

ESMCP TERMS AND CONDITIONS – USER SERVICES

SCHEDULE 19

FINANCIAL REPORTS AND AUDIT RIGHTS





































CHANGE HISTORY

Version	Date	Description	Document Number
1.0	2022.08.01	Base Version – MSC 2.0 unamended	72949217.1
1.2	2023.07.27	Issued for release to bidders with ITPD	
1.3	2023.10.25	Issued for release to bidders prior to detailed dialogue	
2.0	2024.03.14	Issued for release to bidders at ISFT publication	
3.0	2024.10.03	Issued for release to the Preferred Bidder prior to contract conformance	
4.0	2024.12.13	Issued for release to the Preferred Bidder for contract execution	
4.1	2024.12.13	Issued for release to the Preferred Bidder for contract execution	

Schedule 19 (*Financial Reports and Audit Rights*)

1 NOT USED

PART A: FINANCIAL TRANSPARENCY OBJECTIVES AND OPEN BOOK DATA

- 1 
- 1.1 


- (a) 
 - (i) 




 - (ii) 



 - (iii) 


- (b) 
 -  


 - (ii) 


- (c) 
 - (i) 

 - (ii) 



- 2 
- 2.1 



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2.2 [REDACTED]
[REDACTED]

(a) [REDACTED]

(b) [REDACTED]
[REDACTED]

3 [REDACTED]

3.1 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(a) [REDACTED]
[REDACTED]
[REDACTED]

(b) [REDACTED]
[REDACTED]
[REDACTED]

(c) [REDACTED]
[REDACTED]

(d) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

3.2 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

3.3 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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3.4

[REDACTED]

PART B: FINANCIAL REPORTS

1 PROVISION OF THE FINANCIAL REPORTS

1.1 The Supplier shall provide

- (a) [REDACTED]
- (b) [REDACTED]
[REDACTED]

Financial Report	When to be provided
Contract Amendment Report	[REDACTED] [REDACTED] [REDACTED]
Quarterly Contract Report	[REDACTED] [REDACTED]
Annual Contract Report	[REDACTED] [REDACTED] [REDACTED]
Final Reconciliation Report	[REDACTED] [REDACTED]
Deliverable Finance Report	[REDACTED]

1.2 The Supplier shall provide to the Authority the Financial Reports in the same software package (Microsoft Excel or Microsoft Word), layout and format as the blank templates which have been issued by the Authority to the Supplier [REDACTED] The Authority shall be entitled to modify the template for any Financial Report by giving written notice to the Supplier, including a copy of the updated template.

1.3 A copy of each Financial Report shall be held by both the Authority and the Supplier. If there is a Dispute regarding a Financial Report, the Authority's copy of the relevant Financial Report shall be authoritative.

1.4 Each Financial Report shall:

- (a) be completed by the Supplier using reasonable skill and care;
- (b) incorporate and use the same defined terms as are used in this Contract;
- (c) quote all monetary values in pounds sterling;

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- (d) quote all Costs as exclusive of any VAT; and
 - (e) quote all Costs and Charges based on current prices.
- 1.5 Each Financial Report shall be certified by the Supplier's Chief Financial Officer or Director of Finance (or equivalent as agreed in writing by the Authority in advance of issue of the relevant Financial Report), acting with express authority, as:
- (a) being accurate and not misleading;
 - (b) having been prepared in conformity with generally accepted accounting principles within the United Kingdom;
 - (c) being a true and fair reflection of the information included within the Supplier's management and statutory accounts; and
 - (d) compliant with the requirements of Paragraph 1.6.
- 1.6 The Supplier shall:
- (a) prepare each Financial Report using the same methodology as that used for the Contract Inception Report;
 - (b) to the extent permitted by Law, ensure that each Annual Contract Report and each Contract Amendment Report (if any) is a true and fair reflection of the Costs and Supplier Profit Margin forecast by the Supplier;
 - (c) to the extent permitted by Law, ensure that the Final Reconciliation Report is a true and fair reflection of the Costs; and
 - (d) [REDACTED]
[REDACTED]
[REDACTED]
 - (e) not have any other internal financial model in relation to the Services inconsistent with the Financial Model [REDACTED]
[REDACTED]
- 1.7 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- 1.8 During the Term, and for a period of 18 months following the end of the Term, the Supplier shall make available the Financial Representative at reasonable times and on reasonable notice to answer any queries that the Authority may have on any of the Financial Reports and/or Open Book Data.

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1.9 If the Supplier becomes aware of the occurrence, or the likelihood of the future occurrence, of an event which will or may have a material effect on the following:

(a) the Costs incurred (or those forecast to be incurred) by the Supplier; and/or

(b) historic or forecast Charges for the remainder of the Term,

the Supplier shall, as soon as practicable, notify the Authority in writing of the event in question detailing the actual or anticipated effect. For the avoidance of doubt, notifications provided in accordance with this Paragraph 1.9 shall not have the effect of amending any provisions of this Contract.

2 FINANCIAL MODEL

2.1 [REDACTED]

2.2 Following the delivery by the Supplier of each Annual Contract Report and any Contract Amendment Report:

(a) [REDACTED]

(b) the Supplier shall make appropriate Supplier Personnel and advisers available to discuss any variations between the relevant Financial Report and the Contract Inception Report or immediately preceding Annual Contract Report or Contract Amendment Report (as the case may be) and to explain such variations (with reference to supporting evidence) to the satisfaction of the Authority; and

(c) [REDACTED]

(i) [REDACTED]

(ii) [REDACTED]

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- 2.3 Following approval by the Authority of the relevant Financial Report in accordance with Paragraph 2.2(c), that version shall become, with effect from the date of such approval, the current approved version of the Financial Model for the purposes of this Contract, a version of which shall be held by both the Authority and the Supplier. If there is a Dispute regarding a Financial Report, the Authority's copy of the relevant Financial Report shall be authoritative,

- 2.4 If the Parties are unable to reach agreement on any Financial Report [REDACTED], the matter shall be referred for determination in accordance with Schedule 23 (*Dispute Resolution Procedure*), [REDACTED]

3 DISCUSSION OF QUARTERLY CONTRACT REPORTS AND FINAL RECONCILIATION REPORT

- 3.1 Following the delivery by the Supplier of each Quarterly Contract Report, the Parties shall meet to discuss its contents within [REDACTED] of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting.
- 3.2 Following the delivery by the Supplier of the Final Reconciliation Report, the Parties shall meet to discuss its contents within [REDACTED] of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting.

4 KEY SUB CONTRACTORS

- 4.1 The Supplier shall, if requested by the Authority, provide (or procure the provision of) a report or reports including the level of information set out in the Financial Reports in relation to the costs and expenses to be incurred by any of its Key Sub-contractors.
- 4.2 Without prejudice to Paragraph 1.1 of Part C, the Supplier shall:
- (a) be responsible for auditing the financial models/reports of its Key Sub-contractors and for any associated costs and expenses incurred or forecast to be incurred; and
 - (b) on written request by the Authority, provide the Authority or procure that the Authority is provided with:

- (i) [REDACTED]

(ii)

5 DELIVERABLE FINANCE REPORT

5.1

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PART C: AUDIT RIGHTS

1 AUDIT RIGHTS

- 1.1 The Authority, acting by itself or through its Audit Agents, shall have the right during the Term and for a period of 18 months thereafter, to assess compliance by the Supplier and/or its Key Sub-contractors of the Supplier's obligations under this Contract, including for the following purposes:
- (a) to verify the integrity and content of any Financial Report;
 - (b) to verify the accuracy of the Charges and any other amounts payable by the Authority or any User Organisation under this Contract or any User Organisation Order Contract (and proposed or actual variations to such Charges and payments);
 - (c) to verify the Costs (including the amounts paid to all Sub-contractors and any third party suppliers);
 - (d) [REDACTED]
 - (e) to verify the Certificate of Costs and/or the Open Book Data [REDACTED]
 - (f) to verify the Supplier's and each Key Sub-contractor's compliance with this Contract and applicable Law;
 - (g) to identify or investigate actual or suspected fraud, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Authority shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
 - (h) to identify or investigate any circumstances which may impact upon the financial stability of the Supplier, the Guarantor, any Monitored Supplier and/or any Key Sub-contractors or their ability to perform the Services;
 - (i) to obtain such information as is necessary to fulfil the Authority's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
 - (j) to review any books of account and the internal contract management accounts kept by the Supplier in connection with this Contract;

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- (k) to carry out the Authority's internal and statutory audits and to prepare, examine and/or certify the Authority's annual and interim reports and accounts;
- (l) to enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
- (m) to verify the accuracy and completeness of any Management Information delivered or required by this Contract;
- (n) to review any Performance Monitoring Reports and/or other records relating to the Supplier's performance of the Services and to verify that these reflect the Supplier's own internal reports and records;
- (o) to inspect the IT Environment (or any part of it) and the wider service delivery environment (or any part of it);
- (p) to review the accuracy and completeness of the Registers;
- (q) to review any records created during the design and development of the Supplier System and pre-operational environment such as information relating to Testing;
- (r) [REDACTED]
- (s) to review the Supplier's quality management systems (including all relevant Quality Plans and any quality manuals and procedures);
- (t) to review the Supplier's compliance with the Standards;
- (u) to inspect the Authority Assets, including the Authority's IPRs, equipment and facilities, for the purposes of ensuring that the Authority Assets are secure and that any register of assets is up to date; and/or
- (v) to review the integrity, confidentiality and security of the Authority Data, User Organisation Data, User Data and Operational Data.

1.2 Except where an audit is imposed on the Authority by a regulatory body, is conducted pursuant to Paragraph 1.3 or where the Authority has reasonable grounds for believing that the Supplier has not complied with its obligations under this Contract [REDACTED]

[REDACTED]
the Authority may not conduct an audit [REDACTED]

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1.3 Nothing in this Contract shall prevent or restrict the rights of the Comptroller and/or Auditor General and/or their representatives from carrying out an audit, examination or investigation of the Supplier and/or any of the Key Sub-contractors for the purposes of and pursuant to applicable Law.

2 CONDUCT OF AUDITS

2.1 The Authority shall during each audit comply with those security, sites, systems and facilities operating procedures of the Supplier that the Authority deems reasonable and use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.

2.2 Subject to the Authority's obligations of confidentiality, the Supplier shall on demand provide the Authority and the Audit Agents with all reasonable co-operation and assistance (and shall procure such co-operation and assistance from its Sub-contractors) in relation to each audit, including:

- (a) all information requested by the Authority within the permitted scope of the audit;
- (b) reasonable access to any Sites and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;
- (c) access to the Supplier System; and
- (d) access to Supplier Personnel.

User Services

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[REDACTED]

2.3 The Supplier shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Supplier's performance of the Services against the applicable Performance Indicators at a level of detail sufficient to verify compliance with the Performance Indicators.

2.4

[REDACTED]

2.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Paragraph 2, unless the audit identifies a material Default by the Supplier in which case the Supplier shall reimburse the Authority for all the Authority's reasonable costs incurred in connection with the audit.

3 USE OF SUPPLIER'S INTERNAL AUDIT TEAM

3.1 As an alternative to the Authority's right pursuant to Paragraph 1.1 to exercise an audit either itself or through its Audit Agents, the Authority may [REDACTED], require in writing that an audit is undertaken by the Supplier's own internal audit function for any of the purposes set out in Paragraph 1.1. [REDACTED]

3.2 Following the receipt of a request from the Authority under Paragraph 3.1 above, the Supplier shall procure that the relevant audit is undertaken as soon as reasonably practicable and that the Authority has unfettered access to:

- (a) the resultant audit reports; and
- (b) all relevant members of the Supplier's internal audit team for the purpose of understanding such audit reports.

4 RESPONSE TO AUDITS

4.1 If an audit undertaken pursuant to Paragraphs 1 or 3 identifies that:

- (a) the Supplier has committed a Default, the Authority may (without prejudice to any rights and remedies the Authority may have) require the Supplier to correct such Default as soon as reasonably practicable and, if such Default constitutes a Notifiable Default, to comply with the Rectification Plan Process;

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- (b) there is an error in a Financial Report, the Supplier shall promptly rectify the error;
- (c) the Authority has overpaid any Charges, the Supplier shall pay to the Authority:
 - (i) the amount overpaid;
 - (ii) interest on the amount overpaid at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the date of overpayment by the Authority up to the date of repayment by the Supplier; and
 - (iii) the reasonable costs incurred by the Authority in undertaking the audit,the Authority may exercise its right to deduct such amount from the Charges if it prefers; and
- (d) the Authority has underpaid any Charges, the Supplier shall not be entitled to increase the Charges paid or payable by the Authority,

[REDACTED]

[REDACTED]

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ANNEX 1: FINANCIAL MODEL

1 INTRODUCTION

- 1.1 [REDACTED]
- 1.2 [REDACTED]
- 1.3 [REDACTED]
- 1.4 [REDACTED]
- 1.5 [REDACTED]

2 CONTENT AND CONSTRUCTION OF THE FINANCIAL MODEL

- 2.1 [REDACTED]
- (a) [REDACTED]
- (b) [REDACTED]
- (c) [REDACTED]

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- (d) [REDACTED]
- (e) [REDACTED]
- (f) [REDACTED]
- (g) [REDACTED]
- (h) [REDACTED]
- (i) [REDACTED]
- (j) [REDACTED]

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(k) [REDACTED]
[REDACTED]
[REDACTED]

(l) [REDACTED]

(m) [REDACTED]
[REDACTED]

2.2 [REDACTED]
[REDACTED]
[REDACTED]

(a) [REDACTED]
[REDACTED]
[REDACTED]

(b) [REDACTED]
[REDACTED]
[REDACTED]

(c) [REDACTED]
[REDACTED]

2.3 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(a) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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(b)

[REDACTED]

[REDACTED]

(i) [REDACTED]

(ii) [REDACTED]

(iii) [REDACTED]

(iv) [REDACTED]

(v) [REDACTED]

(vi) [REDACTED]

(vii) [REDACTED]

(viii) [REDACTED]

(ix) [REDACTED]

(x) [REDACTED]

(xi) [REDACTED]

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- (xii) [REDACTED]
- (xiii) [REDACTED]
[REDACTED]
- (xiv) [REDACTED]
[REDACTED]
- (xv) [REDACTED]
- (c) [REDACTED]
[REDACTED]
- (d) [REDACTED]
[REDACTED]
[REDACTED]
- (i) [REDACTED]
[REDACTED]
[REDACTED]
- (ii) [REDACTED]
- (iii) [REDACTED]
[REDACTED]
[REDACTED]
- (iv) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- (v) [REDACTED]
[REDACTED]
- (e) [REDACTED]
[REDACTED]
[REDACTED]

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(f) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(h) [REDACTED]
[REDACTED]
[REDACTED]

(i) [REDACTED]
[REDACTED]

2.4 [REDACTED]

(a) [REDACTED]
[REDACTED]
[REDACTED]

(b) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(c) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

3 VISIBILITY THROUGH THE FINANCIAL MODEL

3.1 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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3.2

[REDACTED]
[REDACTED]

(a) [REDACTED]
[REDACTED]

(b) [REDACTED]

(c) [REDACTED]
[REDACTED]

(d) [REDACTED]
[REDACTED]

(e) [REDACTED]
[REDACTED]

(f) [REDACTED]
[REDACTED]
[REDACTED]

(g) [REDACTED]
[REDACTED]

(h) [REDACTED]
[REDACTED]

(i) [REDACTED]

(i) [REDACTED]

(ii) [REDACTED]

(iii) [REDACTED]

(iv) [REDACTED]
[REDACTED]

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- (v) [REDACTED]
- (j) [REDACTED]
[REDACTED]
- (vi) [REDACTED]
- (vii) [REDACTED]
- (viii) [REDACTED]
- (k) [REDACTED]
- (l) [REDACTED]
- (m) [REDACTED]
- (n) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- (o) [REDACTED]
[REDACTED]
- (p) [REDACTED]
[REDACTED]
- (q) [REDACTED]
[REDACTED]
- (r) [REDACTED]
[REDACTED]
[REDACTED]
- (s) [REDACTED]
[REDACTED]
[REDACTED]

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(t) [REDACTED]

(u) [REDACTED]
[REDACTED]
[REDACTED]

(v) [REDACTED]

3.3 [REDACTED]
[REDACTED]

4 CUSTODY OF THE FINANCIAL MODEL

4.1 [REDACTED]

(a) [REDACTED]
[REDACTED]

(b) [REDACTED]

4.2 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

5 UPDATES TO THE FINANCIAL MODEL

5.1 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

5.2 [REDACTED]
[REDACTED]

5.3 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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(a) [REDACTED]

(b) [REDACTED]

5.4 [REDACTED]
[REDACTED]
[REDACTED]

5.5 [REDACTED]
[REDACTED]

(a) [REDACTED]
[REDACTED]
[REDACTED]

(b) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(c) [REDACTED]
[REDACTED]
[REDACTED]

5.6 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

5.7 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

5.8 [REDACTED]
[REDACTED]

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[REDACTED]

6 DISPUTE

6.1 [REDACTED]

6.2 [REDACTED]

7 CERTIFICATION OF COSTS

7.1 [REDACTED]

7.2 [REDACTED]

7.3 [REDACTED]