identified as being "at risk" (this is not clearly defined in the PPN but it states that "many suppliers to public bodies will struggle to meet their contractual obligations and this will put their financial viability, ability to retain staff and their supply chains at risk" and other impacts are identified in the PPN such as financial hardship and

the risk of disrupting continuity of service, including after the initial period of COVID-19 has passed);

- The supplier must agree to provide data on an open book basis to prove that payments are being made to their staff and subcontractors.
- Payments should not be made to suppliers where there is no contractual volume commitment to supply.
- Contracting authorities should carefully consider the extent of payments to be made to suppliers who are underperforming and subject to an existing improvement plan.
- Contracting authorities should not accept claims from suppliers who were already struggling to meet their contractual obligations prior to the COVID-19 outbreak.

Next steps

23. Upon receipt of each suppliers proposals, each case will be assessed on its own merits, and processed in accordance with any governance approvals and delegations agreed via this report.
24. Where relief is formally approved in accordance with the above, appropriate administrative records will be kept per contract. The framework in Appendix 3 will be used for this purpose and will contain links to further records on a contract by contract basis, particularly the detailed recording of decisions. A risk log will be maintained for each supplier in receipt of relief.
25. Further to earlier in principle discussions with Accounts Payable, invoice and payment processes will need to be reviewed to ensure that relief of a financial nature is appropriately administered and recorded. These will be maintained on a case by case basis.

Further considerations in managing ongoing supplier relief

26. *Change control* – details of the particular supplier relief provided per contract will be recorded in a formal contract variation, or change control note. A template contract variation is included in Appendix 5 for this purpose.
27. *Risk* - Continuing to make payments to 'at risk' suppliers will present risks including that a supplier may still become insolvent despite these exceptional actions. A risk management log will be maintained on a case by case basis for each supplier where relief is provided.
28. *Transparency* – The Brigade and suppliers will work collaboratively to ensure there is transparency during this period. Suppliers in receipt of public funds on this basis during this period will be required to agree to operate on an 'open book' basis. This means they must make available to the Brigade any data, including from ledgers, cash-flow forecasts, balance sheets, and profit and loss accounts, as required and requested to demonstrate the payments made to the supplier under contract have been used in the manner intended. For example, this might include evidence that staff have been paid the right amount and on time, and that cash continues to flow through the supply chain as quickly as possible.
29. *Records* – The Brigade will keep records of decisions and agreements made, and ensure suppliers maintain records to enable future reconciliation where necessary.

30. *Supplier integrity* - Suppliers will be notified that they should not expect to make profits on elements of a contract that are undelivered during this period and that they are expected to operate with integrity. Suppliers will be made aware that in cases where they are found to be taking undue advantage, or failing in their duty to act transparently and with integrity, the Brigade will take action to recover payments made.

Finance comments

31. This report recommends that payments in advance may be approved by the Assistant Director, Technical and Commercial and that monthly payments to three suppliers are re-negotiated. Payments in advance will only be made where the impact of COVID-19 has resulted in existing planned payments being delayed. As a result these payments will not impact on the overall level of expenditure or existing cash flow plans for the LFB. However these payments in advance will increase financial risk where any companies may be unable to fulfil their commitments.
32. The renegotiation of monthly payments for three suppliers may result in reduced costs which will be reported on as part of the regular financial position reports.

Workforce comments

33. The recommendations within this report do not directly affect the Brigade's workforce. The Brigade's UNISON branch, which collectively represents FRS staff along with GMB, have requested that the Brigade uses its influence to minimise financial distress of contractor staff who may be on reduced pay if required to self-isolate. Whilst the Brigade cannot require contractors to increase contractual levels of pay in these circumstances, the provision for potential advance payments as set out in this report will financially benefit contractors which in turn should make it easier for them to minimise financial distress for their staff.

Legal comments

34. Under section 9 of the Policing and Crime Act 2017, the London Fire Commissioner (the "Commissioner") is established as a corporation sole with the Mayor appointing the occupant of that office.
35. The Cabinet Office has published Procurement Policy Note 02/20 (PPN 02/20) – Supplier Relief due to COVID-19 which applies from 20 March 2020 to 30 June 2020, to all contracting authorities including the London Fire Commissioner. It covers goods, services and works contracts being delivered in the UK.
36. PPN 02/20 is a guidance note and does not create any new legal duties nor provide any additional powers for the Commissioner, notwithstanding this the Commissioner may have regard to it when deciding how to manage extant contracts with suppliers. PPN 02/20 notes that contracting authorities can define their "at risk" suppliers "according to need".
37. This report sets out the practical and governance measures that the Commissioner is recommended to take to provide supplier relief to suppliers due to COVID-19.
38. The Public Contracts Regulations (PCR) at regulation 72 permit contract amendment. PPN 02/20 states that such changes should be recorded and suggests including provisions on

review or time limiting the amendments and confirming that it is the authority's decision when things should return to normal. This advice has been adopted in this report.

39. The recommendations within this report are consistent with the Commissioner's legal powers and duties and the Commissioner's Procurement Standing Orders.

Sustainability implications

40. Of the 10 suppliers making contact regarding COVID-19 relief, two of those are defined as Small to Medium Sized Enterprises (SMEs), who are known to be at greater risk of cash flow. Performance on invoice payment within 10 days was 97.2% for the past year. More recent monthly data is not presently available to determine if there has been any change to performance due to COVID-19.
41. The terms of the Living Wage Foundation to which the LFC is a signatory, require that all contractor and sub-contractors' staff working at LFC premises are paid at or above the London Living Wage (LLW). Two of the large suppliers requesting relief employ staff on LFC contracts that are subject to the LLW. Discussions on relief payments should seek to ensure that no detrimental labour conditions are introduced particularly to those at risk of low pay, and that contractors' staff wages remain at or above the LLW, including the LLW uplift that should have been taken forward on 01/04/2020.

Equalities implications

42. The London Fire Commissioner and decision takers are required to have due regard to the Public Sector Equality Duty (s149 of the Equality Act 2010) when exercising our functions and taking decisions.
43. It is important to note that consideration of the Public Sector Equality Duty is not a one-off task. The duty must be fulfilled before taking a decision, at the time of taking a decision, and after the decision has been taken.
44. The protected characteristics are: Age, Disability, Gender reassignment, Pregnancy and maternity, Marriage and civil partnership (but only in respect of the requirements to have due regard to the need to eliminate discrimination), Race (ethnic or national origins, colour or nationality), Religion or belief (including lack of belief), Sex, and Sexual orientation.
45. The Public Sector Equality Duty requires us, in the exercise of all LFC functions (i.e. everything the LFC does), to have due regard to the need to:
- a. Eliminate discrimination, harassment and victimisation and other prohibited conduct.
 - b. Advance equality of opportunity between people who share a relevant protected characteristic and persons who do not share it.
 - c. Foster good relations between people who share a relevant protected characteristic and persons who do not share it.
46. Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:

- a. remove or minimise disadvantages suffered by persons who share a relevant protected characteristic where those disadvantages are connected to that characteristic;
 - b. take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
 - c. encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
47. The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.
48. Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:
- a. tackle prejudice, and
 - b. promote understanding.
49. An Equalities Impact Assessment has been completed regarding the proposed supplier relief detailed in this report, and specifically in relation to those employees of the supplier who deliver the contract services and who in turn will receive benefits from the relief provided by the Brigade to the supplier. The relief has been assessed as having positive impacts on the supplier's employees of all groups with protected characteristics because the relief will financially assist in enabling the supplier to remain in business throughout COVID-19 and thereafter, thereby supporting continued payment of salaries and continued employment. The same is true in terms of subcontractors within the supply chain of the particular supplier. There are no differentiating aspects to these but they are positive in each case.
50. The Cabinet Office's PPN02 policy note and the GLA's approved procurement and finance guidance note advise that financial relief (such as advance payments) should be implemented via a formal contract variation which requires the supplier to provide data on an open book basis (i.e. transparent). Essentially, this means that the supplier provides evidence that the advance payments translate into funding flowing down to pay those staff and subcontractors who are instrumental in delivering the services normally to the Brigade. The transparency of the information which will be provided by suppliers will be used by the Brigade to confirm this.
51. The flow down of funding (via advance payments) to maintain jobs and payments of salaries to existing staff means that staff who deliver the services under the contract will all receive their salaries and that their jobs are preserved. The distribution of these benefits are therefore equal to all staff who deliver the contract.

List of Appendices

| Appendix | Title | Protective Marking |
|----------|--|--------------------|
| 1. | GLA procurement and finance guidance Procurement Policy Note - Supplier relief due to COVID-19 | None |
| 2. | Cabinet Office's Procurement Policy Note PPN 02 entitled "Procurement Policy Note - Supplier relief due to COVID-19 Action Note PPN 02/20 March 2020". | None |
| 3. | Supplier Relief Log – COVID-19 Qualifying Suppliers | None |
| 4. | Draft Letter to Suppliers | None |
| 5. | Draft Contract Variation | None |

Appendix 1 - GLA procurement and finance guidance

Procurement Policy Note - Supplier relief due to COVID-19

1. Overview

Government have issued a Procurement Policy Note providing guidance to public bodies on paying suppliers* during the COVID-19 response. The full guidance can be found [here](#).

Ordinarily paying in advance of need, or in advance of receiving goods and service is avoided. In the current circumstances however, this approach is not considered to protect continuity of service over the longer term, as suppliers which are unable to provide goods or services because of COVID-19 may suffer cash flow difficulties and go out of business as a result.

** Whilst the guidance concerns suppliers alone rather than recipients of grant funding it is envisaged that the principles of this note may also be applied to GLA grant funding arrangements, where relevant.*

2. Key Issues

The GLA aims to embrace the spirit of the guidance to seek to ensure that cash continues to reach suppliers *where their provision of goods or services have been prevented or hindered significantly by COVID-19*.

In practice this might mean:

- (a) paying suppliers in advance of confirmation that goods and services have been received; or
- (b) paying for services where we know delivery will be delayed.

Doing this means amending payment practices, for a short period (from the 1st April 2020 until the 30th June).

In most cases, it is envisaged that supplier relief will take the form of payments to suppliers in line with the delivery schedule set out in contracts, but in advance of any contractually required supporting information to confirm delivery of goods or services. Where it is known that goods and services can no longer be delivered to schedule, payment in advance may be approved conditionally on the supplier delivering by a later date agreed by the GLA.

The relief does not include payments exceeding those set out in contracts. It is to be made, also, on the basis that goods/services and the benefits the GLA was due to receive will still be forthcoming at a later date. Such payments must therefore, fall within the maximum amounts set out in the relevant contract and envelope of existing budgets and approvals).

Furthermore, suppliers must ensure that they are not making use of this relief and claiming separate relief from the Government to the effect that they are claiming relief twice for the same hardship. As part of this, suppliers will need to ensure that they are not making applications for support to the HMG Job Retention Scheme offer of 80% payment of employee wages in relation to any support provided by this proposal. Provision of support payments will be conditional on the supplier not invoking force majeure under the contract.

Where it is decided that relief in the form of payment before receipt will be provided, Directorates should good receipt (GRN) for the goods/services. To ensure that these payments are not slowed down please ask suppliers to email you the invoice and to state the following on the invoice **“THIS PAYMENT IS MADE UNDER THE SUPPLIER RELIEF SCHEME IN RESPONSE TO COVID-19. PLEASE PROCESS IMMEDIATELY”**. Please then email the invoice to COVID19INVOICING@tfl.gov.uk and ask for the invoice to be paid immediately.

3. Suggested Action

The Government guidance suggests that public bodies:

- (a) Urgently review their contract portfolio and inform suppliers who they believe are at risk that they will continue to be paid as normal (even if service delivery is disrupted or temporarily suspended) until at least the end of June.
- (b) Put in place the most appropriate payment measures to support supplier cash flow; this might include a range of approaches such as forward ordering, payment in advance/prepayment, interim payments and payment on order (not receipt).
- (c) If the contract involves payment by results then payment should be on the basis of previous invoices, for example the average monthly payment over the previous three months.
- (d) To qualify, suppliers should agree to act on an open book basis and make cost data available to the contracting authority during this period. They should continue to pay employees and flow down funding to their subcontractors.
- (e) Ensure invoices submitted by suppliers are paid immediately on receipt (reconciliation can take place in slower time) in order to maintain cash flow in the supply chain and protect jobs.
- (f) Payments should not be made to suppliers where there is no contractual volume commitment to supply, and contracting authorities should carefully consider the extent of payments to be made to suppliers who are underperforming and subject to an existing improvement plan.

4. Who should be considered a supplier at risk

The Government guidance is not prescriptive on this point. It is for each public body to make reasoned judgements. Some key factors to consider are set out below. The circumstances will vary from one supplier to another, so the factors below should not be seen as prescriptive nor exhaustive.

- (a) Can the supplier demonstrate that it is unable to deliver/its delivery is impeded because of COVID-19 and its cash flow has fallen dramatically as a result of this response? This may be in the form of a description of their income streams and costs, rather than hard accounting reads outs, but should include figures which support their case.
- (b) Can they demonstrate that this is likely to continue for the foreseeable future?
- (c) Can they demonstrate that their cash reserves do not provide an adequate buffer to support their cash position through this period? This is likely to take account of their expected net cash flow over the coming weeks.

5. How the GLA will implement this

The Mayor's Office, CMT and SLT have discussed and agreed the following approach:

- (a) It is not necessary for Financial Services to coordinate a prescriptive, centrally managed process for the implementation of this guidance. It is important however, for them to be informed when relief is provided and on what terms, please notify your Finance Business Partner (see section 7).

- (b) Directorates are best placed to decide which of their suppliers are likely to be at risk.
- (c) Directorates should make contact with suppliers as they see fit to discuss whether they require such relief.
- (d) Directorates should ask suppliers to provide a description explaining why the relief is necessary because of COVID-19 the bullets in the section 4 above may help.
- (e) In discussing this relief with suppliers, Directorates should ensure compliance with the actions suggested by Government in section 3.
- (f) In particular, it is crucial that any relief provided to suppliers is provided strictly on the basis that they observe and adhere to open book accounting requirements. This means that the provision of relief will be conditional on suppliers providing evidence in due course that: a) the relief was necessary, b) of the sums received from GLA, and c) the goods/services they have provided. This could include information from ledgers, cash flow accounts, balances sheets and profit and loss accounts. This will enable us, where GLA has provided payment in advance, to link that retrospectively to the goods/services provided. Suppliers must not profit from this relief. Where this can be shown to be the case, action should be taken to recover the payments made.
- (g) The same principles should be applied to income, interest payments, loan repayments and other GLA receipts, i.e. these may be deferred for those with payment obligations to the GLA and can show that they are at risk because of COVID-19 (subject to the open book requirement set out at section 5(f) above). In circumstances where it is decided that such relief is to be provided it will important to document clearly (varying contracts where necessary) when income/loan repayments are to return to normal, how the shortfall will be made up by the person afforded relief and that it does not involve the GLA waiving any rights, rather pausing their obligations for a temporary period. Such arrangements can be approved through existing governance frameworks.¹
- (h) Where the provision of relief effectively involves substantive changes to the amount, nature of timing of goods/services provided, you should ensure that the GLA and recipient of the relief enter into a contract variation before committing to the same. We should not provide relief for goods and services which are not being provided for reasons other than COVID-19 or are no longer going to be provided even after the COVID-19 response has passed.

6. Actions for Directorates

- Directorates should follow the implementation guidance in section 5.
- Where it has been decided that relief in the form of advance payment will be provided, directorates must good receipt (GRN) for the goods/services when they were due to be provided, rather than waiting confirmation of this.
- To ensure that these payments are not slowed down please ask suppliers to email you the invoice and to state the following on the invoice **“THIS PAYMENT IS MADE UNDER THE SUPPLIER RELIEF SCHEME IN RESPONSE TO COVID-19. PLEASE PROCESS IMMEDIATELY”**.

¹ The government guidance does not touch on this in detail. The GLA will adopt the same principle that is being applied on payment of expenditure. This means that where teams judge that a loan recipient or other income provider is at risk, they have the discretion to provide flexibility on payment of that income. This should be in the form of postponing payments and agreeing a revised timeline for retrieving backdated payments. We do not envisage disregarding income payments all together.

You then need to email the invoice to COVID19INVOICING@tfl.gov.uk and ask for the invoice to be paid immediately.

- Contract managers must document all conversations, agreements and variations with suppliers/and others in receipt of comparable relief in relation to the relief provided and send these to you finance business partner.
- Directorates may wish to write to suppliers seeking expressions of interest. This is likely to create additional administrative burden and may encourage unjustified claims from suppliers whose viability is not at risk. Therefore, it is not the preferred approach. But if it is necessary for reasons of haste or staffing capacity, a template letter is annexed to this guidance.

7. Who to contact for support

- Your first point of contact is always your Finance Business Partner

| | |
|---|--|
| Good Growth: | Abdel Reza Nauyeck |
| Communities & Skills: | Maryam Umar |
| Housing & Land: | Mariette Albini |
| Strategy & Communications, Assembly Secretariat, Mayor's office, Elections, Chief Officer's | |
| Directorate & CMT: | Hina Dabasia |
| Resources | Natalie Luong |
| Capital accountant: | Debra Redhead-Allen (largely in Housing and Land). |

Annex

Template letter

Date XXXX

Dear XXX

As we find ourselves in these unprecedented times, I wanted to reach out to thank you for your continued support during this challenging situation.

Your continued work with the GLA will be crucial for keeping London operating during and after the COVID-19 outbreak. That is why we are taking steps to ensure that the future of suppliers is not threatened by the national response to the outbreak.

New government guidance allows public bodies to amend payment arrangements with their suppliers to ensure service continuity during and after the current COVID-19 outbreak. This guidance titled *Action Note PPN 02/20* can be found on the Cabinet Office website.

Where suppliers are identified as being at risk, these amended arrangements might involve paying for goods and services in advance of confirmation of receipt, or in advance of the usual performance monitoring arrangements. It is also possible that delivery timelines may be agreed to be delayed if such delay is caused by COVID-19 outbreak or the response to it and therefore, payment in advance of delivery may be considered where necessary to enable suppliers to remain viable.

If you believe that your organisation is at risk and is in need of relief, please contact your GLA contract manager who will be happy to discuss your particular circumstance. In order to explore the extent to which relief may be available it will be necessary for you to explain the changes in your cash flow and your reserves position caused by COVID-19 outbreak or the response to it.

The government guidance requires that suppliers benefiting from this relief must commit to open book accounting practices, so that payments and goods received can be reconciled in due course.

Furthermore, suppliers must ensure that they are not making use of this relief and claiming separate relief from the Government to the effect that they are claiming relief twice for the same hardship. As part of this, suppliers will need to ensure that they are not making applications for support to the HMG Job Retention Scheme offer of 80% payment of employee wages in relation to any support provided by this proposal. Provision of support payments will be conditional on the supplier not invoking force majeure under the contract.

I hope this provides reassurance if the viability of your organisation is at risk due to COVID-19 outbreak or the response to it.

Please do not hesitate to contact us if that is the case.

Your sincerely

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Cabinet Office

Procurement Policy Note - Supplier relief due to COVID-19

Action Note PPN 02/20

March 2020

Issue

1. This Procurement Policy Note (PPN) sets out information and guidance for public bodies on payment of their suppliers to ensure service continuity during and after the current coronavirus, COVID-19, outbreak. Contracting authorities must act now to ensure suppliers at risk are in a position to resume normal contract delivery once the outbreak is over.

Action

2. All contracting authorities should:
- Urgently review their contract portfolio and inform suppliers who they believe are at risk that they will continue to be paid as normal (even if service delivery is disrupted or temporarily suspended) until at least the end of June.
 - Put in place the most appropriate payment measures to support supplier cash flow; this might include a range of approaches such as forward ordering, payment in advance/pre-payment, interim payments and payment on order (not receipt).
 - If the contract involves payment by results then payment should be on the basis of previous invoices, for example the average monthly payment over the previous three months.
 - To qualify, suppliers should agree to act on an open book basis and make cost data available to the contracting authority during this period. They should continue to pay employees and flow down funding to their subcontractors.
 - Ensure invoices submitted by suppliers are paid immediately on receipt (reconciliation can take place in slower time) in order to maintain cash flow in the supply chain and protect jobs.

Dissemination and Scope

3. This PPN is applicable to all contracting authorities, including central government departments, executive agencies, non-departmental public bodies, local authorities, NHS bodies and the wider public sector (excluding Devolved Administrations). Together these are referred to in this PPN as 'contracting authorities'. This PPN covers goods, services and works contracts being delivered in the UK.

4. Please circulate this PPN across your organisation and to other relevant organisations that you are responsible for, drawing it to the specific attention of those with a commercial and finance role.

Timing

5. With immediate effect until 30 June 2020.

Background

6. The current outbreak of COVID-19 is unprecedented and will have a significant impact on businesses of all sizes. Many suppliers to public bodies will struggle to meet their contractual obligations and this will put their financial viability, ability to retain staff and their supply chains at risk. Contracting authorities should act now to support suppliers at risk so they are better able to cope with the current crises and to resume normal service delivery and fulfil their contractual obligations when the outbreak is over.

7. It is vital that contracting authorities pay all suppliers as quickly as possible to maintain cash flow and protect jobs. Contracting authorities should also take action to continue to pay suppliers at risk due to COVID-19 on a continuity and retention basis. Contracting authorities can consider making advance payments to suppliers if necessary.

8. Central Government organisations should note that Managing Public Money prohibits payment in advance of need in absence of Treasury consent as this is always novel contentious and repercussive. However, in the circumstances Treasury consent is granted for payments in advance of need where the Accounting Officer is satisfied that a value for money case is made by virtue of securing continuity of supply of critical services in the medium and long term. This consent is capped at 25% of the value of the contract and applies until the end of June 2020. HM Treasury will review in mid-June whether this consent needs to be extended for a further period. Consent for payment in advance of need in excess of this amount should be sought from HMT in the usual way. This consent does not alleviate Accounting Officers their usual duties to ensure that spending is regular, proper and value for money or for other contracting authorities to conduct appropriate and proportionate due diligence to ensure such payments are necessary for continuity of supply of critical services.

9. Contracting authorities should aim to work with suppliers and, if appropriate, provide relief against their current contractual terms (for example relief on KPIs and service credits) to maintain business and service continuity rather than accept claims for other forms of contractual relief, such as force majeure.

10. Continuing to make payments to at risk suppliers will present risks including that, despite these exceptional actions, a supplier may still become insolvent. These risks will need to be managed by contracting authorities on a case by case basis.

Contact

11. Further guidance on COVID-19 for individuals, employers and organisations is available on GOV.UK.

12. Enquiries about this PPN should be directed to the helpdesk at info@crownccommercial.gov.uk.

SUPPLIER RELIEF DUE TO COVID-19

INTRODUCTION

The public sector must act quickly and take immediate steps to pay all suppliers as a matter of urgency to support their survival over the coming months.

Where goods and services are either reduced or paused temporarily, authorities should continue to pay at risk suppliers to ensure cash flow and supplier survival. This could include, for example situations where:

- Services are cut short / reduced at short notice due to the impact of COVID-19 and non-payment could result in supply chains collapsing and/or significant financial implications for the supplier.
- It would be value for money and important to business continuity to continue to pay suppliers in the short term (regardless of whether you are able to reconcile at a later stage). This would ensure continuity of services when services can resume.

PPN 01/20 sets out how contracting authorities can amend contracts under Regulation 72 of the Public Contracts Regulations 2015¹. Changes should be captured in contract variation or change note, and make clear that the changes relate only to the COVID-19 situation, include a review provision or time limit, and that it is the authority's decision when things should return to normal.

PAYMENT TO MAINTAIN BUSINESS CONTINUITY

Contracting authorities should confirm with their at risk suppliers that they will continue to pay until at least the end of June, to ensure business and service continuity. Contracting can define their 'at risk suppliers' according to need. In general, this should override provisions in contracts that might require contracting authorities to pay suppliers on a decreasing scale as a result of, for example performance, force majeure or business continuity clauses.

There are a range of ways to support suppliers in maintaining cash flow during this period. Contracting authorities can continue to pay at usual contractual rates, or consider other options such as payment against revised/extended milestones or timescales, interim payments, forward ordering, payment on order or payment in advance/prepayment. Risks associated with advance or pre payment should be carefully considered and documented.

Where contracts operate 'payment by result' or are 'output / outcome' based, payments to suppliers should be made on the basis of a calculation of the average of the last three months invoices. Where possible, any payments made to suppliers during this emergency period should be adjusted to ensure profit margin is not payable on any undelivered aspects of the contract, however this should not delay payments being made.

Suppliers should identify in their invoices which elements of the invoiced amount relates to services they are continuing to supply (i.e. business as usual) and which amounts are attributable to the impact of COVID-19.

Payments should not be made to suppliers where there is no contractual volume commitment to supply, and contracting authorities should carefully consider the extent of payments to be made to suppliers who are underperforming and subject to an existing improvement plan.

¹ Or equivalent procurement regulations

Transparency

Contracting authorities and suppliers should work collaboratively to ensure there is transparency during this period. Suppliers in receipt of public funds on this basis during this period must agree to operate on an 'open book' basis. This means they must make available to the contracting authority any data, including from ledgers, cash-flow forecasts, balance sheets, and profit and loss accounts, as required and requested to demonstrate the payments made to the supplier under contract have been used in the manner intended.

For example, this might include evidence that staff have been paid the right amount and on time, and that cash continues to flow through the supply chain as quickly as possible. Contracting authorities should keep records of decisions and agreements made, and ensure suppliers maintain records to enable future reconciliation if necessary.

Suppliers should not expect to make profits on elements of a contract that are undelivered during this period and all suppliers are expected to operate with integrity. Suppliers should be made aware that in cases where they are found to be taking undue advantage, or failing in their duty to act transparently and with integrity, contracting authorities will take action to recover payments made.

Supplier capacity

Many suppliers will not be able to fulfil their contracts due to action taken elsewhere in the public sector. For example, transport services for school children, due to the closure of schools. Wherever possible, contracting authorities should seek to re-deploy the capacity of those suppliers to other areas of need; this can be implemented via a time-bound variation to the original contract under regulation 72 of the Public Contract Regulations (see PPN 01/20).

OTHER CONTRACTUAL RELIEF

Contracting authorities should work with all suppliers to ensure business continuity is maintained wherever possible and that business continuity plans are robust and are enacted.

If a supplier seeks to invoke a clause relating to a form of contractual relief that would allow them to suspend performance, such as force majeure, contracting authorities should first work with the supplier to amend or vary contracts instead. These variations could include changes to contract requirements, delivery locations, frequency and timing of delivery, targets and performance indicators etc. Changes to the original terms should be limited to the specific circumstances of the situation, and considered on a case by case basis.

Other reliefs sought by a supplier could relate to any contractual obligation but usually takes the form of one, or both, of the following:

- an extension of time for contract performance (eg revised milestones dates or delivery dates, etc);
- a waiver or delay in the ability of the contracting authority to exercise a right and/or remedy (eg to claim liquidated and ascertained damages, service credits or terminate the contract)

Each claim for relief should be considered on a case by case basis, according to the nature of the goods/services/works being supplied, the challenges being faced, the contract terms and the constraints of any statutory requirements, for example the PCR to above-threshold contracts. You should seek specific legal advice as required.

Contracting authorities should take a pragmatic approach. These discussions and any temporary changes agreed should be recorded. The contract should return to its original terms as soon as the impact of the COVID-19 outbreak on the relevant contract is over.

Contracting authorities should not accept claims from suppliers who were already struggling to meet their contractual obligations prior to the COVID-19 outbreak.

Force Majeure

Force majeure is a contractual term which may, (depending on the specific terms of the contract) allow one or both of the parties, when a specified event or events occurs beyond their control:

- to terminate the contract; or
- to be excused from performance of the contract, in whole or in part; or
- to be entitled to suspend performance for the period the event is continuing or to claim an extension of time for performance

It is important that force majeure clauses is not considered in isolation given its impact on other clauses such as exclusivity, liability, liquidated damages and termination rights. It may also be relevant to consider the governing law and jurisdiction clause as contracts subject to foreign law may be interpreted differently by the courts. It may also be an exclusion clause, which is subject to the Unfair Contract Terms Act 1977.

Contracting authorities are not bound to accept a supplier's claim for force majeure and can resist it. You should seek legal advice when dealing with a claim and continue to work with the supplier to maintain service continuity as far as possible. An attempt by a supplier to invoke a force majeure clause without valid cause may mean that the supplier is in breach of contract.

Force majeure clauses do not automatically entitle either party to claim relief. In some cases, a contract will not allow termination at all due to force majeure, and it cannot be forced.

Frustration

It is unlikely a supplier will seek to frustrate a contract if they continue to be paid. However, unlike force majeure, frustration is rarely included as a provision in the contract. Instead, frustration arises where an event, for which the contract makes no sufficient provision, renders performance of the contract impossible or radically changes a party's principal reason for entering into the contract.

If a contract has been frustrated, it terminates automatically and the parties are excused from their future obligations. Any contractual obligations incurred before the time of frustration, such as for the contracting authority to pay outstanding charges to a supplier, remain enforceable. As neither party is at fault in respect of the frustration, neither may claim damages from the other for non-performance after the contract is declared frustrated.

However, the threshold for a contract being declared 'frustrated' is high and the fact that the contract will merely be more expensive to perform, or that the provider will have to perform the contract in a different way as a result of COVID-19 and/or its impact, are highly unlikely to constitute grounds for frustration in itself. You should seek legal advice if a supplier claims 'frustration'.

Excusing Causes, Relief Events and other options

If included in a contract, excusing cause and relief event provisions generally give a supplier

relief from its contractual obligations, which contracting authorities may be able to use to provide relief, for example, to change the KPI regime, payment mechanism or reduce service level requirements. Some contracts may have other relief mechanisms. Whatever the regime, contracting authorities should maximising any commercial flexibilities within the contract, including agreeing new measures such as on meeting lead times, waiving or delaying exercising the authority's rights and/or remedies (e.g. to claim liquidated and ascertained damages, service credits or terminate the contract), revising milestones or delivery dates. In these circumstances, if there is one, use the contract change control procedure to keep records of any changes made and the decision making behind each one. If not, keep your own records.

ACCELERATING PAYMENT OF INVOICES

Contracting authorities should pay suppliers as quickly as possible to maintain cash flow and protect jobs. The public sector must pay suppliers within 30 days under the Public Contracts Regulations 2015 but contracting authorities now need to accelerate their payment practice.

Contracting authorities should act now to ensure payment is made as quickly as possible to their suppliers, including:

- Targeting high value invoices where a prime is reliant on a supply chain to deliver the contract.
- Resolving disputed invoices as a matter of urgency; consider paying immediately and reconciling at a later date in critical situations.
- Take a risk based approach as to whether 2-way matching is always needed (rather than adopt regular 3-way matching against receipt and Purchase Order)
- Encourage suppliers to invoice on a more regular basis to help cash flow (eg every week rather than monthly)

Contracting authorities should consider the following additional contingency measures during the COVID-19 outbreak

Contingency measures - delegated authority to ensure invoices are not delayed

With significant levels of staff absence possible, ensure you have appropriate contingencies in place including sufficient numbers of staff with delegated authority to promptly receipt / authorise an amount due for payment in business units as well as finance teams.

Contract Managers and Business Units

Receipt for goods promptly, do not delay and ensure there is a contingency in place for delegated authority to approve in the event of staff shortages. Monitor flow down to ensure payment is cascading down the supply chain.

Verifying invoices as quickly as possible

Verify an invoice as quickly as possible and do not send invoices back for minor administrative errors and risk causing delay in payment. Continue to undertake necessary checks, however, look to resolve any issues as a matter of urgency and reconcile any minor discrepancies in information at a later stage.

Payment Card Solutions

Use of procurement/payment cards where possible to ensure businesses are paid as quickly as possible. Consider increasing the upper limit of spend, open up categories and ensure an appropriate number of staff have the authority to use.

Invoicing procedures clearly set out for your suppliers

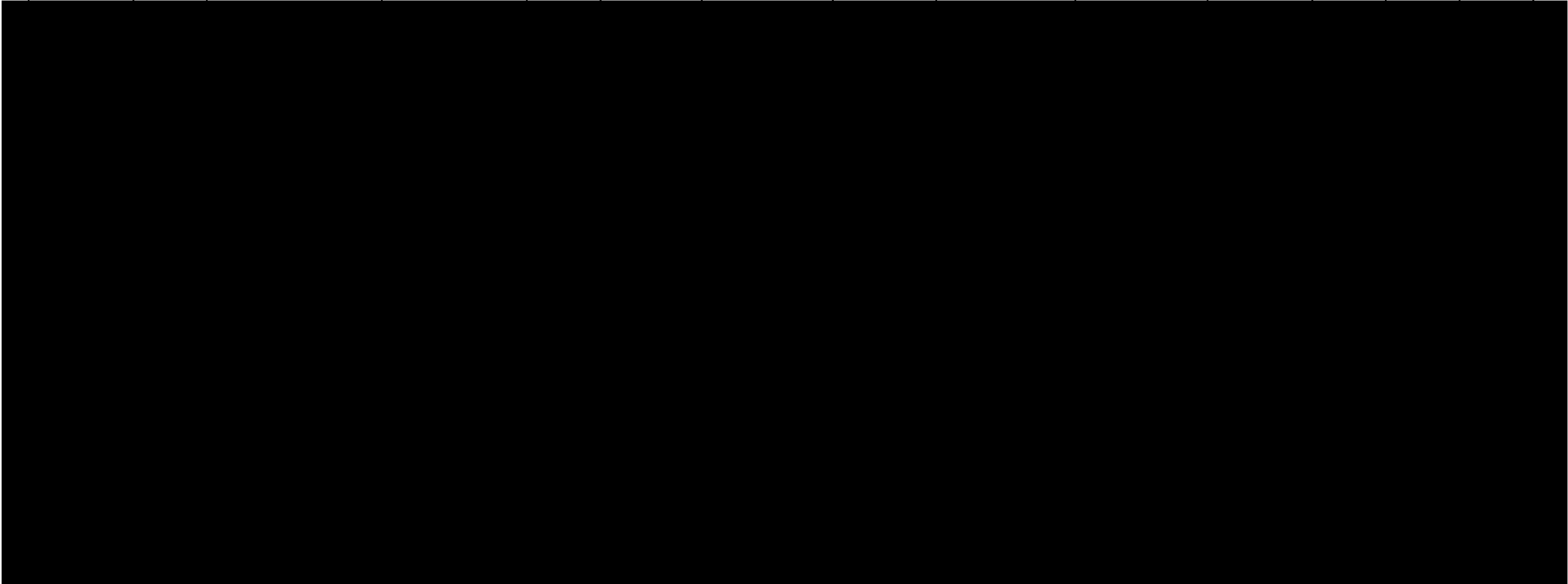
Be clear where suppliers should send their invoice, including email address and the process required. This should be clear on the authority's website. This will minimise the number of invoices with incorrect information and/or being issued to the wrong address. Issue a reminder to all your suppliers to help them best prepare and ask for invoices to be sent in electronically to avoid hard copies sitting in office buildings potentially unattended.

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APPENDIX 3 - SUPPLIER RELIEF LOG COVID-19 QUALIFYING SUPPLIERS

[illegible]

| | | | Ongoing management, administration and assurance | | | | | | | | | | |
|---|-----------------|--|--|---|--|---|--|---|---|--|--|--|--|
| Relief measure: Can the supplier's capacity be redployed to fulfill another service requirement of the Brigade? | Relief measure: | Are the relief measures proposed duly diligent,proportionate, less than 25% of contract value, proper and value for money, and restricted either to 30 June or an approved period of Covid impact? | Have the risks of relief been assessed, documented and are being managed eg insolvency of a supplier receiving forward payments? | Is non delivery or reduced delivery being recorded? | Are failed recociliations post payment being recorded? | Have the measures been embodied in a contract variation or change note stating it is the LFC's decision when the measures will cease? | Is the supplier identifying on invoice which elements are BAU and which are Covid related? | Has the supplier demonstrated (via open book) that the payments are being used to pay their staff and, sub contractors suppliers? | Have all decisions related to Covid relief been sufficiently documented by the lead client and contract manager | Is the supplier maintaining sufficient records for reconciliation at a later date? | | | |





Appendix 4: Draft Letter to Suppliers

Please respond by email: INSERT RELEVANT EMAIL ADDRESS

[REDACTED]
[REDACTED]

SUBJECT TO CONTRACT

Dear Sirs,

[REDACTED] between (1) the London Fire Commissioner , and (2) [REDACTED] ("Your Organisation"/"You"/"Your") dated [REDACTED] (the "Contract")

We are writing to You in the wake of the outbreak of the COVID-19 pandemic and the widespread disruption to businesses and your recent communication with us regarding this [dated XXXXXX]. In light of the Cabinet Office's Procurement Policy Note - Supplier relief due to COVID-19 02/20 (March 2020), we would be interested in receiving details from you how COVID-19 is adversely impacting Your Organisation in relation to Your ability to meet Your contractual obligations under the above Contract. We would be interested in receiving your proposals if you have requirements for supplier relief in these regards.

Until we hear from You and any amendments are formally agreed to the Contract, the Contract will remain effective and unaltered and shall continue in full force and effect. If You feel it is appropriate, please submit Your proposals and Your Contract Manager will be in touch shortly.

Kind regards,

[REDACTED]

For and on behalf of the London Fire Commissioner

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Note for London Fire Brigade

This document contains a template deed of variation for contracts directly affected by the outbreak of COVID-19. It should only be used where contractors are at risk as a result of the issues arising out of the COVID-19 outbreak.

Officers to note:

- a) This variation should only be used for contractual issues arising out of the COVID-19 outbreak.
- b) Legal advice should be sought to draft the provisions required for individual contracts.
- c) Before the deed of variation can be finalised a letter will have been issued to Contractors considered at risk and they will be invited to submit interim proposals. There is a separate template for this letter.
 - The interim proposals will be appended to this deed of variation once agreed.
 - The interim proposals will need to align with the contractual provisions so legal advice should be sought before this is finalised.

Contract extension¹

If a contract extension is required because it is not possible to re-procure the contract in the ordinary way, only the extension clause needs to be included in the template deed of variation below.

Contract variation²

If it is also proposed to vary the contract, the clauses to be included will need to be considered on a case by case basis. Along with the standard drafting for all variations, the following clauses may be included:

1. Payment provisions
2. Relief from contractual remedies (e.g. force majeure, service credits etc.)
3. Redeployment of Contractor's staff and/ or premises
4. Financial distress
5. Excusing clauses

OJEU Contract Notice

A Contract Notice may need to be issued if the Contract is above the EU threshold. [Legal] can assist with this but to speed the process up a copy of the original OJEU notice should be supplied with the instruction to [legal].

¹ Consider Regulation 72 and whether this extension is permissible (consider Reg 72 (1)(a) if there are no extension provisions then consider Reg 72(1)(c))

² As above consider Regulation 72 and whether this is permissible.

DATED

2020

LONDON FIRE COMMISSIONER

AND

[]

**DEED OF VARIATION
TO A CONTRACT FOR [] IN RESPONSE TO THE
COVID-19 OUTBREAK 2020**

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THIS DEED OF VARIATION made the day of 2020

BETWEEN:-

1. **LONDON FIRE BRIGADE** of 169, Union Street, London, SE11 0LL (the “London Fire Commissioner”); and
2. [] incorporated and registered in England and Wales with company number [] whose registered office is at [] (the “**Contractor**”).

BACKGROUND:

- A. The London Fire Commissioner entered into a contract with the Contractor dated [] (the “Contract”) for the provision of [] (the “Services”).
- B. The Contract is due to expire on [] subject to any extension agreed by the London Fire Commissioner and the Contractor in accordance with [Condition 7.2] of the Contract.
- C. The COVID-19 outbreak has given rise to issues in [explain e.g. issues in supply chain; supplier at risk of financial difficulty etc.]. This Variation is for the London Fire Commissioner to give relief to the Contractor on the terms set out in this Variation. The London Fire Commissioner and the Contractor acknowledge that the relief is given in accordance with the policy set out in PPN02/20 and that both parties shall act in good faith and work together towards the principles set out in PPN02/20. The Contractor acknowledges that any relief given to it is at the sole discretion of the London Fire Commissioner.
- D. The Public Contract Regulations 2015 will apply to this Variation and the Parties shall ensure that there is lawful basis for agreeing the variation. It is acknowledged that the current COVID-19 outbreak was unforeseeable, the provisions set out in this Variation do not alter the overall nature of the Contract and the increase in value of the contract does not exceed 50% of the original value of the Contract. Accordingly, the provisions of Regulation 72(1)(c) have been met and the modification set out in this Variation is permitted.
- E. The parties hereby agree to vary the scope of the services provided under the Contract on the terms set out in this Deed of Variation (“this Variation”). This Variation shall be in force for the period as set by the London Fire Commissioner in accordance with the terms of this Variation.

IT IS NOW AGREED as follows: -

1. GENERAL

- 1.1. Any words and expressions with a first capital letter contained within this Variation shall, save where defined below, have the same meaning as defined in the Contract.
- 1.2. For the purposes of this Variation the following terms shall have the meaning as set out and shall be incorporated into the Contract:

| Word or Phrase | Meaning |
|-----------------------------------|---|
| "Credit Rating Threshold" | the minimum credit rating level which shall be for the following Rating Agencies: D&B Risk Indicator 2 – Lower than average risk Experian – Fair; [] |
| "COVID Related Hardship" | means that as a result of the COVID-19 pandemic the Contractor's ability to meet its contractual obligations under the Contract have been adversely affected; |
| "COVID Relief Period" | means the period from the Variation Date until the Relief Expiry Date; |
| "Interim Payment Proposal" | means a proposal for any interim payment structure issued pursuant to paragraph 4 of this Variation; |
| "Open Book Interim Data" | means the complete and accurate financial and non-financial information which is required by the London Fire Commissioner to enable the London Fire Commissioner to understand all COVID-19 related relief, grants, interventions or other measures received by the Contractor from the Government and to verify the [Charges] paid or the [Charges] which would have been paid during the COVID Relief Period, including: <ul style="list-style-type: none"> a. the Contractor's [Costs] broken down against each [Deliverable], including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all hardware and software; b. operating expenditure relating to the provision of the [Goods] or [Services] including an analysis showing: <ul style="list-style-type: none"> i. the unit costs and quantity of consumables and bought-in services; |

| Word or Phrase | Meaning |
|----------------------------------|--|
| | <ul style="list-style-type: none"> ii. staff costs broken down into the number and grade/role of all [Contractor Personnel] together with a list of agreed rates against each manpower grade; and iii. [Reimbursable Expenses]; c. [Overheads]; d. all interest, expenses and any other third party financing costs incurred in relation to the provision of the [Services]; e. full details of the payment of employee wages; and f. full details of the payment of [Sub--contractors]; |
| “PPN 02/20” | means Procurement Policy Note 02/20 [as updated or amended from time to time] setting out information and guidance for public bodies on how they may amend payment provisions in contracts or consider other contractual relief in order to assist Contractors to combat the impact of COVID-19; |
| “Procurement Regulations” | means the Public Contracts Regulations 2015; |
| “Rating Agency” | means [] |
| “Relief Expiry Date” | means 30 June 2020, or such other date as may be notified by the London Fire Commissioner to the Contractor prior to or on 30 June 2020; |
| “Service Continuity Plan” | a plan setting out how the Contractor will ensure the continued performance and delivery of the Services/Goods in accordance with the Contract; and |
| “Variation Date” | means the date the second party signs this Variation. |

- 1.3. The Contract shall be and is hereby varied as expressly set out in this Variation. Except as expressly provided in this Variation, the Contract shall remain unamended and unvaried and all of its provisions shall remain in full force and effect.
- 1.4. This Variation has been properly executed by the parties and shall be effective to vary and amend the Contract and nothing in the Contract shall affect or be interpreted or construed as affecting the validity of this Variation or the variations contained in it.

- 1.5. In so far as the same is necessary or deemed necessary, this Variation shall stand as any and all notices or procedures required by virtue of the Contract. For the avoidance of doubt, no payment or remuneration to the Contractor shall be due and payable by the London Fire Commissioner as a result of or flowing from this Variation except as expressly set out in this Variation.

2. VARIATION

- 2.1. Pursuant to Condition [] of the Contract, the terms of this Variation shall come into effect on the Variation Date and shall continue in full force and effect for the COVID Relief Period unless terminated sooner in accordance with the terms of the Contract or clause 2.2 below or extended in accordance with Clause 2.3 below.
- 2.2. The London Fire Commissioner shall, at its absolute discretion, be entitled to terminate this Variation and the COVID Relief Period by serving 14 days written notice on the Contractor if the following arise:
- 2.2.1. the Contractor is in material breach of the Contract;
 - 2.2.2. the Contractor fails to comply with the Service Continuity Plan in accordance with clause 9.3 of this Variation;
 - 2.2.3. any of the provisions of Clause 7.1 of this Variation arise;
 - 2.2.4. a further PPN brings to an end the COVID Relief Period;
 - 2.2.5. [THIS MAY LINK TO FINANCIAL STANDING OR EARLIER TERMINATION BY THE GOVERNMENT].
- 2.3. The London Fire Commissioner may at any time and in its sole discretion extend the COVID Relief Period by extending it for a period or periods on written notice to the Contractor from time to time. Any such notice shall specify which, if any, PPN contains the applicable rules and principles for the relevant COVID Relief Period.
- 2.4. Except to the extent set out in this Variation, this Variation shall not constitute a waiver of any right or remedy of the London Fire Commissioner or the Contractor arising before, during or after this Variation.
- 2.5. The London Fire Commissioner and the Contractor agree that any event arising from COVID-19 shall not give rise to any force majeure or frustration rights set out in the Contract to the extent that such rights are mitigated by the provisions of this Variation.
- 2.6. If there is an inconsistency between any of the provisions of this Variation and the provisions of the Contract, the provisions of this Variation shall prevail.

3. EXTENSION OF THE CONTRACT

- 3.1. The London Fire Commissioner and the Contractor agree that the Contract Period shall be extended for a period of [] from [] to [] (the "Extension Period"), subject to earlier termination in accordance with the Contract; and [accordingly the definition of "Termination Date" in the Contract shall be amended to read "means the []".]

4. INTERIM PAYMENT PROPOSAL

- 4.1. The Contractor has confirmed to the London Fire Commissioner that it is subject to COVID Related Hardship and has applied for and the London Fire Commissioner has agreed a change to the Contract which has the aim of providing interim relief and support to the Contractor in order to support its cash flow position during the COVID Relief Period. Such proposals have been agreed pursuant to the aims and principles set out in PPN 02/20.

- 4.2. Accordingly and notwithstanding any other term of the Contract, the Parties agree to vary the Contract by incorporating the Interim Payment Proposal as set out in Appendix 1.

5. OPEN BOOK ACCOUNTING

- 5.1. Where the Parties agree and implement the Interim Payment Proposal, the Contractor shall:
- 5.1.1. [at the London Fire Commissioner's request, promptly provide a [Certificate of Costs] which sets out the Contractor's actual costs, expenses, cash flow and profits of providing the [Goods] and/or [Services] over the [3 months] prior to the effective date of the Interim Payment Proposal];
 - 5.1.2. ensure that the payments agreed under the Interim Payment Proposal are promptly and solely applied to the purposes for which they are paid, which may include payments to [Contractor Staff] and the Contractor's Contract supply chain; who are working on the [Deliverables] to be provided under or in connection with the Contract so as to reduce the adverse effect of COVID Related Hardship;
 - 5.1.3. make available to the London Fire Commissioner upon request any information and/or evidence (including the Open Interim Book Data) which the London Fire Commissioner may reasonably require in order to:
 - 5.1.3.1. verify and ensure that the Contractor has applied the monies as agreed in the Interim Payment Proposal, including copies of accounts, ledgers, cash-flow forecasts and statements, balance sheets, profit and loss accounts and any other documentary evidence;
 - 5.1.3.2. verify and ensure that monies intended for [Contractor Staff] performing the Contract have been properly and promptly paid; and
 - 5.1.3.3. pay invoices submitted by the Contractor's [Sub-contractors] and supply chain immediately on receipt;
 - 5.1.4. ensure that all invoices clearly set out which elements of the invoice are attributable to the Interim Payment Proposal and which elements are business as usual;
 - 5.1.5. maintain full records and a written audit trail of all Interim Payment Proposal activity in accordance with the general financial records provisions in the Contract (and such records shall be made available promptly to the London Fire Commissioner on reasonable request); and
 - 5.1.6. retain the records referred to in this clause 5.1 for a period of at least six (6) years after the Contractor's obligations under the Contract have come to an end.
- 5.2. The Contractor shall not be entitled:
- 5.2.1. to include any profit in the Interim Payment Proposals to the extent that such profit might apply to elements of the Contract that are undelivered by the Contractor during the COVID Relief Period;
 - 5.2.2. to include any payments in the Interim Payment Proposals where there is no contractual volume commitment under the Contract;
 - 5.2.3. to include any payments to the extent that the Contractor has been underperforming under the Contract and is subject to a current improvement plan or other remedial performance measure under the Contract; or

- 5.2.4. to combine the Interim Payment Proposal with any other government/public sector COVID-19 related relief, grant, intervention or other measure which results in the Contractor receiving more than one benefit/relief for the same underlying cash-flow issue (including the central government Furlough Scheme to pay 80% of salaries).

6. RELIEF FROM CONTRACTUAL OBLIGATIONS

- 6.1. Without prejudice to the provisions of clause 5 of this Variation, the Parties agree to use existing contractual mechanisms and provisions under the Contract to reduce the adverse impact of COVID Related Hardship on the Contractor, which include:
 - 6.1.1. [relief against performance indicators;]
 - 6.1.2. [relief and/or changes to delivery dates;]
 - 6.1.3. [relief and/or delays to service credits;]
 - 6.1.4. [consider the provisions of Appendix 2 to see if these are applicable; or]
 - 6.1.5. [waiver or delay by the London Fire Commissioner of its remedies and rights under the Contract in whole or in part.]

7. LONDON FIRE COMMISSIONER REMEDIES

- 7.1. If, in the reasonable opinion of the London Fire Commissioner, the Contractor:
 - 7.1.1. fails to meet any obligation set out in this Variation;
 - 7.1.2. receives any payment and fails to apply it to meet any proposal in the relevant Interim Payment Proposal;
 - 7.1.3. takes undue advantage of any relief; or
 - 7.1.4. fails to act transparently and with integrity,the London Fire Commissioner may take all action necessary to recover any payments made to the Contractor during the relevant COVID Relief Period, including without limitation retaining or setting-off payment of any amount it owes to the Contractor at any time under this Contract or any other contract between the London Fire Commissioner and the Contractor, to the extent that sub-paragraphs 7.1.1. and 7.1.4 apply to such payments.

8. RE-DEPLOYMENT OR ALTERNATIVE SERVICES

- 8.1. [The Parties agree that during the COVID-Relief Period the Contractor shall [re-deploy:
 - 8.1.1. the Contractor's staff; and/ or
 - 8.1.2. the Contractor's Premises,for all or part of the COVID Relief Period.]

9. FINANCIAL DISTRESS PROVISIONS

- 9.1. Throughout the COVID Relief Period it is important that the London Fire Commissioner is kept up to date with any financial distress which affects the Contractor such that it is likely to be unable to continue to provide services to the London Fire Commissioner.
- 9.2. The Contractor shall promptly (and in any event within five (5) Working Days) notify the London Fire Commissioner in writing if the credit rating of the Contractor with the Rating Agency falls below the Credit Rating Threshold such that there is or likely to be any downgrade in the credit rating issued by Rating Agency.
- 9.3. In the event the provisions of clause 9.2 arise then:

Appendix 5 Draft Contract Variation

- 9.3.1. the Contractor shall arrange a meeting with the London Fire Commissioner as soon as reasonably practicable to review the effect of the financial change on the continued performance of the Contract and delivery of the [Service/ Goods] Deliverables in accordance with the Contract; and
- 9.3.2. where the London Fire Commissioner reasonably believes that the financial standing could impact on the continued performance of the Contract and delivery of the [Services/ Goods] Deliverables in accordance with the Contract the London Fire Commissioner may require the Contractor to:
 - 9.3.2.1. submit to the London Fire Commissioner for its approval, a draft Service Continuity Plan as soon as reasonably practicable (and in any event, within ten (10) Working Days of the initial notification (or awareness) in accordance with clause 9.2 of this Variation); and
 - 9.3.2.2. provide such financial information relating to the Contractor as the London Fire Commissioner may reasonably require.
- 9.4. If the London Fire Commissioner acting reasonably:
 - 9.4.1. does not approve the draft Service Continuity Plan; or
 - 9.4.2. considers the draft Service Continuity Plan is insufficiently detailed to be properly evaluated;
 - 9.4.3. will take too long to complete; or
 - 9.4.4. will not remedy any failures to meet the requirements of the Contract

it shall inform the Contractor of its reasons and the Contractor shall take those reasons into account in the preparation of a further draft Service Continuity Plan, which shall be resubmitted to the London Fire Commissioner within five (5) Working Days of the rejection of the first or subsequent (as the case may be) drafts. This process shall be repeated until the Service Continuity Plan is Approved by the London Fire Commissioner or referred to the Dispute Resolution Procedure under the terms of the Contract.
- 9.5. Following Approval of the Service Continuity Plan by the London Fire Commissioner, the Contractor shall comply with the Service Continuity Plan.
- 9.6. Where the Contractor's financial standing improves such that its credit rating increases above the Credit Rating Threshold the Contractor shall inform the London Fire Commissioner and, subject to agreement of the Parties, the Contractor may be relieved of its obligations under clause 9.5 of this Variation.
- 9.7. If the Contractor:
 - 9.7.1. fails to implement the agreed Service Continuity Plan within the agreed timescales; or
 - 9.7.2. the financial standing of the Contractor falls lower and does not recover within a reasonable period of time

the London Fire Commissioner shall be entitled to terminate the Contract on [] days notice.

10. NON-RELIANCE

Each party acknowledges and warrants to the other party that it is entering into this Variation having satisfied itself on all matters relating thereto and not in reliance on any statement warranties or representations which may have been made by the other party or by any person acting or purporting to act on behalf of them.

11. SEVERABILITY

In the event that any term, condition or provision of this Variation shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall to that extent be omitted from this Variation and the rest of this Variation shall stand.

12. GOVERNING LAW

This Variation shall be governed and construed in accordance with English Law and the parties hereby submit to the exclusive jurisdiction of the English Courts.

13. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

The parties to this Variation do not intend that any of its terms will be enforceable by any person not a party to it whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise.

14. GOVERNING LAW

This Variation and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Executed as a deed by)
affixing the common seal of)
THE LONDON FIRE BRIGADE)
in the presence of:)
)
)

.....
Signature of authorised officer
.....
Print name (ALL CAPITALS)

Appendix 5 Draft Contract Variation

| | | |
|---|---|---|
| Executed as a deed by |) | |
| [CONTRACTOR] |) | |
| acting by: |) | |
| two directors, or |) | |
| a director and its secretary, or |) | Signature of director |
| a director in the presence of a witness |) | |
| | | |
| If signed by a director in the presence | | Print name (ALL CAPITALS) |
| of a witness, please ensure the witness | | |
| completes the following: | | |
| | | Signature of director / secretary / witness |
| | | (delete as appropriate) |
| Witness address (ALL CAPITALS) | | |
| | | |
| Witness occupation (ALL CAPITALS) | | Print name (ALL CAPITALS) |

Appendix 1

Interim Payment Proposals

Drafting Note:

Insert the agreed Interim Payment Proposals here.
These must align with the payment provisions under the Contract.

[Appendix 2 Excusing clauses]

[INSERT IF APPLICABLE]

1. COVID-19

- 1.1. If and to the extent that COVID-19 adversely affects the ability of the Contractor to perform any of its obligations under the Contract, then the Contractor shall be entitled to relief from its obligations [and from Adjustments being made to the Charges under the Contract].
- 1.2. To obtain relief:
 - 1.2.1. the Contractor must as soon as practicable, give to the London Fire Commissioner a notice of its claim for relief from its obligations under the Contract;
 - 1.2.2. within five (5) Business Days of receipt by the London Fire Commissioner of the notice referred to in clause 1.2.1, give full details of the relief claimed; and
 - 1.2.3. demonstrate to the reasonable satisfaction of the London Fire Commissioner that:
 - i. the Contractor and its Sub-Contractors could not have avoided such occurrence or consequences by steps which they might reasonably be expected to have taken, without incurring material expenditure;
 - ii. COVID-19 directly caused the need for relief from obligations;
 - iii. the relief from the obligations under the Contract claimed could not reasonably be expected to be mitigated or dealt with by the Contractor acting in accordance with Good Industry Practice, without incurring material expenditure; and
 - iv. the Contractor is using all reasonable endeavours to perform its obligations under the Contract. To the extent that the Contractor does not use all such reasonable endeavours, the Contractor shall not be entitled to, and shall not receive, the relief specified in Clause 1.2.1 above.
- 1.3. In the event that the Contractor has complied with its obligations under clause 1.2, then the London Fire Commissioner shall not be entitled to:
 - 1.3.1. exercise its right to terminate the Contract;
 - 1.3.2. [make Adjustments to the Charges in relation to any Performance Failure resulting from the COVID-19 event identified for the COVID Relief Period.]
- 1.4. In the event that information required by clause 1.2 is provided after the dates referred to in that clause, then the Contractor shall not be entitled to any relief during the period for which the information is delayed.
- 1.5. The Contractor shall notify the London Fire Commissioner if at any time it receives or becomes aware of any further information relating to the Excusing Cause, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading.
- 1.6. If the parties cannot agree the extent of the relief required, or the London Fire Commissioner disagrees that an Excusing Cause has occurred or that the Contractor is entitled to relief from obligations under the Contract, the parties shall resolve the matter in accordance with the Dispute Resolution Procedure.

