

CONTRACT FOR THE PROVISION OF
IMS4 SERVICES

- (c) not disclose or permit the disclosure of any of the Confidential Information to any other person without obtaining the prior written consent of the Supplier or, if relevant, other owner or except as expressly set out in this Agreement;
- (d) not transfer any of the Confidential Information outside the United Kingdom;
- (e) not use or exploit any of the Confidential Information for any purpose whatsoever other than the Permitted Purpose;
- (f) immediately notify the Supplier in writing if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Confidential Information; and
- (g) once the Permitted Purpose has been fulfilled:
 - (i) destroy or return to the Supplier all documents and other tangible materials that contain any of the Confidential Information;
 - (ii) ensure, so far as reasonably practicable, that all Confidential Information held in electronic, digital or other machine- readable form ceases to be readily accessible (other than by the information technology staff of the Benchmark) from any computer, word processor, voicemail system or any other device; and
 - (iii) make no further use of any Confidential Information.

3 Permitted Disclosures

- 3.1 The Benchmark may disclose Confidential Information to those of its directors, officers, employees, consultants and professional advisers who:
 - (a) reasonably need to receive the Confidential Information in connection with the Permitted Purpose; and
 - (b) have been informed by the Benchmark of the confidential nature of the Confidential Information; and
 - (c) have agreed to terms similar to those in this Agreement.
- 3.2 The Benchmark shall be entitled to disclose Confidential Information to the Authority for the Permitted Purpose and to any Expert appointed in relation to a Dispute as referred to in Paragraph 5.7 of Schedule 7.3 (*Benchmarking*) to the Contract.
- 3.3 The Benchmark shall be entitled to disclose Confidential Information to the extent that it is required to do so by applicable law or by order of a court or other public body that has jurisdiction over the Benchmark.
- 3.4 Before making a disclosure pursuant to Clause 3.3 above, the Benchmark shall, if the circumstances permit:
 - (a) notify the Supplier in writing of the proposed disclosure as soon as possible (and if possible before the court or other public body orders the disclosure of the Confidential Information); and
 - (b) ask the court or other public body to treat the Confidential Information as confidential.

4 General

- 4.1 The Benchmark acknowledges and agrees that all property, including intellectual property rights, in Confidential Information disclosed to it by the Supplier shall remain with and be vested in the Supplier.

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- 4.2 This Agreement does not include, expressly or by implication, any representations, warranties or other obligations:
- (a) to grant the Benchmarker any licence or rights other than as may be expressly stated in this Agreement;
 - (b) to require the Supplier to disclose, continue disclosing or update any Confidential Information; or
 - (c) as to the accuracy, efficacy, completeness, capabilities, safety or any other qualities whatsoever of any Information or materials provided pursuant to or in anticipation of this Agreement.
- 4.3 The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers or remedies provided by law. No failure or delay by either Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.
- 4.4 Without prejudice to any other rights or remedies that the Supplier may have, the Benchmarker acknowledges and agrees that damages alone may not be an adequate remedy for any breach by the Benchmarker of any of the provisions of this Agreement. Accordingly, the Benchmarker acknowledges that the Supplier shall be entitled to the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of this Agreement and/or breach of confidence and that no proof of special damages shall be necessary for the enforcement of such remedies.
- 4.5 The maximum liability of the Benchmarker to the Supplier for any breach of this Agreement shall be limited to ten million pounds (£10,000,000)
- 4.6 For the purposes of the Contracts (Rights of Third Parties) Act 1999 no one other than the Parties has the right to enforce the terms of this Agreement.
- 4.7 Each Party shall be responsible for all costs incurred by it or on its behalf in connection with this Agreement.
- 4.8 This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.

5 Notices

- 5.1 Any notice to be given under this Agreement (each a “**Notice**”) shall be given in writing and shall be delivered by hand and shall be deemed to have been duly given at the time of delivery provided that such Notice is sent to the relevant physical address, and expressly marked for the attention of the relevant individual, set out in Clause 5.2 below.
- 5.2 Any Notice:
- (a) if to be given to the Supplier shall be sent to:

[Address]
Attention: [Contact name and/or position, e.g. “The Finance Director”]
 - (b) if to be given to the Benchmarker shall be sent to:

[Name of Organisation]
[Address]

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Attention: []

6 Governing law

- 6.1 This Agreement shall be governed by, and construed in accordance with, English law and any matter claim or dispute arising out of or in connection with this Agreement whether contractual or non-contractual, shall be governed by and determined in accordance with English law.
- 6.2 Each Party hereby irrevocably submits to the exclusive jurisdiction of the English courts in respect of any claim or dispute arising out of or in connection with this Agreement.

IN WITNESS of the above this Agreement has been signed by the duly authorised representatives of the Parties on the date which appears at the head of page 1.

For and on behalf of [name of Supplier]

Signature: _____ Date: _____

Name: _____ Position: _____

For and on behalf of [name of Benchmark]

Signature: _____ Date: _____

Name: _____ Position: _____

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SCHEDULE 7.4

FINANCIAL DISTRESS

SCHEDULE 7.4

FINANCIAL DISTRESS

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

“Applicable Indicators”	Financial	means the financial indicators from Paragraph 5.1 of this Schedule which are to apply to the Monitored Suppliers as set out in Paragraph 5.2 of this Schedule;
“Supplier Board”		the Supplier’s board of directors;
“Supplier Confirmation”	Board	written confirmation from the Supplier Board in accordance with Paragraph 8 of this Schedule;
“Credit Rating Level”		a credit rating level as specified in Annex 2 of this Schedule;
“Credit Rating Threshold”		the minimum Credit Rating Level for each entity in the FDE Group as set out in Annex 2 of this Schedule;
“FDE Group”		the Supplier, Key Sub-contractors, the Guarantor(s) and the Monitored Suppliers;
“Financial Indicators”		(a) in respect of the Supplier, Key Sub-contractors and Guarantor(s), each of the financial indicator set out at Paragraph 5.1 of this Schedule; and (b) in respect of each Monitored Supplier, those Applicable Financial Indicators;
“Financial Threshold”	Target	the target threshold for each of the Financial Indicators set out at Paragraph 5.1 of this Schedule; and
“Monitored Suppliers”		means those entities specified at Paragraph 5.2 of this Schedule;
“Rating Agencies”		the rating agencies listed in Annex 1 of this Schedule.

2 WARRANTIES AND DUTY TO NOTIFY

2.1 The Supplier warrants and represents to the Authority for the benefit of the Authority that as at the Effective Date:

- (a) the long term credit ratings issued for each entity in the FDE Group by each of the Rating Agencies are as set out in Annex 2 of this Schedule; and

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- (b) the consolidated financial position of the Supplier, Guarantor(s) and Key Sub-contractors and Other Consortium Members collectively satisfy the Financial Target Thresholds.
- 2.2 The Supplier shall (and shall procure that the Guarantor(s) and Key Sub-contractors):
 - (a) promptly notify (or shall procure that its auditors promptly notify) the Authority in writing if there is any downgrade in the credit rating issued by any Rating Agency for any entity in the FDE Group (and in any event within five (5) Working Days of the occurrence of the downgrade).
 - (b) exercise reasonable endeavours to maintain or improve the credit ratings as set out in this Schedule throughout the Term.
- 2.3 The Supplier shall:
 - (a) regularly monitor the credit ratings of each entity in the FDE Group with the Rating Agencies;
 - (b) monitor and report on the Financial Indicators for each entity in the FDE Group set out at Paragraph 5 of this Schedule against the corresponding Financial Target Threshold at least at the frequency set out for each at Paragraph 5.1 of this Schedule (where specified) and in any event, on a regular basis and no less than once a year within one hundred and twenty (120) days after the Accounting Reference Date; and
 - (c) promptly notify (or shall procure that its auditors promptly notify) the Authority in writing following the occurrence of a Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event (and in any event, ensure that such notification is made within ten (10) Working Days of the date on which the Supplier first becomes aware of the Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event.
- 2.4 For the purposes of determining whether a Financial Distress Event has occurred pursuant to the provisions of Paragraphs 3.1(a) of this Schedule, and for the purposes of determining relief under Paragraph 7.1 of this Schedule, the credit rating of an FDE Group entity shall be deemed to have dropped below the Credit Rating Threshold if:
 - (a) any of the Rating Agencies have given a credit rating for that entity which is below the applicable Credit Rating Threshold; or
 - (b) a Rating Agency that is specified as holding a credit rating for an entity as set out at Annex 2 of this Schedule ceases to hold a credit rating for that entity.
- 2.5 Each report submitted by the Supplier pursuant to Paragraph 2.3(b) of this Schedule shall:
 - (a) be a single report with separate sections for each of the FDE Group entities;
 - (b) contain a sufficient level of information to enable the Authority to verify the calculations that have been made in respect of the Financial Indicators;
 - (c) include key financial and other supporting information (including any accounts data that has been relied on) as separate annexes;
 - (d) be based on the audited accounts for the date or period on which the Financial Indicator is based or, where the Financial Indicator is not linked to an accounting period or an Accounting Reference Date, on unaudited management accounts prepared in accordance with their normal timetable; and
 - (e) include a history of the Financial Indicators reported by the Supplier in graph form to

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enable the Authority to easily analyse and assess the trends in financial performance.

Financial Distress Support

- 2.6 The Supplier shall (and shall procure that any Guarantor(s) and Key Sub-contractors, as applicable) assist the Authority with Government reporting requirements relating to this Agreement and the reporting requirements in the Financial Distress Support document, including reporting information about: (i) Services, performance information in relation to Schedule 2.2 (*Performance Levels*), contingency and business continuity; (ii) supply chain information; (iii) classification tools; (iv) risk and issues; and (v) assets register.

3 FINANCIAL DISTRESS EVENTS

- 3.1 The following shall be Financial Distress Events:

- (a) the credit rating of an FDE Group entity dropping below the applicable Credit Rating Threshold;
- (b) an FDE Group entity issuing a profits warning to a stock exchange or making any other public announcement, in each case about a material deterioration in its financial position or prospects;
- (c) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of an FDE Group entity;
- (d) an FDE Group entity committing a material breach of covenant to its lenders;
- (e) a Key Sub-contractor notifying the Authority that the Supplier has not satisfied any material sums properly due under a specified invoice and not subject to a genuine dispute;
- (f) any of the following:
 - (i) commencement of any litigation against an FDE Group entity with respect to financial indebtedness greater than £5 million or obligations under a service contract with a total contract value greater than £5 million;
 - (ii) non-payment by an FDE Group entity of any financial indebtedness;
 - (iii) any financial indebtedness of an FDE Group entity becoming due as a result of an event of default;
 - (iv) the cancellation or suspension of any financial indebtedness in respect of the FDE Group entity; or
 - (v) the external auditor of an FDE Group entity expressing a qualified opinion on, or including an emphasis of matter in, its opinion on the statutory accounts of that FDE Group entity;

in each case which the Authority reasonably believes (or would be likely reasonably to believe) could directly impact on the continued performance and delivery of the Goods and Services in accordance with this Agreement; and

- (g) the Financial Indicator set out at Paragraph 5.1 of this Schedule for, collectively, any of the FDE Group entities and Other Consortium Members failing to meet the required Financial Target Threshold or any of the Financial Indicators set out at Paragraph 5 of this Schedule or for any of the Monitored Suppliers failing to meet the required Financial Target Threshold.

4 CONSEQUENCES OF FINANCIAL DISTRESS EVENTS

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- 4.1 Immediately upon notification by the Supplier of a Financial Distress Event (or if the Authority becomes aware of a Financial Distress Event without notification and brings the event to the attention of the Supplier), the Supplier shall have the obligations and the Authority shall have the rights and remedies as set out in Paragraphs 4.3 to 4.6 of this Schedule.
- 4.2 In the event of a late or non-payment of a Key Sub-contractor pursuant to Paragraph 3.1(e) of this Schedule, the Authority shall not exercise any of its rights or remedies under Paragraph 4.3 of this Schedule without first giving the Supplier ten (10) Working Days to:
- (a) rectify such late or non-payment; or
 - (b) demonstrate to the Authority's reasonable satisfaction that there is a valid reason for late or non-payment.
- 4.3 The Supplier shall (and shall procure that any Monitored Supplier, Guarantor and/or any relevant Key Sub-contractor shall):
- (a) at the request of the Authority, meet the Authority as soon as reasonably practicable (and in any event within three (3) Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Authority may permit and notify to the Supplier in writing) to review the effect of the Financial Distress Event on the continued performance and delivery of the Goods and Services in accordance with this Agreement; and
 - (b) where the Authority reasonably believes (taking into account the discussions and any representations made under Paragraph 4.3(a) of this Schedule) that the Financial Distress Event could impact on the continued performance and delivery of the Goods and Services in accordance with this Agreement:
 - (i) submit to the Authority for its approval, a draft Financial Distress Remediation Plan as soon as reasonably practicable (and in any event, within ten (10) Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Authority may permit and notify to the Supplier in writing); and
 - (ii) to the extent that it is legally permitted to do so and subject to Paragraph 4.8 of this Schedule, provide such financial information relating to the Supplier, any Monitored Supplier, Key Sub-contractors and/or Guarantor as the Authority may reasonably require in order to understand the risk to the Goods and Services, which may include forecasts in relation to cash flow, orders and profits and details of financial measures being considered to mitigate the impact of the Financial Distress Event.
- 4.4 The Authority shall not withhold its approval of a draft Financial Distress Remediation Plan unreasonably. If the Authority does not approve the draft Financial Distress Remediation Plan, it shall inform the Supplier of its reasons and the Supplier shall take those reasons into account in the preparation of a further draft Financial Distress Remediation Plan, which shall be resubmitted to the Authority within five (5) Working Days of the rejection of the first draft. This process shall be repeated until the Financial Distress Remediation Plan is approved by the Authority or referred to the Dispute Resolution Procedure under Paragraph 4.5 of this Schedule.
- 4.5 If the Authority considers that the draft Financial Distress Remediation Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not ensure the continued performance of the Supplier's obligations in accordance with the Agreement, then it may either agree a further time period for the development and agreement of the Financial Distress Remediation Plan or escalate any issues with the draft Financial Distress Remediation Plan using the Dispute Resolution Procedure in accordance with Schedule 8.3 (*Dispute Resolution Procedure*).

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- 4.6 Following approval of the Financial Distress Remediation Plan by the Authority, the Supplier shall:
- (a) on a regular basis (which shall not be less than fortnightly):
 - (i) review and make any updates to the Financial Distress Remediation Plan as the Supplier may deem reasonably necessary and/or as may be reasonably requested by the Authority, so that the plan remains adequate, up to date and ensures the continued performance and delivery of the Goods and Services in accordance with this Agreement; and
 - (ii) provide a written report to the Authority setting out its progress against the Financial Distress Remediation Plan, the reasons for any changes made to the Financial Distress Remediation Plan by the Supplier and/or the reasons why the Supplier may have decided not to make any changes;
 - (b) where updates are made to the Financial Distress Remediation Plan in accordance with Paragraph 4.6(a) of this Schedule, submit an updated Financial Distress Remediation Plan to the Authority for its approval, and the provisions of Paragraphs 4.4 and 4.5 of this Schedule shall apply to the review and approval process for the updated Financial Distress Remediation Plan; and
 - (c) comply with the Financial Distress Remediation Plan (including any updated Financial Distress Remediation Plan) and ensure that it achieves the financial and performance requirements set out in the Financial Distress Remediation Plan.
- 4.7 Where the Supplier reasonably believes that the relevant Financial Distress Event under Paragraph 3.1 of this Schedule (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Authority and the Parties may agree that the Supplier shall be relieved of its obligations under Paragraph 4.6 of this Schedule.
- 4.8 The Supplier shall use reasonable endeavours to put in place the necessary measures to ensure that the information specified at paragraph 4.3(b)(ii) is available when required and on request from the Authority and within reasonable timescales. Such measures may include:
- (a) obtaining in advance written authority from Key Sub-contractors, Guarantor(s) and/or Monitored Suppliers authorising the disclosure of the information to the Authority and/or entering into confidentiality agreements which permit disclosure;
 - (b) agreeing in advance with the Authority, Key Sub-contractors, Guarantor(s) and/or Monitored Suppliers a form of confidentiality agreement to be entered into by the relevant parties to enable the disclosure of the information to the Authority;
 - (c) putting in place any other reasonable arrangements to enable the information to be lawfully disclosed to the Authority (which may include making price sensitive information available to Authority nominated personnel through confidential arrangements, subject to their consent); and
 - (d) disclosing the information to the fullest extent that it is lawfully entitled to do so, including through the use of redaction, anonymisation and any other techniques to permit disclosure of the information without breaching a duty of confidentiality.

5 FINANCIAL INDICATORS

- 5.1 Subject to the calculation methodology set out at Annex 3 of this Schedule, the Financial Indicators and the corresponding calculations and thresholds used to determine whether a Financial Distress Event has occurred in respect of those Financial Indicators, shall be as follows:

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Financial Indicator	Calculation 1	Financial Target Threshold:	Monitoring and Reporting Frequency (if different from the default position set out in Paragraph 2.3(b) of this Schedule)
Turnover Ratio	Supplier Annual Revenue/Expected annual contract value	>2.0x	Quarterly – EntServ UK Limited Annually – Guarantor / Key Sub-contractor
Operating Margin	Operating profit / revenue	>10%	Quarterly – EntServ UK Limited Annually – Guarantor / Key Sub-contractor
Acid Ratio	(Current assets – Inventories) / Current liabilities	>1.0x	Quarterly – EntServ UK Limited Annually – Guarantor / Key Sub-contractor
Net Debt to EBITDA Ratio	Net Debt/EBITDA	<3.0x	Quarterly – EntServ UK Limited Annually – Guarantor / Key Sub-contractor

Key: 1 – See Annex 3 of this Schedule which sets out the calculation methodology to be used in the calculation of each Financial Indicator.

5.2 Monitored Suppliers

Monitored Supplier	Applicable Financial Indicators
Entserv UK Limited	Per Paragraph 5.1 of this Schedule
	Per Paragraph 5.1 of this Schedule
	Per Paragraph 5.1 of this Schedule
	Per Paragraph 5.1 of this Schedule
Any other supplier identified as a Key Sub-contractor throughout the Term	Per Paragraph 5.1 of this Schedule

6 TERMINATION RIGHTS

6.1 The Authority shall be entitled to terminate this Agreement under Clause 34.1 (*Termination by the Authority*) if:

- (a) the Supplier fails to notify the Authority of a Financial Distress Event in accordance with Paragraph 2.3(c) of this Schedule;
- (b) the Parties fail to agree a Financial Distress Remediation Plan (or any updated Financial Distress Remediation Plan) in accordance with Paragraphs 4.3 to 4.5 of this Schedule; and/or

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- (c) the Supplier fails to comply with the terms of the Financial Distress Remediation Plan (or any updated Financial Distress Remediation Plan) in accordance with Paragraph 4.6(c) of this Schedule.

7 PRIMACY OF CREDIT RATINGS

- 7.1 Without prejudice to the Supplier's obligations and the Authority's rights and remedies under Paragraph 2 of this Schedule, if, following the occurrence of a Financial Distress Event pursuant to any of Paragraphs 3.1(b) to 3.1(g) of this Schedule, the Rating Agencies review and report subsequently that the credit ratings for the FDE Group entities do not drop below the relevant Credit Rating Thresholds specified for those entities in Annex 2 of this Schedule, then:
 - (a) the Supplier shall be relieved automatically of its obligations under Paragraphs 4.3 to 4.6 of this Schedule; and
 - (b) the Authority shall not be entitled to require the Supplier to provide financial information in accordance with Paragraph 4.3(b)(ii) of this Schedule.

8 SUPPLIER BOARD CONFIRMATION

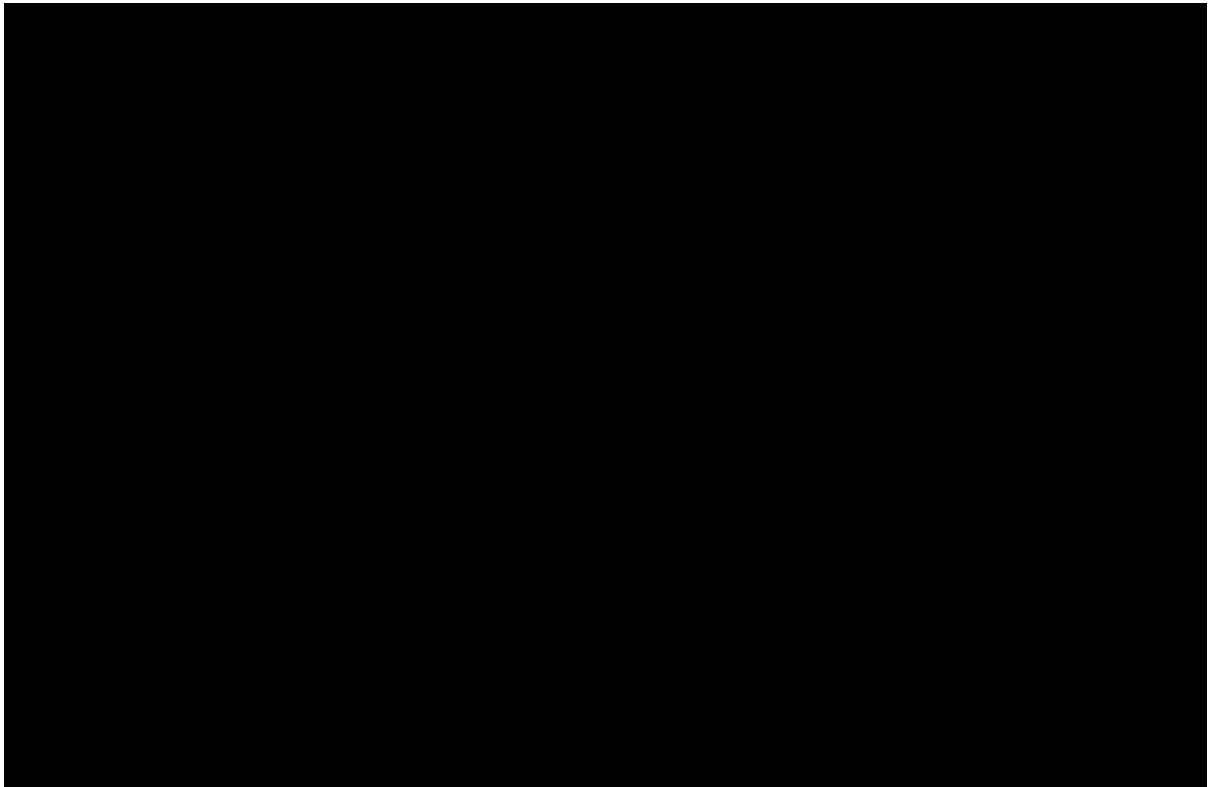
- 8.1 If this Agreement has been specified as a Critical Service Contract under Paragraph 11.1 of Part B to Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*) then, subject to Paragraph 8.4 of this Schedule, the Supplier shall within one hundred and twenty (120) days after each Accounting Reference Date or within fifteen (15) months of the previous Supplier Board Confirmation (whichever is the earlier) provide a Supplier Board Confirmation to the Authority in the form set out at Annex 4 of this Schedule, confirming that to the best of the Supplier Board's knowledge and belief, it is not aware of and has no knowledge:
 - (a) that a Financial Distress Event has occurred since the later of the Effective Date or the previous Supplier Board Confirmation or is subsisting; or
 - (b) of any matters which have occurred or are subsisting that could reasonably be expected to cause a Financial Distress Event.
- 8.2 The Supplier shall ensure that in its preparation of the Supplier Board Confirmation it exercises due care and diligence and has made reasonable enquiry of all relevant Supplier Personnel and other persons as is reasonably necessary to understand and confirm the position.
- 8.3 In respect of the first Supplier Board Confirmation to be provided under this Agreement, the Supplier shall provide the Supplier Board Confirmation within fifteen (15) months of the Effective Date if earlier than the timescale for submission set out in Paragraph 8.1 of this Schedule.
- 8.4 Where the Supplier is unable to provide a Supplier Board Confirmation in accordance with Paragraphs 8.1 to 8.3 of this Schedule due to the occurrence of a Financial Distress Event or knowledge of subsisting matters which could reasonably be expected to cause a Financial Distress Event, it will be sufficient for the Supplier to submit in place of the Supplier Board Confirmation, a statement from the Supplier Board to the Authority (and where the Supplier is a Strategic Supplier, the Supplier shall send a copy of the statement to the Cabinet Office Markets and Suppliers Team) setting out full details of any Financial Distress Events that have occurred and/or the matters which could reasonably be expected to cause a Financial Distress Event.

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ANNEX 1: RATING AGENCIES

- Dunn and Bradstreet
- Standard & Poor
- Moody's
- Fitch
- Company Watch Ltd

ANNEX 2: CREDIT RATINGS AND CREDIT RATING THRESHOLDS



ANNEX 3: CALCULATION METHODOLOGY FOR FINANCIAL INDICATORS

The Supplier shall ensure that it uses the following general and specific methodologies for calculating the Financial Indicators against the Financial Target Thresholds:

General methodology

- 1 **Terminology:** The terms referred to in this Annex are those used by UK companies in their financial statements. Where the entity is not a UK company, the corresponding items should be used even if the terminology is slightly different (for example a charity would refer to a surplus or deficit rather than a profit or loss).
- 2 **Groups:** Where the entity is the holding company of a group and prepares consolidated financial statements, the consolidated figures should be used.
- 3 **Foreign currency conversion:** Figures denominated in foreign currencies should be converted at the exchange rate in force at the relevant date for which the Financial Indicator is being calculated.
- 4 **Treatment of non-underlying items:** Financial Indicators should be based on the figures in the financial statements before adjusting for non-underlying items.

Specific methodology

Financial Indicator	Specific Methodology
Operating Margin	<p>The elements used to calculate the Operating Margin should be shown on the face of the Income Statement in a standard set of financial statements.</p> <p>Figures for Operating Profit and Revenue should exclude the entity's share of the results of any joint ventures or Associates.</p> <p>Where an entity has an operating loss (i.e. where the operating profit is negative), Operating Profit should be taken to be zero.</p>
Net Debt to EBITDA Ratio	<p>"Net Debt" = Bank overdrafts + Loans and borrowings + Finance leases + Deferred consideration payable – Cash and cash equivalents</p> <p>"EBITDA" = Operating profit + Depreciation charge + Amortisation charge</p> <p>The majority of the elements used to calculate the Net Debt to EBITDA Ratio should be shown on the face of the Balance sheet, Income statement and Statement of Cash Flows in a standard set of financial statements but will otherwise be found in the notes to the financial statements.</p> <p>Net Debt: The elements of Net Debt may be described slightly differently and should be found either on the face of the Balance Sheet or in the relevant note to the financial statements. All interest bearing liabilities (other than retirement benefit obligations) should be included as borrowings as should, where disclosed, any liabilities (less any assets) in respect of any hedges designated as linked to borrowings (but not non-designated hedges).</p> <p>Borrowings should also include balances owed to other group members.</p>

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	<p>Deferred consideration payable should be included in Net Debt despite typically being non-interest bearing.</p> <p>Cash and cash equivalents should include short-term financial investments shown in current assets.</p> <p>Where Net debt is negative (i.e. an entity has net cash), the relevant Financial Target Threshold should be treated as having been met.</p> <p>EBITDA: Operating profit should be shown on the face of the Income Statement and, for the purposes of calculating this Financial Indicator, should include the entity's share of the results of any joint ventures or Associates. The depreciation and amortisation charges for the period may be found on the face of the Statement of Cash Flows or in a Note to the Accounts.</p> <p>Where EBITDA is negative, the relevant Financial Target Threshold should be treated as not having been met (unless Net Debt is also negative, in which case the relevant Financial Target Threshold should be treated as having been met).</p>
Acid Ratio	All elements that are used to calculate the Acid Ratio are available on the face of the Balance Sheet in a standard set of financial statements.
Turnover Ratio	Supplier Annual Revenue/Expected Annual Contract Value

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ANNEX 4: SUPPLIER BOARD CONFIRMATION

Supplier Name:

Contract Reference Number:

The Supplier Board acknowledges the requirements set out at Paragraph 8 of Schedule 7.4 (*Financial Distress*) and confirm that the Supplier has exercised due care and diligence and made reasonable enquiry of all relevant Supplier Personnel and other persons as is reasonably necessary to enable the Supplier Board to prepare this statement.

The Supplier Board confirms, to the best of its knowledge and belief, that as at the date of this Supplier Board Confirmation it is not aware of and has no knowledge:

- (a) that a Financial Distress Event has occurred since the later of the previous Supplier Board Confirmation and the Effective Date or is subsisting; or
- (b) of any matters which have occurred or are subsisting that could reasonably be expected to cause a Financial Distress Event.

On behalf of the Supplier Board:

Chair

Signed

Date

Director

Signed

Date

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SCHEDULE 7.5
FINANCIAL REPORTS AND AUDIT RIGHTS

SCHEDULE 7.5
FINANCIAL REPORTS AND AUDIT RIGHTS

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

“Annual Contract Report”	the annual contract report to be provided by the Supplier to the Authority pursuant to Paragraph 1 of Part B;
“Audit Agents”	(a) the Authority’s internal and external auditors; (b) the Authority’s statutory or regulatory auditors; (c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office; (d) HM Treasury or the Cabinet Office; (e) any party formally appointed by the Authority to carry out audit or similar review functions; and (f) successors or assigns of any of the above;
“Contract Amendment Report”	the contract amendment report to be provided by the Supplier to the Authority pursuant to Paragraph 1 of Part B of this Schedule;
“Final Reconciliation Report”	the final reconciliation report to be provided by the Supplier to the Authority pursuant to Paragraph 1 of Part B of this Schedule;
“Financial Model”	the Contract Inception Report, the latest Annual Contract Report or the latest Contract Amendment Report, whichever has been most recently approved in accordance with Paragraph 2 of Part B of this Schedule;
“Financial Reports”	the Contract Inception Report and the reports listed in the table in Paragraph 1.1 of Part B of this Schedule;
“Financial Representative”	a reasonably skilled and experienced member of the Supplier’s staff who has specific responsibility for preparing, maintaining, facilitating access to, discussing and explaining the Open Book Data and Financial Reports;
“Financial Transparency Objectives”	has the meaning given in Paragraph 1 of Part A of this Schedule;
“Material Change”	a Change which: (a) materially changes the profile of the Charges; or (b) varies the total Charges payable during the Term (as forecast in the latest Financial Model) by:

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- (i) 5% or more; or
- (ii) £1 million or more; and

“Open Book Data”

complete and accurate financial and non-financial information which is sufficient to enable the Authority to verify the Charges already paid or payable and Charges forecast to be paid during the remainder of the Term, including details and all assumptions relating to:

- (a) the Supplier's Costs broken down against each Good and/or Service and/or 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 and Services including an analysis showing:
 - (i) the unit costs and quantity of consumables and bought-in services;
 - (ii) manpower resources broken down into the number and grade/role of all Supplier Personnel (free of any contingency) together with a list of agreed rates against each manpower grade
 - (iii) a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier's Profit Margin; and
 - (iv) Reimbursable Expenses;
- (c) Overheads;
- (d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Goods and Services;
- (e) confirmation that all methods of Cost apportionment and Overhead allocation are consistent with and not more onerous than such methods applied generally by the Supplier;
- (f) an explanation of the type and value of risk and contingencies associated with the provision of the Goods and Services, including the amount of money attributed to each risk and/or contingency; and
- (g) the actual Costs profile for each Service Period.

PART A. FINANCIAL TRANSPARENCY OBJECTIVES AND OPEN BOOK DATA

1 FINANCIAL TRANSPARENCY OBJECTIVES

1.1 The Supplier acknowledges that the provisions of this Schedule are designed (inter alia) to facilitate, and the Supplier shall co-operate with the Authority in order to achieve, the following objectives:

(a) **Understanding the Charges**

- (i) for the Authority to understand any payment sought from it by the Supplier including an analysis of the Costs, Overhead recoveries (where relevant), time spent by Supplier Personnel in providing the Goods and Services and the Supplier Profit Margin;
- (ii) for both Parties to be able to understand the Financial Model and Cost forecasts and to have confidence that these are based on justifiable numbers and appropriate forecasting techniques;

(b) **Agreeing the impact of Change**

- (i) for both Parties to agree the quantitative impact of any Changes that affect ongoing costs and to identify how these could be mitigated and/or reflected in the Supplier's Charges;
- (ii) for both Parties to be able to review, address issues with and re-forecast progress in relation to the provision of the Goods and Services;

(c) **Continuous improvement**

- (i) for the Parties to challenge each other with ideas for efficiency and improvements; and
- (ii) to enable the Authority to demonstrate that it is achieving value for money for the taxpayer relative to current market prices,

(together the “Financial Transparency Objectives”).

2 OPEN BOOK DATA

2.1 The Supplier acknowledges the importance to the Authority of the Financial Transparency Objectives and the Authority's need for complete transparency in the way in which the Charges are calculated.

2.2 During the Term, and for a period of seven (7) years following the end of the Term, the Supplier shall:

- (a) maintain and retain the Open Book Data; and
- (b) disclose and allow the Authority and/or the Audit Agents access to the Open Book Data.

PART B. FINANCIAL REPORTS

1 PROVISION OF THE FINANCIAL REPORTS

1.1 The Supplier shall provide

- (a) the Contract Inception Report on or before the Effective Date;
- (b) during the Term the following financial reports to the Authority, in the frequency specified in the table below; and
- (c) the Financial Reports contained in Appendix 2 upon request by the Authority.

Financial Report	When to be provided
Contract Amendment Report	Within one (1) month of a Material Change being agreed between the Supplier and the Authority
Quarterly Contract Report	Within one (1) month of the end of each Quarter
Annual Contract Report	Within one (1) month of the end of the Contract Year to which that report relates
Final Reconciliation Report	Within six (6) months after the end of the Term

- 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 any blank templates provided by the Authority to the Supplier from time to time for the purposes of this Agreement. 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 Agreement;
 - (c) quote all monetary values in pounds sterling;
 - (d) quote all Costs as exclusive of any VAT; and
 - (e) quote all Costs and Charges based on current prices.
- 1.5 Each Annual Contract Report and the Final Reconciliation 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:

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- (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 of this Part B.

1.6 The Supplier shall:

- (a) prepare each Financial Report using the same methodology as that used for the Contract Inception Report, except where the Authority requests (acting reasonably) any elements of the Financial Report to be prepared using an alternative methodology for clarificatory and/or transparency purposes in which case the Supplier shall use such alternative methodology;
- (b) 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) the Final Reconciliation Report is a true and fair reflection of the Costs; and
- (d) not have any other internal financial model in relation to the provision of the Goods and Services inconsistent with the Financial Model.

1.7 During the Term, and for a period of eighteen (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.

1.8 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:

- (a) Costs incurred (or those forecast to be incurred) by the Supplier; and/or
- (b) 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 1.8 of this Part B shall not have the effect of amending any provisions of this Agreement.

2 FINANCIAL MODEL

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

- (a) the Parties shall meet to discuss its contents within ten (10) Working Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting;
- (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

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- (c) the Authority shall either within ten (10) Working Days of the meeting referred to in Paragraph 2.1(a) notify the Supplier that:
 - (i) the relevant Financial Report contains errors or omissions or that further explanations or supporting information is required, in which event the Supplier shall make any necessary modifications to the Financial Report and/or supply the Authority with such supporting evidence as is required to address the Authority's concerns within ten (10) Working Days of such notification and the Authority shall following receipt of such amended Financial Report and/or supporting information, approve or reject such Financial Report; or
 - (ii) the Authority has approved the relevant Financial Report.
- 2.2 Following approval by the Authority of the relevant Financial Report in accordance with Paragraph 2.1(c) of this Part B, 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 Agreement, 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.
- 2.3 If the Parties are unable to reach agreement on any Financial Report within thirty (30) Working Days of its receipt by the Authority, the matter shall be referred for determination in accordance with Schedule 8.3 (*Dispute Resolution Procedure*).

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 ten (10) Working Days 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 ten (10) Working Days 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. The Supplier shall include similar terms and conditions to those in this Schedule in the Key Sub-contracts in relation to the provision of Financial Reports on request by the Authority.
- 4.2 Without prejudice to Paragraph 1.1 of Part C of this Schedule, 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) full copies of audit reports for the Key Sub-contractors. The Authority shall be entitled to rely on such audit reports; and
 - (ii) further explanation of, and supporting information in relation to, any audit reports provided.

5 RECORDS

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- 5.1 The Supplier shall, during the Term and for a period of at least seven (7) years following the end of the Term or termination of this Agreement, maintain or cause to be maintained complete and accurate documents, Financial Reports and records in relation to the provision of the Goods and Services, including all information (whether in electronic format or otherwise) referred to in Appendices 1 and 2 to this Schedule. The Supplier agrees to keep such documents, Financial Reports and records in a safe storage for the Term and for a period referenced above in this Paragraph 5.1 of this Part B.
- 5.2 The Supplier shall retain and maintain all the records (including superseded records) referred to in the Appendices 1 and 2 to this Schedule:
- (a) in accordance with the requirements of the Public Records Office, Cabinet Office, transparency requirements and Good Industry Practice;
 - (b) in chronological order;
 - (c) electronically and in hard copy;
 - (d) in a form that is capable of audit; and
 - (e) at the Supplier's expense and cost.

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, any Termination Assistance Period and for a period of eighteen (18) months after the later of the end of the Term and the end of any Termination Assistance Period, to assess compliance by the Supplier and/or its Key Sub-contractors of the Supplier's obligations under this Agreement, 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 under this Agreement (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) to verify the Certificate of Costs and/or the Open Book Data;
 - (e) to verify the Supplier's and each Key Sub-contractor's compliance with this Agreement and applicable Law;
 - (f) 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;
 - (g) to identify or investigate any circumstances which may impact upon the financial stability of the Supplier, any Guarantor and/or any Key Sub-contractors or their ability to provide the Goods and Services;
 - (h) 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;
 - (i) to review any books of account and the internal contract management accounts kept by the Supplier in connection with this Agreement;
 - (j) 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;
 - (k) 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;
 - (l) to verify the accuracy and completeness of any Management Information delivered or required by this Agreement;
 - (m) to review any Performance Monitoring Reports and/or other records relating to the Supplier's provision of the Goods and Services and to verify that these reflect the Supplier's own internal reports and records;
 - (n) to inspect the IT Environment (or any part of it) and the wider service delivery environment (or any part of it);
 - (o) to review the accuracy and completeness of the Registers;

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- (p) to review any records created during the design and development of the Supplier System and pre-operational environment such as information relating to Testing;
 - (q) to review the Supplier's quality management systems (including all relevant Quality Plans and any quality manuals and Procedures);
 - (r) to review the Supplier's compliance with the Standards;
 - (s) to inspect the Authority Assets, including the Authority's IPRs (including any Authority Background 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;
 - (t) to review the integrity, confidentiality and security of the Authority Data;
 - (u) to verify the Supplier's compliance with the requirements of Clause 24 (*Protection of Personal Data*) and any obligations under the Data Protection Legislation; and/or
 - (v) to review and inspect all the information available through the ITSM Dashboard for audit purposes, including the information contained in Appendices 1 and 2.
- 1.2 Except where an audit is imposed on the Authority by a regulatory body or where the Authority has reasonable grounds for believing that the Supplier has not complied with its obligations under this Agreement, the Authority may not conduct an Audit of the Supplier or of the same Key Sub-contractor more than twice in any Contract Year. For the purposes of this Paragraph 1.2 of this Part C, the final Contract Year shall end on the last date of the Termination Assistance Period.
- 1.3 Nothing in this Agreement 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.
- 1.4 The Supplier shall include similar terms and conditions to those in this Schedule in the Key Sub-contracts in relation to the Audit Rights contained in Paragraph 1.1 of Part C above, on request by the Authority.

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 Goods and 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 provision of the Goods and Services;
 - (c) access to the Supplier System; and
 - (d) access to Supplier Personnel.
- 2.3 The Supplier shall implement all measurement and monitoring tools and Procedures necessary to measure and report on the Supplier's provision of the Goods and Services

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against the applicable Performance Indicators at a level of detail sufficient to verify compliance with the Performance Indicators.

- 2.4 The Authority shall endeavour to (but is not obliged to) provide at least fifteen (15) Working Days' notice of its intention to conduct an audit.
- 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 of this Part C, 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 of this Part C to exercise an Audit either itself or through its Audit Agents, the Authority may 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 of Part C.
- 3.2 Following the receipt of a request from the Authority under Paragraph 3.1 of this Part C, 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.
- 3.3 The Authority's exercise of its rights in Paragraph 3.1 of this Part C shall not count towards the limit of two (2) permitted audits per Contract Year under Paragraph 1.2 of this Part C.

4 RESPONSE TO AUDITS

- 4.1 If an audit undertaken pursuant to Paragraphs 1 or 3 of this Part C 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;
 - (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.
- 4.2 If an audit undertaken pursuant to Paragraph 4.1.23 of Part A of Schedule 2.1 (*Services Description*) identifies any recommendations, then the Supplier shall implement any such

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recommendations agreed with the Authority.

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Appendix 1 Records to be kept by the Supplier

In accordance with the provisions of Paragraph 5.2 of Part B of this Schedule, the Supplier shall maintain the following records:

1. This Agreement, its Schedules and all amendments to such documents.
2. All other documents which this Agreement expressly requires to be prepared.
3. Records relating to the appointment and succession of the Supplier Representative, Supplier Personnel and each member of the Key Personnel.
4. Notices, reports and other documentation submitted by an expert.
5. All operation and maintenance manuals prepared by the Supplier for the purpose of maintaining the provision of the Goods and/or Services and the underlying Supplier Equipment.
6. Documents prepared by the Supplier or received by the Supplier from third parties relating to a Force Majeure Event.
7. All formal notices, reports or submissions made by the Supplier to the Authority Representative in connection with the provision of the Goods and/or Services.
8. All certificates, licences, registrations or warranties in each case obtained by the Supplier in relation to the provision of the Goods and/or Services.
9. Documents prepared by the Supplier in support of claims for the Charges.
10. Documents submitted by the Supplier pursuant to and in accordance with the Change Control Procedure.
11. Documents submitted by the Supplier pursuant to invocation by it or the Authority of the Dispute Resolution Procedure.
12. Documents evidencing any change in ownership or any interest in any or all of the shares in the Supplier and/or any Guarantor.
13. Invoices and records related to VAT sought to be recovered by the Supplier.
14. Financial records, including audited and un-audited accounts of any Guarantor and the Supplier.
15. Records required to be retained by the Supplier by Law, including in relation to health and safety matters and health and safety files and all consents.
16. All documents relating to the Insurances to be maintained under this Agreement and any claims made in respect of them.
17. All other records, notices or certificates required to be produced and/or maintained by the Supplier pursuant to this Agreement.
18. All journals and audit trail data referred to in Clause 21 (*Authority Data and Security Requirements*).
19. Quotes relating to Impact Assessments made in response to Contract Change Requests.

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Appendix 2 Financial Reports

This Appendix 2 contains the list of Financial Reports referenced at Paragraph 1.1(c) of Part B of this Schedule.

1. The Supplier's total fixed price for the provision of the Goods and Services and/or any Deliverables to be provided by the Supplier pursuant to this Agreement.
2. The profit, overhead recovery and risk/contingency margins included in each price as specified in Schedule 8.2 (*Change Control Procedure*) and Schedule 7.1 (*Charges and Invoicing*).
3. A list of the agreed prices against each manpower grade in the Financial Model.
4. A list of the costs underpinning those prices for each manpower grade, Operational Service Charge, internal recharge and labour charge in the Financial Model, being the price less the margin, setting the costs and various margins set out explicitly in the cost-build-up worksheets in the Financial Model.
5. A summary of the costs broken down against each Service and/or any Deliverables to be provided by the Supplier pursuant to this Agreement.
6. Details of any other manpower costs, not already included in the rates, for all activities to be undertaken.
7. Explanation of any underlying assumptions regarding:
 - i. overtime rates;
 - ii. standard hours;
 - iii. accommodation charges; and
 - iv. discounts applied.
8. A breakdown of manpower resources by the number and type of Supplier Personnel (including any Sub-contractors) required for each Service and/or Deliverable to be provided by the Supplier pursuant to this Agreement and free of any contingency. This should also apply to third party costs.
9. The total price of the Deliverables to be provided by the Supplier pursuant to this Agreement broken down by volume, unit cost and margin.
10. Any additional activities, costs and, risks that may impact the Authority and which are not already covered by the Charges.
11. An explanation of the type and value of risk associated with the provision of the Goods and/or Services, including the amount of money attributable to each risk.
12. An explanation and supporting details of any financing costs applicable to this Agreement as set out in Schedule 7.1 (*Charges and Invoicing*).
13. The actual Charges profile for the Term in accordance with Schedule 7.1 (*Charges and Invoicing*) and monthly breakdown of Charges against the Financial Model.
14. Provide the underlying information used to apply Indexation in accordance with Schedule 7.1 (*Charges and Invoicing*).
15. Certificate of Costs annually.

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16. Provide information relating to the Service Improvement Fund.
17. Information relating to any rebates identified in Schedule 7.1 (*Charges and Invoicing*), outstanding purchase order's and/or aged debt.
18. Total revenue broken down by Charges and project revenue.
19. Forecasted spend.
20. Information in relation to commercial cover agreed with the Authority in accordance with Paragraph 9 of Schedule 8.2 (*Change Control Procedure*).
21. Any additional information as the Authority reasonably requires.

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SCHEDULE 8.1

GOVERNANCE

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SCHEDULE 8.2

CHANGE CONTROL PROCEDURE

SCHEDULE 8.2

CHANGE CONTROL PROCEDURE

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

“Amendment”		refers, collectively, to Contract Changes, Work Requests and Operational Changes;
“Atamis”		refers to the Authority’s software system to be used by the Supplier under this Agreement, through which Contract Changes shall be processed;
“Contract Request”	Change	a written request for a Contract Change which shall be substantially in the forms set out in Atamis and/or Annex 1 of this Schedule;
“Change Communication”		any Contract Change or Work Request, Impact Assessment, Change Authorisation Note or other communication sent or required to be sent by either Party to the other Party pursuant to this Schedule;
“Fast-track Change”		any Contract Change or Work Request, which the Parties will expedite in accordance with Paragraph 8 of this Schedule;
“Impact Assessment”		an assessment of any Contract Change or Work Request, in accordance with Paragraph 5 of this Schedule;
“Impact Assessment Estimate”	Assessment	has the meaning given in sub-Paragraph 3.3(b) of this Schedule;
“Operational Change”		any change to be implemented to any Operational Service, as more particularly described in Paragraph 7.2 of Part A of Schedule 2.1 (<i>Services Description</i>) and/or any other relevant Paragraphs of Part A of Schedule 2.1 (<i>Services Description</i>) that describe or direct how such change shall be carried out;
“Receiving Party”		the Party which receives a proposed Contract Change or Work Request;
“Urgent Change”		refers to any Contract Change or Work Request to which the provisions of Paragraph 9 of this Schedule apply; and
“Work Request”		a written request for a change Impact Assessment and / or activity covering ‘Small Works’, ‘Repeatable Items’, rough order of magnitude quotations, discovery / feasibility work, Projects and Programmes, as more particularly described in Annex 3 of this Schedule.

2 GENERAL PRINCIPLES OF CHANGE CONTROL PROCEDURE

2.1 Under this Agreement there are three types of Amendment available to the Parties:

- (a) Contract Changes;
- (b) Work Requests – examples of Work Requests are set out in Annex 3 of this Schedule; and
- (c) Operational Changes.

This Schedule sets out the procedures for the Parties to follow for Contract Changes (see Paragraph 3 of this Schedule) and Work Requests (see Paragraph 4 of this Schedule). The process for Operational Changes is set out in Paragraph 7.2 of Part A of Schedule 2.1 (*Services Description*) and/or any other relevant Paragraphs of Part A of Schedule 2.1 (*Services Description*) that describe or direct how such change shall be carried out.

2.2 This Schedule also contains the forms that the Authority and the Supplier shall use to initiate Contract Changes and Work Requests (as applicable). For the avoidance of doubt, these are the forms described in more detail below:

TYPE OF CHANGE	FORM TO BE USED	APPLICABLE SYSTEM
Contract Change	Contract Authorisation Note	Atamis
Work Request	Work Request Form	ITSM Product
Operational Change	Request for Change (“RFC”) Note: the RFC process is set out in Paragraph 7.2 of Part A of Schedule 2.1 (<i>Services Description</i>).	ITSM Product

2.3 This Schedule also contains the processes and forms that the Parties shall use and follow to approve Contract Changes and Work Requests, which shall be made through Atamis (for Contract Changes) or the ITSM Product (for Work Requests) in the first instance, or using the forms in Annex 1 and Annex 2 of this Schedule (respectively, as applicable) where the relevant system is not available.

2.4 For the avoidance of doubt:

- (a) where any Operational Change impacts the Charges, or changes the risk or liability under this Agreement, in any way then that Operational Change must be treated by the Parties as a Contract Change; or
- (b) if either Party is unsure whether an Amendment is an Operational Change or a Contract Change, then it must be processed as a Contract Change;

and managed in accordance with this Schedule.

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- 2.5 If a proposed Contract Change or Work Request is a Fast-track Change or an Urgent Change, then the Contract Change or Work Request (as applicable) shall be processed in accordance with Paragraph 8 or 9 of this Schedule, respectively.
- 2.6 The Authority requires the Supplier to provide an ITSM service for the processing and tracking of all Work Requests and Operational Changes (as more particularly described in Part A of Schedule 2.1 (*Services Description*)).

3 INITIATION OF CONTRACT CHANGES

- 3.1 Either Party may request a Contract Change at any time during the Term by issuing a Contract Change Request.
- 3.2 Contract Change Requests shall be initiated through Atamis and shall be substantially in the form set out in Annex 1.
- 3.3 Unless this Agreement otherwise requires, where the Contract Change Request is issued by the:
- (a) Supplier, then the Supplier shall also provide an Impact Assessment to the Authority (for review by the IT Change and Improvement Board) as soon as is reasonably practicable but in any event within 10 Working Days of the date of issuing the Contract Change Request; or
 - (b) Authority, then the Supplier shall provide as soon as reasonably practical and in any event within ten (10) Working Days of the date of receiving the Contract Change Request an estimate ("**Impact Assessment Estimate**") of the cost of preparing an Impact Assessment and the timetable for preparing it. The timetable shall provide for the completed Impact Assessment to be received by the Authority within ten (10) Working Days of acceptance of the Impact Assessment Estimate or within any longer time period agreed by the Authority.
- 3.4 If the Authority accepts an Impact Assessment Estimate then following receipt of notice of such acceptance the Supplier shall provide the completed Impact Assessment to the Authority as soon as is reasonably practicable and in any event within the period agreed in the Impact Assessment Estimate. If the Supplier requires any clarification in relation to the Contract Change Request before it can deliver the Impact Assessment, then it shall promptly make a request for clarification to the Authority and provided that sufficient Information is received by the Authority to fully understand the:
- (a) nature of the request for clarification; and
 - (b) reasonable justification for the request;
- the time period to complete the Impact Assessment shall be extended by the time taken by the Authority to provide that clarification. The Authority shall respond to the request for clarification as soon as is reasonably practicable.
- 3.5 The Authority (acting through the IT Change and Improvement Board), shall have the right to request amendments to, approve, or reject a Contract Change Request in the manner set out in Paragraph 6 of this Schedule.
- 3.6 The Supplier shall have the right to reject a Contract Change Request solely in the manner set out in Paragraph 7 of this Schedule.
- 3.7 Until a Change Authorisation Note has been signed and issued by the Authority then:
- (a) unless the Authority expressly agrees (or requires) in writing, the Supplier shall continue to supply the Goods and Services in accordance with the existing terms of this Agreement as if the proposed Contract Change did not apply; and

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- (b) any discussions, negotiations or other communications which may take place between the Parties in connection with any proposed Contract Change (including the submission of any Change Communications) shall be without prejudice to each Party's other rights under this Agreement.

3.8 The Supplier shall (at its cost):

- (a) within 10 Working Days of the Authority's signature and issue of a Change Authorisation Note, deliver to the Authority a copy of this Agreement updated to reflect all Contract Changes agreed in the relevant Change Authorisation Note (and annotated with a reference to the Change Authorisation Note pursuant to which the relevant Contract Changes were agreed); and
- (b) thereafter provide to the Authority such further copies of the updated Agreement as the Authority may from time to time request.

3.9 Unless otherwise provided in this Agreement, no Contract Change shall be implemented by the Supplier until a Contract Change Authorisation Note has been signed and issued by the Authority (acting through the IT Change and Improvement Board or the Authority's central commercial management team).

4 INITIATION OF WORK REQUESTS

4.1 Either Party may issue a Work Request to the other Party at any time during the Term. Examples of Work Requests are listed in Annex 3 of this Schedule.

4.2 Work Requests shall be initiated through the ITSM Product and shall be substantially in the form set out in Annex 2 of this Schedule.

4.3 Unless this Agreement otherwise requires, where the Work Request is issued by the:

- (a) Supplier, then the Supplier shall also provide an Impact Assessment to the Authority (for review by the IT Change and Improvement Board) as soon as is reasonably practicable but in any event within 10 Working Days of the date of issuing the Work Request; or
- (b) Authority, then the Supplier shall provide as soon as reasonably practical and in any event within ten (10) Working Days of the date of receiving the Work Request an estimate ("**Impact Assessment Estimate**") of the cost of preparing an Impact Assessment and the timetable for preparing it. The timetable shall provide for the completed Impact Assessment to be received by the Authority within ten (10) Working Days of acceptance of the Impact Assessment Estimate or within any longer time period agreed by the Authority.

4.4 If the Authority accepts an Impact Assessment Estimate then following receipt of notice of such acceptance the Supplier shall provide the completed Impact Assessment to the Authority as soon as is reasonably practicable and in any event within the period agreed in the Impact Assessment Estimate. If the Supplier requires any clarification in relation to the Work Request before it can deliver the Impact Assessment, then it shall promptly make a request for clarification to the Authority and provided that sufficient Information is received by the Authority to fully understand the:

- (a) nature of the request for clarification; and
- (b) reasonable justification for the request;

the time period to complete the Impact Assessment shall be extended by the time taken by the Authority to provide that clarification. The Authority shall respond to the request for clarification as soon as is reasonably practicable.

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- 4.5 The Authority (acting through the IT Change and Improvement Board), shall have the right to request amendments to, approve, or reject a Work Request in the manner set out in Paragraph 6 of this Schedule.
- 4.6 The Supplier shall have the right to reject a Work Request solely in the manner set out in Paragraph 7 of this Schedule.
- 4.7 Unless otherwise provided in this Agreement, no Work Request shall be implemented by the Supplier until the relevant section (Part C) of the Work Request form has been signed and issued by the Authority (acting through the IT Change and Improvement Board or the Authority's central commercial management team).
- 4.8 If, and to the extent that, any Work Request requires Testing and/or a programme for implementation, then the Parties shall follow the procedures set out in Schedule 6.2 (*Testing Procedures*). Where appropriate, the Work Request form relating to such Work Request shall specify any Milestones and/or a Key Milestone and Milestone Date(s) in respect of such Work Request for such procedures.
- 4.9 Until Part C of the Work Request form has been signed and issued by the Authority then:
- (a) unless the Authority expressly agrees (or requires) in writing, the Supplier shall continue to supply the Goods and Services in accordance with the existing terms of this Agreement as if the proposed Work Request did not apply; and
 - (b) any discussions, negotiations or other communications which may take place between the Parties in connection with any proposed Work Request (including the submission of any Change Communications) shall be without prejudice to each Party's other rights under this Agreement.
- 4.10 As soon as Part C of the Work Request form has been signed and issued by the Authority then the Supplier shall (at its cost):
- (a) deliver to the Authority, within ten (10) Working Days of the Authority's signature, a copy of this Agreement updated to reflect all agreed Work Requests in the relevant Work Request form (annotated with a reference to the Work Request form pursuant to which the relevant Work Requests were agreed); and
 - (b) thereafter provide to the Authority such further copies of the updated Agreement as the Authority may from time to time request

5 IMPACT ASSESSMENT FOR CONTRACT CHANGES AND WORK REQUESTS

- 5.1 Each Impact Assessment shall be completed in good faith and shall include:
- (a) details of the proposed Contract Change or Work Request (as applicable) including the reason for the Contract Change or Work Request; and
 - (b) details of the impact of the proposed Contract Change or Work Request on the Supplier's provision of the Goods and Services, the Optional Services (if any) and the Supplier's ability to meet its other obligations under this Agreement;
 - (c) any variation to the terms of this Agreement that will be required as a result of the Contract Change, including changes to:
 - (i) the Services Description, the Performance Indicators and/or the Target Performance Levels;
 - (ii) the format of Authority Data (as set out in Part A of Schedule 2.1 (*Services Description*));

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- (iii) the Milestones, Implementation Plan and any other timetable previously agreed by the Parties; and
 - (iv) other services provided by third party contractors to the Authority, including any changes required by the proposed Change to the Authority's IT infrastructure;
 - (d) details of the cost of implementing the proposed Contract Change or Work Request;
 - (e) details of the ongoing costs required by the proposed Contract Change or Work Request when implemented, including any increase or decrease in the Charges, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;
 - (f) a timetable for the implementation, together with any proposals for the Testing of the Contract Change or Work Request;
 - (g) details of how the proposed Contract Change or Work Request will ensure compliance with any applicable Change in Law;
 - (h) such other Information as the Authority may reasonably request in (or in response to) the Contract Change or Work Request, including the impact of the Contract Change or Work Request (if any) on the then subsisting Exit Plan; and
 - (i) any Authority Responsibilities agreed between the Parties in relation to the Contract Change or Work Request.
- 5.2 If the Contract Change or Work Request involves the processing or transfer of any Personal Data outside the UK (either directly or through an appointed Sub-processor), other than to the Controller, the preparation of the Impact Assessment shall also be subject to the relevant provisions of Clause 24 (*Protection of Personal Data*) and Schedule 11 (*Processing of Personal Data*).
- 5.3 Subject to Paragraph 5.4, the Authority (acting through the IT Change and Improvement Board) shall review the Impact Assessment and respond to the Supplier in accordance with Paragraph 6 of this Schedule within fifteen (15) Working Days of receipt.
- 5.4 If the Authority is the Receiving Party and the Authority reasonably considers that it requires further Information regarding the proposed Contract Change or Work Request so that it may properly evaluate the Contract Change or Work Request and the relevant Impact Assessment, then within five (5) Working Days of receiving the Impact Assessment, it shall notify the Supplier of this fact and detail the further Information that it requires. The Supplier shall then re-issue the relevant Impact Assessment to the Authority within ten (10) Working Days of receiving such notification. At the Authority's discretion, the Parties may repeat the process described in this Paragraph 5.4 until the Authority is satisfied that it has sufficient Information to properly evaluate the Contract Change or Work Request and Impact Assessment.
- 5.5 The calculation of costs for the purposes of Paragraphs 5.1(d) and (e) of this Schedule shall:
- (a) be based on the Financial Model;
 - (b) facilitate the Financial Transparency Objectives;
 - (c) include volumes of each type of resource to be employed and the applicable rate card;
 - (d) include full disclosure of any assumptions underlying such Impact Assessment;
 - (e) include evidence of the cost of any assets required for the Contract Change or Work Request; and

- (f) include details of any new Sub-contracts necessary to accomplish the Contract Change or Work Request.

6 AUTHORITY'S RIGHT OF APPROVAL FOR CONTRACT CHANGES AND WORK REQUESTS

6.1 Within fifteen (15) Working Days of receiving the Impact Assessment from the Supplier or within ten (10) Working Days of receiving the further Information that it may request pursuant to Paragraph 5.4 of this Schedule, the Authority (acting through the IT Change and Improvement Board with approval as appropriate from the IT Programme Board or the Head of IT Service Management (for Work Requests classified under Annex 3 of this Schedule as either a 'Small Work' or a 'Repeatable Item')) shall evaluate the Contract Change or Work Request and the Impact Assessment and shall either:

- (a) approve the proposed Contract Change or Work Request (in which case the Parties shall follow the procedure set out in Paragraph 6.2 below);
- (b) reject the Contract Change or Work Request, in which case it shall notify the Supplier. The Authority shall not reject any proposed Contract Change or Work Request to the extent that the Contract Change or Work Request is necessary for the Supplier or for the Supplier's compliance with any Change in Law in regards to the provision of the Goods and/or Services (as applicable). If the Authority does reject a Contract Change that was initiated by the Supplier, then it shall explain its reasons in writing to the Supplier as soon as is reasonably practicable following such rejection;
- (c) if the Authority reasonably believes that a Contract Change, Work Request or Impact Assessment contains any errors or omissions, the Authority will require the Supplier to modify the relevant document accordingly, and the Supplier shall make such modifications within five (5) Working Days of such request. Subject to Paragraph 5.4 of this Schedule, on receiving the modified Contract Change, Work Request and/or Impact Assessment (as applicable), the Authority shall approve or reject the proposed Contract Change or Work Request within ten (10) Working Days; or
- (d) if the Authority (acting through the IT Change and Improvement Board) is undecided whether to accept or reject the Contract Change or Work Request, reserves the right to delay issuing its approval or rejection of the proposed Contract Change, providing its reasons and the length of the proposed delay. Where the delay extends beyond the validity period applicable to the relevant Contract Change or Work Request it is the Supplier's decision whether the proposal should be updated prior to approval from the Authority.

6.2 If the IT Change and Improvement Board approves the proposed Contract Change or Work Request pursuant to Paragraph 6.1 of this Schedule and Schedule 8.1 (*Governance*), and it has not been rejected by the Supplier in accordance with Paragraph 7 of this Schedule, then the Authority shall inform the Supplier and the Supplier shall prepare the Change Authorisation Note or approved Work Request form (as applicable) which it shall sign electronically and deliver to the Authority for its electronic signature. On the Authority's signature, the Change Authorisation Note or signed Work Request form shall constitute (or, where the Authority has agreed to or required the implementation of a Contract Change or Work Request prior to signature, shall constitute confirmation of) a binding variation to this Agreement.

7 SUPPLIER'S RIGHT OF APPROVAL FOR CONTRACT CHANGES AND WORK REQUESTS

7.1 Following an Impact Assessment, if the Supplier:

- (a) reasonably believes that any proposed Contract Change or Work Request which is requested by the Authority would:

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- (i) materially and adversely affect the risks to the health and safety of any person; and/or
 - (ii) require the provision of the Goods and/or Services to be performed in a way that infringes any Law; and/or
- (b) demonstrates to the Authority's reasonable satisfaction that the proposed Contract Change or Work Request is technically impossible to implement and neither the Supplier Solution nor the Services Description state that the Supplier does have the technical capacity and flexibility required to implement the proposed Contract Change or Work Request,

then the Supplier shall be entitled to reject the proposed Contract Change or Work Request and shall notify the Authority of its reasons for doing so within five (5) Working Days after the date on which it is obliged to deliver the relevant Impact Assessment pursuant to sub-Paragraph 3.3(a) or 4.3(a) of this Schedule (as applicable).

8 FAST-TRACK CHANGES FOR CONTRACT CHANGES AND WORK REQUESTS

8.1 The Parties acknowledge that, to ensure operational efficiency, there may be circumstances where it is desirable to expedite the Contract Change and Work Requests processes set out above.

8.2 The provisions of this Paragraph 8 will apply, without limit, if:

- (a) the proposed Work Request can be classified under Annex 3 of this Schedule either as a "Small Work" or "Repeatable Item";
- (b) relate to obligations that are already performed frequently by the Supplier directly (and not any Sub-contractor) under this Agreement;
- (c) the Authority (acting reasonably) considers that the proposed Contract Change is suitable to be carried out as a Fast-track Change;
- (d) the Work Request for "Projects" (identified in Annex 3 of this Schedule) unless the Supplier (acting reasonably) can demonstrate that it is not technically possible to carry out the Work Request as a Fast-track Change;
- (e) have no obvious impact on any other part of the Goods and/or Services such that the IT Change and Improvement Board's approval is not required (other than that which is the subject matter of the Contract Change or Work Request); or
- (f) directly and substantially relate to a Contract Change or Work Request that was previously eligible for the expedited procedure set out in this Paragraph 8.

8.3 Where this Paragraph 8 applies, the Parties shall confirm to each other in writing that they shall use the applicable processes in Paragraphs 3 to 7 of this Schedule (inclusive) but with the following reduced timescales, such that any period of:

- (a) fifteen (15) Working Days is reduced to five (5) Working Days;
- (b) ten (10) Working Days is reduced to two (2) Working Days; and
- (c) five (5) Working Days is reduced to one (1) Working Day.

8.4 Where the reduced timescales set out in Paragraph 8.3 above cannot be met by the Supplier for any technical reason, the Supplier will advise the Authority of the fastest available time that it can achieve (using all reasonable efforts) provided that such time must be faster than the timescales ordinarily applicable to Contract Changes or Work Requests.

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- 8.5 The Parties may agree in writing to revise the parameters set out in Paragraph 8.2 of this Schedule from time to time.

9 URGENT CHANGES FOR CONTRACT CHANGES AND WORK REQUESTS

- 9.1 The Parties acknowledge that there may be circumstances where it is required to further expedite the Change Control Procedure in order to deal with Urgent Changes. Either Party may (acting reasonably) request that a Change is processed as an Urgent Change.
- 9.2 In respect of an Urgent Change, the requesting Party will notify the other Party by telephone, or e-mail in advance of its submission of a Contract Change or Work Request, and the Parties shall use all reasonable endeavours to expedite the Change Control Procedure.
- 9.3 Following the notification under Paragraph 9.2 above, a Contract Change or Work Request will then be submitted in writing or by email or via Atamis or the ITSM Product (as applicable) by the authorised representative of the Authority to the authorised representative of the Supplier, who will promptly (and in any event within 24 hours of receipt), acknowledge receipt in writing or by e-mail or via Atamis or the ITSM Product (as applicable) to the authorised representative of the Authority
- 9.4 Where a Contract Change or Work Request has been issued in accordance with Paragraph 9.3 above to carry out the Urgent Change, any Charges relating to such Contract Change or Work Request shall be deemed to be capped in total at £10,000 unless a different amount is authorised by the Authority in the Contract Change or Work Request and in which case such different amount shall apply.
- 9.5 On receipt of such Contract Change or Work Request, the Supplier shall promptly commence working on such Urgent Change. Unless otherwise agreed by the Authority, and until such time as the applicable Change Authorisation Note or Work Request form is agreed to include such Charges, any Charges incurred by the Supplier in relation to the Urgent Change that are in excess of any capped Charges under Paragraph 9.4 above shall not be due to the Supplier or chargeable to the Authority.
- 9.6 Save as otherwise set out in this Agreement, the terms and conditions of this Agreement, including the limitations of liability set out therein, shall apply to any and all Urgent Changes authorised in accordance with Paragraph 9.4 of this Schedule. Upon authorisation of an Urgent Change as detailed in and subject to the terms of Paragraph 9.5 of this Schedule (including the provisions relating to the cap on the Charges for carrying out the Urgent Change), the Supplier shall be entitled to invoice in arrears, on a monthly basis from the month in which the Charges were incurred, all Charges incurred as a direct result of the Supplier fulfilling such Urgent Change and the Authority shall pay all such Charges (where applicable) up to any cap in accordance with Paragraph 9.4 of this Schedule, as reasonably evidenced by the Supplier.
- 9.7 All Charges incurred in relation to the Urgent Change shall be in accordance with the charging mechanisms of the Agreement. As soon as reasonably practicable after an Urgent Change has been authorised by the Authority under Paragraph 9.5 of this Schedule, an Impact Assessment and Change Authorisation Note or Work Request form will be raised for authorisation by the Authority.
- 9.8 From the date a Change Authorisation Note in relation to the relevant Urgent Change is agreed by the Parties:
- (a) the terms and conditions set out in such authorised Impact Assessment and Change Authorisation Note or Work Request form shall be deemed to apply to such Urgent Change from the date of authorisation of such Urgent Change; and
 - (b) any previous terms and/or Charges authorised by the Authority under Paragraph 9.4 of this Schedule shall no longer apply in relation to such Urgent Change.