



Hosting

7.1: Charging & Invoicing

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1. PURPOSE OF THIS SCHEDULE

- 1.1. This schedule 7.1 (Charging and Invoicing) sets out the provisions relating to:
- 1.1.1. key charging principles;
 - 1.1.2. Milestone Payments;
 - 1.1.3. Service Charges;
 - 1.1.4. Charges for Changes and Future Services;
 - 1.1.5. Bounded Mechanisms for Changes to FITS Services and Future Services;
 - 1.1.6. Deferred Shareholder Fund;
 - 1.1.7. Service Credits;
 - 1.1.8. saving share;
 - 1.1.9. Certification of Costs; and
 - 1.1.10. invoicing.

2. KEY CHARGING PRINCIPLES

- 2.1. Other than as expressly stated in this Agreement, the Hosting Supplier is not entitled to any form of payment in addition to, or any amendment to, the Charges, whether as a result of increased costs, expenses, risks or any other matter.
- 2.2. The Charges set out or referred to in this schedule 7.1 (Charging and Invoicing) are the only charges that the Hosting Supplier can charge for the provision of the Hosting Services. No additional fees, charges or expenses shall be payable by the Authority to the Hosting Supplier in addition to those set out or referred to in this schedule 7.1 (Charging and Invoicing).
- 2.3. The Hosting Supplier shall make available to the Authority its estimations and projections of future costs and charges and its records and accounts of all actual costs and charges relating to the Hosting Services in accordance with the financial transparency requirements referred to in paragraph 2.4.
- 2.4. The Hosting Supplier shall comply with the following financial transparency requirements:
- 2.4.1. schedule 7.5 (Financial Model);
 - 2.4.2. paragraph 11 (Certification of Costs); and
 - 2.4.3. maintenance, during the Term, of up-to-date open book accounts that record the Hosting Supplier's actual costs and revenues relating to the Hosting Services.

- 2.5. Subject to paragraph 2A, any variation to the Charges shall only apply if agreed in writing and in advance in accordance with the Change Control Procedure.
- 2.6. If the Hosting Supplier fails to comply with paragraph 7 (Payments Schedule) of schedule 7.5 (Financial Model), the Authority reserves the right to withhold payment of any Charges due and payable under this Agreement.
- 2.7. All Charges set out in this schedule 7.1 (Charging and Invoicing) are exclusive of VAT.

2A INDEXATION

- 2A.1 REDACTED.

3. MILESTONE PAYMENTS

- 3.1. On the issue of Milestone Achievement Certificates in relation to a Milestone the Hosting Supplier will be entitled to invoice the Authority in accordance with paragraph 12 of this schedule 7.1 (Charging and Invoicing) in respect of the Charges associated with that Milestone as set out in the following workbooks of the Financial Model:
 - 3.1.1. Milestones referred to in the “Milestone Payments” workbook that are Achieved through Approval of Documentary Deliverables; and
 - 3.1.2. Milestones referred to in the “Milestone Payments” workbook other than those Milestones referred to in paragraph 3.1.1.
- 3.2. In respect of the Milestones referred to in paragraph 3.1, a Milestone Achievement Certificate will be issued in accordance with clause 5.1 and schedule 6.1 (Transition Requirements).
- 3.3. If any Milestone is not Achieved by its associated Milestone Date then, where this schedule 7.1 (Charging and Invoicing) identifies the payment of Delay Payments in respect of such Milestone, Delay Payments will be applied in accordance with paragraph 4 of this schedule 7.1 (Charging and Invoicing).
- 3.4. Not used.
- 3.5. Not used.
- 3.6. Either party may propose Changes to the Milestone Payments referred to in paragraphs 3.1.1 and 3.1.2 in accordance with the Change Control Procedure. The parties acknowledge that a Change to a Milestone Payment may impact upon the people cost element of the Milestone Payment. The Hosting Supplier agrees that if any such proposed Change has an impact upon the people cost element of the Milestone Payment, any proposed changes to the people cost element shall be calculated by reference to the Rate Card workbook of the Financial Model.
- 3.7. The parties acknowledge that in May of each Contract Year the Hosting Supplier

must instruct its Key Sub-contractor REDACTED to extend its third party support arrangements and licences, listed in the Table 1 below, for a further 12 months commencing on May 19th (12 months being the minimum period for which it is feasible to agree such an extension), and that this will be chargeable to the Authority, with the actual costs being confirmed and agreed via the Change Control Procedure.

3.8. REDACTED.

3.9. The Hosting Supplier shall provide a further Proposal Document to the Authority, by no later than the end of April 2023, for renewal of such third party support in May 2023. The Hosting Supplier shall ensure that this Proposal Document and the proposed third party costs contained in it take account of any reduction in the scope to the Hosting Services since the Effective Date.

4. DELAY PAYMENTS

4.1. If a Milestone has not been Achieved by the relevant Milestone Date, the Hosting Supplier shall pay to the Authority Delay Payments for each day of delay from and including the relevant Milestone Date until and including the date on which the Authority provides the Hosting Supplier with a Milestone Achievement Certificate.

4.2. REDACTED.

4.3. In the event that the Maximum Delay Payment Period in respect of any Transition Milestone is exceeded:

4.3.1. clause 7.4.5 shall apply; and

4.3.2. for the avoidance of doubt, the Delay Payments shall not be the Authority's exclusive financial remedy and the Authority reserves its rights and remedies but confirms that it shall not claim Anticipated Savings during the Maximum Delay Payment Period.

4.4. If no further Milestone Charges fall due after Delay Payments accrue, the Hosting Supplier shall issue a credit note to the Authority and a sum equal to any such Delay Payments then outstanding shall be repayable by the Hosting Supplier to the Authority as a debt.

5. SERVICE CHARGES

5.1. The Authority will pay the Service Charges to the Hosting Supplier for all Hosting Services in each Service Measurement Period from the Effective Date to the end of the Term. The Service Charges shall be made up of:

5.1.1. fixed service Charges as set out in the "Run & Maintain - Summary" workbook of the Financial Model (the "**Fixed Service Charges**").

5.1.2. Not used.

- 5.2. Either party may propose Changes in accordance with the Change Control Procedure which impact upon the Service Charges. The parties acknowledge that a Change to the Service Charges may impact upon the people cost element of the Service Charges. The Hosting Supplier agrees that if any such proposed Change has an impact upon the people cost element of the Service Charges, any proposed changes to the people cost element shall be calculated by reference to the applicable "Daily Rate" workbooks in the Financial Model.
- 5.3. The Service Charges will be payable monthly in arrears in accordance with paragraph 12 of this schedule 7.1 (Charging and Invoicing).

Fixed Service Charges

- 5.4. The total Fixed Services Charges to be applied are set out in the "Run & Maintain - Summary" workbook of the Financial Model.

Changes to the Fixed Service Charges

- 5.5. The Fixed Service Charges are calculated to provide a fixed Monthly charge. Save as otherwise provided in this Agreement (for example in paragraph 13 (Gain Share) or schedule 7.3 (Benchmarking) and paragraph 2A of this schedule 7.1 (Charging and Invoicing)), the Fixed Service Charges shall only vary in accordance with paragraphs 5.5 to 5.7 of this schedule.
- 5.6. Subject to paragraph 5.7, the following changes may result in a variation to the Fixed Service Charges where such changes directly impact on the Hosting Supplier's costs:
- 5.6.1. a Change to the Agreement (including any Change to the Service Requirements);
 - 5.6.2. a Change to the MAL which impacts directly upon the Service Levels or on any other of the Authority's requirements with regard to the hosting of a Business Application (save for any promotion of a KPI in accordance with schedule 2.2 (Service Performance Management));
 - 5.6.3. a change in respect of a Business Application or its components which is requested and approved by the Authority (for example a technical upgrade or change to functionality which is requested by the Authority and which impacts on the hosting of such Business Application in a manner not otherwise required to be delivered by the Hosting Supplier in accordance with this Agreement); and/or
 - 5.6.4. a significant change in usage of a Business Application, for example as a result of an organisational or machinery of Government change within the Authority, or changes in working practices and which impacts on the hosting of such Business Application in a manner not otherwise required to be delivered by the Hosting Supplier in accordance with this Agreement,

provided always that the Hosting Supplier is able to demonstrate to the Authority by way of completing a Change Request Part B2: Financial Impact Assessment, which shall be prepared in accordance with the Change Control Procedure, that the Change will lead to a decrease or an unavoidable increase in the Hosting Supplier's costs, and that a Change to the Agreement is approved by the Authority in accordance with the Change Control Procedure.

5.7. For the avoidance of doubt, there shall be no change to the Fixed Service Charges as a result of:

- 5.7.1. changes to the Agreement that are required to incorporate any services, functions and responsibilities not specifically described in schedule 2.1 (Service Requirements) but which are reasonably required for the proper performance and provision of the Hosting Services in accordance with the provisions of this Agreement;
- 5.7.2. Hosting Supplier initiated Changes that only impact schedule 4.1 (Hosting Supplier Solution) and have no adverse impact on the Authority;
- 5.7.3. changes required for the Hosting Supplier to carry out its obligations under the Agreement where the costs associated with such changes are already included in the Charges;
- 5.7.4. changes arising out of or in connection with any Default of the Hosting Supplier;
- 5.7.5. changes that are part of any problem resolution procedure arising as a result of any Default of the Hosting Supplier, including those set out in schedule 2.2 (Service Performance Framework); and/or
- 5.7.6. changes required as a result of any General Change in Law or Specific Change in Law where the effect of that Specific Change in Law on the Hosting Services is known at the Effective Date.

Variable Service Charges

5.8. Not used.

6. CHARGES FOR CHANGES AND FUTURE SERVICES

Rate Cards

- 6.1. If the parties agree that the Hosting Supplier shall implement Future Services, programmes, projects or Changes that have not been specified at the Effective Date (together, "Rate Card Services"), then:
 - 6.1.1. the Hosting Supplier Personnel cost elements of the Charges for such implementation services shall be calculated on a daily basis for every day

that the agreed Hosting Supplier Personnel are actively performing the Rate Card Services by reference to the Project Daily Rate by role set out in the applicable "Project Daily Rate" workbook of the Financial Model; and

- 6.1.2. the Hosting Supplier's Sub-contractor REDACTED personnel elements of the Charges associated with the Project(s) for such implementation services shall be calculated on a daily basis for every day that the agreed REDACTED personnel are actively performing the Rate Card Services by reference to the Project Daily Rate by role set out in the "Project Daily Rate – REDACTED " workbook of the Financial Model.
- 6.2. Travel and subsistence within the M25 is included in the Project Daily Rates referred to in paragraph 6.1 above and is payable at the Authority's standard travel and subsistence rates outside the M25, subject always to such expenses being agreed in advance in the respective Proposal Document or CAN. For the avoidance of doubt, if the personnel are required to work within the M25 there shall be no travel and subsistence expenses incurred, no matter where the personnel are normally based, e.g. if the personnel are based in Birmingham but are required to work inside the M25 there would be no expenses payable. However, if the personnel are required to work at another site outside the M25 travel and subsistence expenses would be incurred, e.g. if the personnel are based in Birmingham and are required to work in Bristol.
- 6.3. Not used.
- 6.4. Not used.

Charges for Changes – other requirements

- 6.5. Where either party requests a Change then the Hosting Supplier shall assess the potential impact of the proposed Change on the Charges, in accordance with the Change Control Procedure. Without limiting paragraph 4 (Impact Assessment) of schedule 8.2 (Change Control Procedure), the Hosting Supplier shall provide sufficient detail to justify the potential impact on the Charges which shall:
 - 6.5.1. be based on and reflect the principles of the Financial Model;
 - 6.5.2. include estimated volumes of each type of resource to be employed using the applicable "Project Daily Rate" workbook of the Financial Model;
 - 6.5.3. include full disclosure of any assumptions underlying the proposed impact on the Charges; and
 - 6.5.4. include evidence of the cost of any assets required for the proposed Change.
- 6.6. Subject to clause 20.4 of the MSA, the Hosting Supplier may not charge for the development of commercial proposals, estimates, financial impact assessments or quotations for the Hosting Supplier to undertake work for the Authority and such activities shall be non-chargeable.

- 6.7. If the proposed Contract Change is approved by the Authority in accordance with the Change Control Procedure then the Hosting Supplier will update the Financial Model in accordance with the provisions of schedule 7.5 (Financial Model).
- 6.8. The Hosting Supplier shall use the Financial Model to demonstrate any proposed revisions to the Charges arising as a result of any proposed Change.
- 6.9. Unless otherwise specified by the Authority, the Hosting Supplier shall provide to the Authority estimates of any proposed charges for a proposed work package or project in terms of Milestone Payments.
- 6.10. Where the Project delivers a Future Service, then the Hosting Supplier shall ensure that the Project proposal includes SCD Milestones and details of all impacts on Service Levels and Charges.
- 6.11. The Authority reserves the right to require Project proposals to include provisions for Delay Payments.
- 6.12. Without limiting paragraph 0 of this schedule 7.1 (Charging and Invoicing), if the Hosting Supplier is submitting a collective Project proposal involving Other FITS Suppliers, the Authority reserves the right to require such Project proposals to include collective provisions for Delay Payments.

Project Contingency and Risk

- 6.13. Where Projects are charged on a fixed price basis, with payments linked to Milestones, the Hosting Supplier may include an appropriate level of contingency and risk premium within the agreed price. To ensure that the Authority has transparency over the contingencies added, and that risks are not double counted, the Hosting Supplier shall ensure that the following principles for costing contingency and risk shall be applied:
 - 6.13.1. the Person Day effort calculated by the Hosting Supplier excluding any contingency or risk premiums;
 - 6.13.2. contingency shall be calculated as a percentage of the total Person Day effort to reflect the level of uncertainty (estimating risk) in the man-day estimates. This percentage will be agreed between the Authority and the Hosting Supplier and will be informed by such factors as: the precision of the project specification and outputs; completeness of information; availability of accurate metrics; the complexity of the solution; feedback from relevant completed projects and the period of time over which the project is delivered;
 - 6.13.3. Project Plans will then be presented by the Hosting Supplier that reflect the level of Person Days and timescales for milestones and deliverables inclusive of the agreed contingency;
 - 6.13.4. a Risk Register shall be presented by the Hosting Supplier which identifies

all Project specific risks, an estimate of the value of the risk if it were to materialise, planned actions to mitigate the risk, cost of implementing such actions and an estimate of the residual value of the risk after the mitigating actions have been taken;

- 6.13.5. the quantification of risk values shall take account of those risks that are independent of each other and those risks that are interdependent. The cumulative value of the interdependent risk values should be less than the sum of each individual risk to reflect the direct relationship between each risk;
- 6.13.6. prior to agreeing the fixed charges for a Project, both the Authority and the Hosting Supplier shall endeavour to minimise the likelihood of identified risks materialising, to ensure any risk premium value is kept to a minimum. Such actions could include detailed scoping studies, business impact analysis, pilot and testing activities;
- 6.13.7. any agreed residual risk value of risks owned by the Hosting Supplier shall be included in the project costing, but not converted into man-day effort within the project plans; and
- 6.13.8. the utilisation of project contingency and risk premiums shall be measured and shared with the Authority on an open-book basis. The outcomes shall be fed back into future project costing to continuously improve the accuracy of the project estimation process.

Capital and 3rd Party Project Costs

- 6.13.9. Where the parties agree that any Projects require the Hosting Supplier to procure services or capital assets from third parties on a pass-through basis, the Hosting Supplier shall not mark-up the costs charged by such third parties to the Hosting Supplier by more than 0% in its pass-through charge to the Authority. For the avoidance of doubt, if clause 25.13 applies, the Hosting Supplier shall not be entitled to apply any mark-up to the supply of such goods, software or services.

Commercial Approach to Project Work

- 6.14. REDACTED.
- 6.15. REDACTED.
- 6.16. REDACTED.
- 6.17. REDACTED.
- 6.18. REDACTED.
- 6.19. REDACTED.

6.20. REDACTED.

6.21. REDACTED.

6.22. REDACTED.

6.23. REDACTED.

6.24. REDACTED.

6.25. REDACTED.

Shoring-Up

6.26. The parties are entering into this Agreement to ensure continuity of the Hosting Services for the duration of the Term. The parties have agreed a set of principles to perform a ‘Shoring-Up’ project to replace the End of Life infrastructure to ensure ongoing continuity of Hosting Services during the Term.

6.27. REDACTED.

Disaster recovery testing

6.28. In accordance with schedule 8.6 (Business Continuity), in each twelve (12) month period, the Hosting Supplier shall undertake one (1) Disaster Recovery Plan test for one (1) Business Application at no additional cost to the Authority. The Authority must submit a request via the Change Control Procedure confirming which Business Application it requires a Disaster Recovery Plan test for at no additional cost. Such Business Application may fall under any one of the categories listed at paragraph 7.11 of schedule 8.6 (Business Continuity).

6.29. If the Authority requires additional Disaster Recovery Plan testing to that provided in paragraph 7.9 of schedule 8.6 (Business Continuity), it will raise a Change Request via the Change Control Procedure and the activity will be chargeable in accordance with the pricing set out in the Financial Model.

7. BOUNDED MECHANISMS FOR CHANGES TO FITS SERVICES AND FUTURE SERVICES

7.1. As part of agreeing any change to FITS Services or Future Services, the parties may agree any of the following Bounded Mechanisms which are shown in the following table as potentially applicable in the given circumstances:

	Single relevant FITS Supplier	Small number of relevant FITS Suppliers	Many relevant FITS Suppliers	Existing Suppliers and Other Authority Providers
Under	• Shared Risk	• Shared Risk Pot	• Exceptional	• Shared Risk Pot

£5m	<ul style="list-style-type: none"> Pot Exceptional Bonus Delay Payments Tapering Relief Application of Revised Service Charges 	<ul style="list-style-type: none"> Exceptional Bonus Delay Payments Tapering Relief Application of Revised Service Charges 	<ul style="list-style-type: none"> Bonus Delay Payments Tapering Relief Application of Revised Service Charges 	<ul style="list-style-type: none"> Exceptional Bonus Delay Payments Tapering Relief Application of Revised Service Charges
Over £5m	<ul style="list-style-type: none"> Shared Risk Pot Exceptional Bonus Delay Payments Tapering Relief Application of Revised Service Charges 	<ul style="list-style-type: none"> Shared Risk Pot Incentive Scheme Exceptional Bonus Delay Payments Tapering Relief Application of Revised Service Charges 	<ul style="list-style-type: none"> Shared Risk Pot Incentive Scheme Exceptional Bonus Delay Payments Tapering Relief Application of Revised Service Charges 	<ul style="list-style-type: none"> Shared Risk Pot Incentive Scheme Exceptional Bonus Delay Payments Tapering Relief Application of Revised Service Charges

7.2. Of these:

7.2.1. Shared Risk Pots, Incentive Schemes and Exceptional Bonuses shall constitute the Positive Mechanisms; and

7.2.2. Delay Payments, Tapering and Application of Revised Service Charges shall constitute the Negative Mechanisms.

7.3. These Bounded Mechanisms may be used in combination save that in agreeing the Bounded Mechanisms the parties should aim to ensure that any Delay Payments should not apply at such a level where the effect in combination with other Bounded Mechanisms would be to allow the Authority to recover the same loss twice. This paragraph shall not, however, excuse any FITS Supplier liability under a Bounded Mechanism once agreed.

7.4. The Authority and the relevant FITS Suppliers shall agree the appropriate Bounded Mechanisms that shall apply as part of agreeing the relevant Change Request Part C:

Change Authorisation. If the Authority and the relevant FITS Suppliers are unable to agree on the Bounded Mechanisms and the arrangements for them, as referred to below, the Authority's decision shall apply.

- 7.5. In principle, when agreeing Bounded Mechanisms the parties shall seek to combine both Positive Mechanisms and Negative Mechanisms.
- 7.6. In agreeing Bounded Mechanisms, the parties shall, unless they agree otherwise, follow the principles in the following paragraphs:
 - 7.6.1. Bounded Mechanisms shall apply in accordance with the principles in the following paragraphs subject to any agreements to the contrary when establishing them;
 - 7.6.2. Bounded Mechanisms shall be documented in the Change Request Part C: Change Authorisation which documents the applicable change to FITS Services or Future Services; and
 - 7.6.3. where the provisions below refer to something being documented in the Change Request Part C: Change Authorisation but it is not in fact so documented, the relevant FITS Suppliers shall use reasonable endeavours to agree the applicable matter within five (5) Working Days, failing which the Authority shall determine the matter.
- 7.7. **Shared Risk Pots**
 - 7.7.1. A Shared Risk Pot shall be created on the basis of risks and the costs of their mitigation, which have been identified by the relevant FITS Suppliers and accepted by the Authority as appropriate in agreeing the Bounded Mechanism for the particular change to FITS Services or Future Service. This shall consist of a proportion of the Charges of each relevant FITS Supplier in relation to the change to FITS Services or Future Service as set out in the Change Request Part C: Change Authorisation, and the Change Request Part C: Change Authorisation shall identify that proportion and ensure that the other payment milestones in the Change Request Part C: Change Authorisation are reduced accordingly.
 - 7.7.2. The Shared Risk Pot shall be administered by the Authority or such other entity as may be agreed in the Change Request Part C: Change Authorisation.
 - 7.7.3. Relevant FITS Suppliers may recover costs of the sort permitted in the Change Request Part C: Change Authorisation where the risks and circumstances in the Change Request Part C: Change Authorisation apply, and in accordance with any rules in the Change Request Part C: Change Authorisation. In this event, they shall be invoiced to the Authority in accordance with the provisions of the Change Request Part C: Change Authorisation.

- 7.7.4. The Change Request Part C: Change Authorisation shall, unless agreed otherwise, follow these principles:
- 7.7.4.1. a given relevant FITS Supplier should only be allowed to recover costs from the Shared Risk Pot in relation to risks outside the control of that relevant FITS Supplier and where the relevant FITS Supplier has not caused the risk to crystallise nor contributed to the risk crystallising, and subject to the relevant FITS Supplier only being able to recover reasonably incurred non-mitigable costs;
 - 7.7.4.2. Delay Payments recoverable by the Authority may be agreed as being recoverable out of the Shared Risk Pot (subject to its exhaustion, in which case they shall revert to being recoverable from specific relevant FITS Suppliers); and
 - 7.7.4.3. the Shared Risk Pot should not cover risks outside the control of any party.
- 7.7.5. On the final CPP Milestone for the applicable change to FITS Services or Future Service, or on such other point as may be provided in the Change Request Part C: Change Authorisation, the Authority and the relevant FITS Suppliers shall share any remaining amounts in the Shared Risk Pot in equal shares (or such other shares as may be provided in the Change Request Part C: Change Authorisation), and the relevant FITS Suppliers shall invoice the Authority for this in accordance with the provisions of the Change Request Part C: Change Authorisation or, if the Change Request Part C: Change Authorisation is silent on this, in the next applicable invoice.
- 7.7.6. The provisions of this paragraph 7.7 shall cease to apply as and when the applicable Shared Risk Pot is exhausted.

7.8. Incentive Schemes

- 7.8.1. Incentive Schemes shall involve a Shared Incentive Fund. This shall consist either of a proportion of the Charges of each relevant FITS Supplier in relation to the change to FITS Services or Future Service as set out in the Change Request Part C: Change Authorisation (and the Change Request Part C: Change Authorisation shall identify that proportion and ensure that the other payment milestones in the Change Request Part C: Change Authorisation are reduced accordingly) and, should the Authority agree to make any such contribution, a contribution from the Authority as set out in the Change Request Part C: Change Authorisation, or where a Shared Risk Pot has been created, any unallocated element of the Shared Risk Pot.
- 7.8.2. The Shared Incentive Fund shall be administered by the Authority or such other entity as may be agreed in the Change Request Part C: Change Authorisation.

7.8.3. The Shared Incentive Fund shall operate in accordance with a mechanism set out in the Change Request Part C: Change Authorisation, which shall be based on the principles of the Deferred Shareholder Fund under the MSA, but shall, unless agreed otherwise, follow these principles:

7.8.3.1. KPIs shall be amended to reflect the issues and circumstances of the specific change to FITS Services or Future Service;

7.8.3.2. relevant FITS Suppliers shall be entitled to exercise their options and raise an invoice for any applicable shares on the final CPP Milestone or other point specified in the Change Request Part C: Change Authorisation; and

7.8.3.3. where the Shared Incentive Fund is used to calculate FITS Suppliers' entitlement to any unallocated element of a Shared Risk Pot a FITS Supplier shall be entitled to a proportion of such Shared Risk Pot set in accordance with the level of KPIs they have achieved in relation to the total level of KPIs achieved across all relevant FITS Suppliers.

7.9. **Exceptional Bonus**

7.9.1. Exceptional Bonuses may apply where the parties can identify a clear financial saving or cost avoidance for the Authority arising out of the particular Change to FITS Services or Future Service and that benefit can be shown to be increased in the event of early delivery of the Change or Future Service.

7.9.2. Under an Exceptional Bonus, in the event of early delivery of the Change or Future Service, as defined in the Change Request Part C: Change Authorisation, the element of savings specified in the Change Request Part C: Change Authorisation as applying for the early delivery in question shall be shared between the parties in equal shares or such other share as may be agreed in the Change Request Part C: Change Authorisation.

7.9.3. Unless otherwise agreed, the Exceptional Bonus and parties' shares in it shall apply regardless of additional costs incurred or level of contribution. Where a Change Request Part C: Change Authorisation sets out rules in relation to these matters, such rules shall apply.

7.10. **Delay Payments**

7.10.1. Delay Payments shall, unless otherwise agreed in the Change Request Part C: Change Authorisation, follow the provisions of the applicable Tower Service Agreement.

7.10.2. Dates and amounts of Delay Payment, and any cap on the Delay Payment, shall be set out in the Change Request Part C: Change Authorisation.

- 7.10.3. Where the Delay Payment mechanism applies Delay Payments to Milestones or Deliverables within the control of more than one relevant FITS Supplier and the mechanism provides for Delay Payments to be payable in a pre-allocated proportion then, unless the Delay Payments are covered by a Shared Risk Pot and/or the Bounded Mechanism provides otherwise, any relevant FITS Supplier which has incurred Delay Payments without contributing to the applicable Delay may recover the Delay Payments from those of the relevant FITS Suppliers who have so contributed. Unless otherwise agreed in the Change Request Part C: Change Authorisation this shall be recovered in proportions equal to the amount of the Delay contributed by such relevant FITS Suppliers or the proportion of Charges for the Future Service or change to FITS Services for the applicable relevant FITS Suppliers to the overall Charges for the Future Service or change to FITS Services of all applicable relevant FITS Suppliers.
- 7.10.4. Where the Delay Payment mechanism applies Delay Payments to Milestones or Deliverables to a single relevant FITS Supplier but the Dependencies Register or Change Request Part C: Change Authorisation makes it clear that delivery of the Milestone or Deliverable depends on performance by other relevant FITS Suppliers of given obligations and such obligations have not been performed, the lead relevant FITS Supplier may, unless the Delay Payments are covered by a Shared Risk Pot and/or the Bounded Mechanism provides otherwise, recover elements of the Delay Payments from those of the relevant FITS Suppliers who have caused the applicable element of Delay.
- 7.10.5. The Change Request Part C: Change Authorisation shall, unless agreed otherwise, follow these principles:
- 7.10.5.1. the Delay Payments should represent a genuine pre-estimate of the loss likely to be suffered by the Authority as a result of the applicable delay;
 - 7.10.5.2. where Delay Payments apply to more than one relevant FITS Supplier, they should be allocated in the same proportion as the proportion of Charges for the Future Service or change to FITS Services for the applicable relevant FITS Suppliers to the overall Charges for the Future Service or change to FITS Services of all applicable relevant FITS Suppliers; and
 - 7.10.5.3. where a single relevant FITS Supplier's Charges for the Future Service or change to FITS Services will represent more than seventy per cent (70%) of the overall Charges for the Future Service or change to FITS Services of all applicable relevant FITS Suppliers, or where the overall Charges for the Future Service or change to FITS Services are less than one million pounds (£1,000,000), all Delay

Payments shall apply to that relevant FITS Supplier and that relevant FITS Supplier shall be given appropriate Delegated Authority to manage the other relevant FITS Suppliers.

- 7.10.6. Dependencies between relevant FITS Suppliers shall be set out clearly and precisely and be linked to Milestones.

7.11. Tapering Relief

- 7.11.1. Where Tapering Relief applies to specific Milestones in the Change Request Part C: Change Authorisation that are missed, specified day rates or Service Charges are reduced at the rate and by the amount specified in the Change Request Part C: Change Authorisation.

- 7.11.2. Where the Change Request Part C: Change Authorisation provides for this, where a Tapering Relief payment mechanism applies to a relevant FITS Supplier but the Dependencies Register or Change Request Part C: Change Authorisation makes it clear that delivery of the Milestone depends on performance by other relevant FITS Suppliers of given obligations and such obligations have not been performed, the impacted relevant FITS Supplier may, unless the Bounded Mechanism provides otherwise, recover its losses from elements of the Delay Payments from those of the relevant FITS Suppliers who have caused the applicable element of Delay.

7.12. Application of Revised Service Charges

- 7.12.1. Where the Application of Revised Service Charges applies, Revised Service Charges set out in the Change Request Part C: Change Authorisation shall apply from any planned SCD Milestone set out in the Change Request Part C: Change Authorisation regardless of whether or not the SCD Milestone has been achieved.

- 7.12.2. Application of Revised Service Charges shall only apply where the Future Service or change to FITS Services is due to lead to a reduction in current Charges.

- 7.13. Where the Change Request Part C: Change Authorisation provides for this, where an Application of Revised Service Charges mechanism applies to a relevant FITS Supplier but the Dependencies Register or Change Request Part C: Change Authorisation makes it clear that delivery of the Milestone depends on performance by other relevant FITS Suppliers of given obligations and such obligations have not been performed, the impacted relevant FITS Supplier may, unless the Bounded Mechanism provides otherwise, recover its losses from elements of the Delay Payments from those of the relevant FITS Suppliers who have caused the applicable element of Delay.

8. DEFERRED SHAREHOLDER FUND

- 8.1. Where a Service Charge is payable under this Agreement in accordance with

paragraph 5, the Authority will retain two per cent (2%) of such Service Charge into the Deferred Shareholder Fund in accordance with schedule 5 (Deferred Shareholder Fund) of the MSA.

- 8.2. In addition to the provisions set out in paragraph 8.1, the Authority shall contribute a sum to the Deferred Shareholder Fund which shall be calculated in accordance with paragraph 8.3 by reference to the Hosting Supplier's contribution per MSA Contract Year to the Deferred Shareholder Fund.
- 8.3. REDACTED.
- 8.4. The Authority shall maintain details of the sum of all FITS Suppliers contributions in each MSA Contract Year and shall share this information with the Hosting Supplier, to provide visibility of how the Authority's total contribution to the Deferred Shareholder Fund for the Hosting Supplier is calculated.
- 8.5. The value of each Share issued to the Hosting Supplier by the Authority in accordance with paragraph 5.3 of schedule 5 (Deferred Shareholder Fund) of the MSA shall be calculated at the end of each MSA Contract Year based on the accumulated value of the Deferred Shareholder Fund from contributions under paragraph 8.1 and 8.2 divided by the maximum awardable Shares for the Hosting Supplier in the MSA Contract Year.

9. SERVICE CREDITS

- 9.1. Schedule 2.2 sets out the Service Levels to be achieved for all Hosting Services. Where the Hosting Supplier fails to meet the Service Levels, a Service Credit may apply. Schedule 2.2 contains tables that define which Service Level Failures are subject to the application of a Service Credit, by Service Credit type and whether a Service Credit weighting applies. The tables that set out, for each Service Level that has Service Credits attached, how the number of Service Credits is calculated by comparing the actual Service performance to the defined Service Level.
- 9.2. REDACTED
- 9.3. REDACTED
- 9.4. REDACTED
- 9.5. REDACTED

10. SAVINGS SHARE

- 10.1. The Authority may require the Hosting Supplier to comply with the principles set out in this paragraph 10 in respect of Changes agreed under the Change Control Procedure which require either the Authority or the Hosting Supplier to invest in the Hosting Services.

- 10.2. The Hosting Supplier shall seek opportunities for identifying savings and reducing costs and for increasing the value of the Hosting Services to the Authority.
- 10.3. Subject to paragraph 10.1 and paragraph 10.4, if any Changes proposed by the Hosting Supplier require investment from the Hosting Supplier or the Authority, the following shall apply:
- 10.3.1. REDACTED
- 10.3.2. REDACTED
- 10.4. In determining whether the Hosting Supplier is entitled to share in any reductions to the Service Charges pursuant to paragraph 10.3, the Authority in its absolute discretion may consider a range of factors, including whether any achieved reduction in Service Charges:
- 10.4.1. reduces the overall cost to the Authority of receiving FITS Services; and
- 10.4.2. should be shared with Other FITS Suppliers to account for changes to their revenues which may be caused by the Change.
- 10.5. If paragraph **Error! Reference source not found.** applies, the Financial Model shall be used to allocate the percentage of the achieved reduction in Service Charges between the Authority and the Hosting Supplier.

11. CERTIFICATION OF COSTS

- 11.1. The Hosting Supplier shall on each anniversary of the Effective Date and also at the request of the Authority (such additional requests not to exceed five occasions over the Term) within 15 Working Days of such request provide, to the Authority a Certificate of Costs in the format as set out in Appendix A to this schedule 7.1 (Charging and Invoicing). The Certificate of Costs shall be signed by a director of the Hosting Supplier.
- 11.2. The Certificate of Costs shall set out the Hosting Supplier's actual costs, expenses and profits in providing the services over the preceding year of the Agreement, including details of at least the following:
- 11.2.1. the actual capital expenditure, including capital replacement costs (including details of expected asset lives);
- 11.2.2. actual operating expenditure relating to the provision of the Services, with labour costs, consumables, sub-contracted and bought-in services;
- 11.2.3. all interest expenses and other third party financing costs;
- 11.2.4. details of the overhead recoveries that have been made to the extent detailed in Appendix A to this schedule 7.1 (Charging and Invoicing); and
- 11.2.5. the profit which the Hosting Supplier has achieved in the provision of the Services including any profit element forming any part of the overhead

recoveries disclosed by reason of paragraph 11.2.4 above.

- 11.3. Following receipt of the Certificate of Costs, the Hosting Supplier shall provide to the Authority any reasonable additional information to enable the Authority to verify the accuracy of the Certificate of Costs.
- 11.4. Following receipt of the Certificate of Costs, the Authority (and its expert third party advisors) shall be entitled at any time to access the Hosting Supplier's computations that have been used by the Hosting Supplier in the preparation of the Certificate of Costs. The computations should follow the visibility principles set out in paragraph 3 of schedule 7.5 (Financial Model).

12. INVOICING

12.1. Raising invoices

- 12.1.1. The Hosting Supplier shall be entitled to raise an invoice in respect of any payment which falls payable to the Hosting Supplier pursuant to the Agreement and as agreed through the Payment Schedule review process as described in paragraph 7 of schedule 7.5 (Financial Model).
- 12.1.2. The Hosting Supplier shall submit all invoices and address any invoice queries to the Authority contract manager. The address will be as notified by the Authority to the Hosting Supplier from time to time.

12.2. Format of invoice

- 12.2.1. The Hosting Supplier shall ensure that each invoice contains the following information:
 - 12.2.1.1. the date of the invoice;
 - 12.2.1.2. a unique invoice number;
 - 12.2.1.3. details of the correct Agreement reference;
 - 12.2.1.4. the purchase order number and Milestone reference to which it relates (if any);
 - 12.2.1.5. a copy of the relevant information from the Payment Schedule (to be displayed on the front page of the invoice);
 - 12.2.1.6. the dates between which the Hosting Services the subject of each of the Charges detailed on the invoice were performed;
 - 12.2.1.7. the total Charges gross and net of any applicable deductions and, separately, the amount of any disbursements properly chargeable to the Authority under the terms of this Agreement, and, separately, any VAT or other sales tax payable in respect of the same;

- 12.2.1.8. details of any Service Credits or similar deductions that shall apply to the Charges detailed on the invoice;
 - 12.2.1.9. a contact name and telephone number of a responsible person in the Hosting Supplier's finance department in the event of administrative queries; and
 - 12.2.1.10. the bank account details for payments to the Hosting Supplier via electronic transfer of funds (i.e. name and address of bank, sort code, account name and number).
- 12.2.2. The Hosting Supplier shall submit all invoices and supporting documentation in such format as the Authority may specify from time to time:
- 12.2.2.1. by post to:

Shared Services Connected Ltd
PO Box 769
Newport
Gwent
NP20 9BB
 - 12.2.2.2. by email as unstructured electronic invoices in pdf format to Shared Services Connected Ltd email address

ap-statements@hmpps.gsi.gov.uk; or
 - 12.2.2.3. to such other address, whether physical or electronic, as may be notified by the Authority in accordance with paragraph 12.1.2.
- 12.2.3. All Hosting Supplier invoices shall be expressed in sterling or such other currency as shall be permitted by the Authority in writing.
- 12.2.4. The Authority shall only regard an invoice as valid if it complies with the provisions of this schedule 7.1 (Charging and Invoicing). Where any invoice does not conform to the Authority's requirements set out in paragraph 12.2 of this schedule 7.1 (Charging and Invoicing), the Authority will promptly return the disputed invoice to the Hosting Supplier. The Hosting Supplier shall promptly issue a replacement invoice which shall comply with the same.
- 12.2.5. Save for where the parties agree otherwise in writing, only one invoice per purchase order should be submitted per month, and amounts relating to different purchase orders should be included on separate invoices.
- 12.2.6. The final invoice relating to this Agreement shall only be sent to the Authority following agreement between the parties, such agreement not to be unreasonably withheld or delayed, of any Service Credits relating to the Service Credit regime as detailed in schedule 2.2 (Service Performance Management).

Electronic Invoicing

- 12.2.7. The Authority shall accept and process for payment an electronic invoice submitted for payment by the Supplier where the invoice is undisputed and where it complies with the standard on electronic invoicing.
- 12.2.8. For the purposes of paragraph 12.2.7, an electronic invoice complies with the standard on electronic invoicing where it complies with the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870.

12.3. Supporting information

- 12.3.1. Milestone Payments must be supported by copies of Milestone Achievement Certificates as signed by appropriately authorised Authority personnel.
- 12.3.2. Except where paragraph 12.3.4 applies, any items ordered through the Services and Products catalogue can be aggregated on an invoice, subject to all orders being raised under the same Purchase Order number, but shall be supported by individual order and delivery information, including organisation, authorisation and budgetary code information. This has to be sufficient to enable re-charges to be made within the Authority and associated bodies. Charges for orders not containing sufficient information to enable re-charge will be disputed.
- 12.3.3. Each invoice will only be paid if the amount matches the amount agreed through the Payment Schedule process as detailed in paragraph 7 of schedule 7.5 (Financial Model).
- 12.3.4. Items ordered through the Service Catalogue will only be payable by the Authority if they are listed on the Lodge Card.

12.4. Payment terms

- 12.4.1. The Authority shall pay undisputed valid invoices within thirty calendar (30) days of receipt.

12.5. Credit notes

- 12.5.1. The Hosting Supplier shall provide the Authority with a credit note in the following circumstances:
- 12.5.1.1. an invoice in full or in part has been issued in error;
 - 12.5.1.2. the agreed resolution of a disputed invoice is that the disputed charge is too high and a credit note is agreed to be issued;
 - 12.5.1.3. a Contract Performance Point has not been achieved and the

Authority wishes to recover the related Milestone Payments already made;

12.5.1.4. the Authority is eligible to receive Delay Payments and has requested that the Delay Payments are realised by a credit note;

12.5.1.5. the Authority is eligible to received Service Credits and has requested that the Service Credits are realised by a credit note; and

12.5.1.6. other circumstances as agreed between the Authority and the Hosting Supplier.

12.5.2. Each credit note shall be a valid tax invoice.

12.6. **Disputed invoices**

12.6.1. If the Authority disputes all or part of an invoice raised by the Hosting Supplier, then the Authority shall inform the Hosting Supplier at the earliest opportunity. The Authority shall set out the nature of the dispute and reasons for the dispute.

12.6.2. At its sole discretion, the Authority may postpone payment of the disputed amount until the dispute is resolved and any correcting documentation (further invoice or credit note) has been received.

12.6.3. Where the disputed amount is a part of a larger invoice, the entire invoice will be disputed. The Authority will not part pay an invoice.

12.6.4. Payment by the Authority of any invoice submitted by the Hosting Supplier shall not signify approval of such invoice. The Authority reserves the right to verify and, where appropriate, dispute invoices after the date of payment and subsequently to recover any sums which have been overpaid.

12.6.5. If any part of an invoice rendered by the Hosting Supplier is disputed or subject to question by the Authority either before or after payment then the Authority may call for the Hosting Supplier to provide such further documentary evidence as it may reasonably require to verify its liability to pay the amount which is disputed or subject to question and the Hosting Supplier shall promptly provide such evidence in a form satisfactory to the Authority.

13. **GAIN SHARE**

Purpose

13.1. This paragraph 13 details the method by which the Authority will share in any Gain Share Amounts which are made by the provision of the Hosting Services in each Contract Year.

13.2. Gain Share Calculation

- 13.2.1. Within 30 days of each anniversary of the Effective Date, the Hosting Supplier shall deliver to the Authority the Gain Share Calculation as calculated for the immediately preceding Contract Year.
- 13.2.2. The Gain Share Calculation shall be prepared in accordance with this paragraph 13 and the gain sharing rates set out in Appendix B to this schedule 7.1 (Charging and Invoicing).
- 13.2.3. Each Gain Share Calculation shall:
 - 13.2.3.1. be constructed using the Reconciliation for the immediately preceding Contract Year and shall be supplied in both paper and electronic copy;
 - 13.2.3.2. be certified as correct and accurate by a director of the Hosting Supplier;
 - 13.2.3.3. calculate, in accordance with the methodology used for the calculation of the Financial Model, the Earned Revenue and Earned Expenses for the immediately preceding Contract Year;
 - 13.2.3.4. calculate, in accordance with the methodology used in the Financial Model the Earned Gain for the immediately preceding Contract Year;
 - 13.2.3.5. show separately the amounts of Earned Gain (falling into Band 1, Band 2, Band 3 and Band 4 as defined in Appendix B of this schedule); and
 - 13.2.3.6. show separately the Gain Share Amount, the Hosting Supplier's Gain Share Amount and the Authority's Gain Share Amount for each of Band 2, Band 3 and Band 4.
- 13.2.4. Following receipt by the Authority of a Gain Share Calculation, the Hosting Supplier shall at its own expense provide to the Authority any such additional information as it may reasonably request so that the Authority can verify the accuracy of the Gain Share Calculation. This shall include the detailed working papers and spreadsheets constructed in accordance with schedule 7.5 (Financial Model) and shall be supplied in both paper and electronic copy.
- 13.2.5. Within 30 days of receipt of each Gain Share Calculation and all additional information required pursuant to paragraph 13.2.4, the Authority shall notify the Hosting Supplier whether it agrees with or disputes the Gain Share Calculation.

Payment of Gain Share

- 13.3. Following agreement or determination of the Gain Share Calculation based on the Reconciliation for the immediately preceding Contract Year, the Hosting Supplier shall pay the Authority the Authority's Gain Share Amount calculated in accordance with Appendix B to this schedule.

13.4. **Impact of Deferred Shareholder Fund and Savings Share**

For the avoidance of doubt:

- 13.4.1. any sums which are from time to time held in or paid to the Hosting Supplier in respect of the Deferred Shareholder Fund; and
- 13.4.2. any financial gains which are made by the Hosting Supplier from time to time in accordance with paragraph 10 (Savings Share) of this schedule 7.1 (Charging and Invoicing),

shall not be taken into account for the purposes of the Gain Share Calculation.

14. MANAGEMENT CHARGES AND INFORMATION

- 14.1. In addition to any other management information requirements set out in this Agreement, the Hosting Supplier agrees and acknowledges that it shall, at no charge, provide timely, full, accurate and complete SME Management Information (MI) Reports to the Authority which incorporate the data described in the MI Reporting template which is:
- 14.1.1. the total contract revenue received directly on a specific contract;
- 14.1.2. the total value of sub-contracted revenues under the contract (including revenues for non-SMEs/non-VCSEs); and
- 14.1.3. the total value of sub-contracted revenues to SMEs and VCSEs.
- 14.2. The SME Management Information Reports shall be provided in the correct format as required by the MI Reporting Template and any guidance issued by the Authority from time to time. The Hosting Supplier shall use the initial MI Reporting Template which is set out in the Appendix C to this schedule 7.1 (Charging and Invoicing) and which may be changed from time to time (including the data required and/or format) by the Authority by issuing a replacement version. The Authority shall give at least thirty (30) days' notice in writing of any such change and shall specify the date from which it must be used.
- 14.3. The Hosting Supplier further agrees and acknowledges that it may not make any amendment to the current MI Reporting Template without the prior written approval of the Authority.

APPENDIX A
Certificate of Costs

Certificate of Costs – Sample Report

For the Period of [insert date] (Start of Contract) through [insert date] (Start of Contract + 1 year)

Labour	£XXXX
Labour Overhead	£XXXX
Purchases	£XXXX
Purchases Overhead	£XXXX
Travel	£XXXX
Other Value-Add	£XXXX
General & Administrative	£XXXX
Other Non-Value	£XXXX
Total Cost	£XXXX
Profit	<u>£XXXX</u>
Total Price	£XXXX

APPENDIX B
Gain Sharing Table

The following table details the manner in which Earned Gain achieved by the Hosting Supplier in each Contract Year above the level of the Threshold Gain Margin shall be shared between the Authority and the Hosting Supplier:

REDACTED

APPENDIX C
MI Reporting Template

The parties acting reasonably shall agree in writing the full detail of the initial MI Reporting Template as soon as practicable and in any event within 30 days of the Effective Date.

End of schedule