

OFFICIAL – COMMERCIAL

## **SCHEDULE 7.5**

### **TRANSPARENCY, FINANCIAL REPORTS AND AUDIT RIGHTS**

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#### PART A

##### Financial Transparency Objectives and Open Book Data

#### **1. FINANCIAL TRANSPARENCY OBJECTIVES**

- 1.1. The Supplier acknowledges that the provisions of this Schedule 7.5 are designed (inter alia) to facilitate, and the Supplier shall co-operate with the Authority in order to achieve, the following objectives:
- 1.1.1. for the Authority to understand any payment sought from it by the Supplier including an analysis of the costs, Service Charges, Supplier Premises Charges, and fees, and time spent by Supplier Personnel in providing the Services and the Target Fee;
  - 1.1.2. for both Parties to be able to understand the Payment Model as at the Effective Date and the Payment Model Template, Estate Model, Outturn Report, Supplier Premises Outturn Report, and any report in respect of the Supplier Premises TCIF Mechanism and/or the Supplier Premises ACM Mechanism and to have confidence that these are based on justifiable numbers and appropriate forecasting techniques;
  - 1.1.3. 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 Charges;
  - 1.1.4. for both Parties to be able to review, address issues with and re-forecast progress in relation to the provision of the Services;
  - 1.1.5. for the Parties to challenge each other with ideas for efficiency and improvements;
  - 1.1.6. to enable the Authority to demonstrate that it is achieving value for money relative to current market prices; and
  - 1.1.7. all financial documents and models prepared by the Supplier shall be consistent with each other in the use of terminology, presentation, underlying structure and Cost Breakdown Structure (CBS),
- (together the “Financial Transparency Objectives”).

#### **2. SUPPLIER FINANCIAL REPORTING SYSTEMS**

- 1.1. The Supplier shall throughout the Term maintain a Supplier Financial Reporting Systems in respect of this Agreement which shall be used by the Supplier for its own internal finances and which the Authority may at any time review pursuant to the provisions of this Schedule 7.5.
- 1.2. The Supplier shall ensure that the Supplier Financial Reporting Systems are consistent with the CBS notified to the Authority pursuant to paragraph 2 of Part B to this Schedule 7.5.

- 1.3. The Supplier Financial Reporting Systems shall provide the volumes, costs and Charges as at the Effective Date. The Supplier Financial Reporting Systems shall include sufficient detail to enable the Authority (upon review by the Authority) to have full visibility of the Supplier's variance analysis in respect of actual, budgeted and forecast volume performance and costs during the life of the Agreement.
- 1.4. The Supplier shall ensure that the cost centre taxonomy used within the Supplier Financial Reporting Systems and any other financial reports and Cost MI required under this Schedule 7.5, is ring-fenced within the Supplier's overall cost centre structure.

### **3. COST TRANSPARENCY AND COST MANAGEMENT INFORMATION**

- 1.1. During the Term, and for a period of seven (7) years following the end of the Term, the Supplier shall maintain and retain all Open Book Data upon which the Cost MI is based.
- 1.2. During the Term, the Supplier shall report to the Authority, produce records and provide the Authority with complete transparency (in accordance with the Financial Transparency Objectives) and full access to all the Cost MI in accordance with this paragraph and in doing so shall:
  - 1.1.8. consistently, openly, willingly and proactively share with the Authority the information that the Supplier collects and uses internally to deliver and manage its delivery of the Services;
  - 1.1.9. ensure that the Authority is not reliant solely on the accuracy of the Authority's own enquiries to elicit information that may be relevant to the effective operation of this Agreement and can rely on the information prepared, recorded and provided by the Supplier;
  - 1.1.10. maintain the purpose and derivation of the information throughout the Term, including during and after the implementation of any Changes;
  - 1.1.11. enable the Authority to carry out efficient and timely root-cause analyses;
  - 1.1.12. ensure that all Cost MI provided or made available to the Authority is the same as the Cost MI the Supplier uses for its own reporting;
  - 1.1.13. provide Cost MI that requires no or minimal reprocessing by the Authority to understand, verify and validate and does not require the Authority to draw its own conclusions from voluminous, disparate, disorganised and unconnected data;
  - 1.1.14. maintain the capability to provide financial modelling, financial analysis, performance analysis and any other activities relating to the production and analysis of the Cost MI;
  - 1.1.15. promptly rectify errors identified in Cost MI and re-imburse the Authority for any excess sums paid by the Authority, or any associated costs or expenses incurred by the Authority, as a result of such errors.
- 1.3. The Supplier shall ensure that the Cost MI is at all times comprehensive, complete, up-to-date and accurate.
- 1.4. During the Term, the Cost MI shall be produced, stored and maintained:
  - 1.1.1. consistently with the Supplier's own internal policies and in accordance with Good Industry Practice;

- 1.1.2. in chronological order, as appropriate for the Cost MI concerned and where such an approach is in keeping with Good Industry Practice;
  - 1.1.3. within organised systems, in a form which maintains their integrity, context and authenticity and which enables the efficient audit and inspection of the Cost MI by the Authority pursuant to this Schedule 7.5;
  - 1.1.4. using a method of storage which allows reasonable access and duplication by the Authority in accordance with this Agreement;
  - 1.1.5. so as to enable full visibility of costs within the CBS hierarchy;
  - 1.1.6. in such a manner that the Authority and/or a Replacement Supplier(s) could, if required, commence the provision of the Replacement Services immediately on expiry or termination of this Agreement; and
  - 1.1.7. so as to enable clear and straightforward segregation and visibility of the Cost MI relating to this Agreement from any other records of the Supplier and the transfer of the Cost MI to the Authority and/or a Replacement Contractor efficiently and without undue expense or delay on expiry or termination in whole or part of this Agreement.
- 1.5. The Supplier shall ensure that the Cost MI is at all times:
- 1.1.1. updated and stored in safe storage, all in accordance with the security requirements set out in this Agreement and that they are audited by the Supplier at intervals not exceeding twelve (12) Months; and
  - 1.1.2. kept at such location or locations as are agreed by the Authority, such agreement not to be unreasonably withheld.
  - 1.1.3. Without prejudice to any requirement of Law, all Cost MI shall be retained for no less than a period of seven (7) years after creation. Cost MI which has been superseded but is still of historical, contractual or legal significance shall be retained for at least seven (7) years after being superseded.
- 1.6. At the request of the Authority, which request shall be made whilst this Agreement remains in effect or within seven (7) years following expiry or termination of this Agreement, the Supplier shall provide reasonable assistance to the Authority and its agents in exercising the rights granted under this Schedule 7.5. The Supplier shall provide such facilities as the Authority may reasonably require for its representatives to visit any place where the Cost MI is held.
- 1.7. Where the Supplier provides information using Microsoft Excel, all information deliverables will be built to such a standard that a person reasonably skilled in operating Microsoft Excel will be able to understand and use such information.
- 1.8. The Supplier shall submit Cost MI and financial reports to the Authority by way of spreadsheets prepared in Microsoft Excel and which are compatible with Microsoft Excel version 2002 until such time that the Authority notifies the Supplier that the Authority's IT infrastructure has migrated to Microsoft Excel 2010, or any other spreadsheet programme as may be agreed, after which time the Supplier shall submit reports which are compatible with this replacement spreadsheet programme. All Models shall be built to the standards set out in Paragraph 8 to Part A of this Schedule 7.5. Where Cost MI spreadsheets and models contain hard-coded data that has been sourced from supporting models, the Supplier shall provide reasonable access without undue delay to the Authority to review those supporting models following a request to do so by the Authority.

- 1.9. The Supplier shall ensure that, in respect of all Services provided under this Agreement, the Authority shall at all times have access to full details of all sums charged by the Supplier and all Sub-contractors throughout the relevant subcontracting chain, so that all Supplier costs, cost components, cost savings and profits at every level are clearly visible to the Authority, together with such other information as the Authority may reasonably require from time to time to facilitate its clear understanding of such details.
- 1.10. The Supplier shall use, and shall procure that the Key Sub-contractors shall use, a financial accounting system that complies with the requirements of this paragraph 3.
- 1.11. The Supplier shall if requested by the Authority, for all Sub-contractors, be responsible for demonstrating to the Authority how value for money is achieved in the procurement of the relevant Services.
- 1.12. The Supplier shall ensure that all Cost MI:
  - 1.1.1. is provided in accordance with Clause 12, Schedule 8.4 (Records Provisions/Management Information) and the provisions set out in this Schedule 7.5;
  - 1.1.2. is relevant and presented at an appropriately meaningful level of detail to inform and enable the decision-making process (e.g. not at such a high level that it fails to provide sufficient detail, and not so detailed as to make it unmanageable);
  - 1.1.3. includes clear narrative explanations which describe:
    - (a) the information captured by the Supplier;
    - (b) where it comes from;
    - (c) what it means;
    - (d) how it is used; and
    - (e) the interfaces, tools and systems capabilities used by the Supplier to provide it;
    - (f) and which direct the recipient's attention to significant and/or relevant matters, including the Supplier's key management insights and any issues requiring management attention from the Supplier or which would require a management intervention by the Supplier.
- 1.2. The Supplier shall, in relation to the Cost Breakdown Structure ("CBS") as set out in the CBS Document:
  - 1.1.16. ensure the Cost MI uses and is aligned to the CBS;
  - 1.1.17. ensure that the CBS and financial reporting structure it uses in order to provide the Cost MI to the Authority:
    - (a) is at all times the same as the CBS and financial reporting structure used by the Supplier for its own management and reporting purposes in relation to the Services and this Agreement;
    - (b) is at all times the same as the Supplier Financial Reporting Systems except to the extent the CBS has been amended in accordance with the change provisions of Schedule 8.2 (Change Control Procedure); and

- (c) enables the Authority on request to investigate and penetrate any level of the CBS available to the Supplier and/or its Key Sub-contractors.

#### **4. CHANGES TO THE FINANCIAL REPORTS**

- 1.1. Where the Supplier proposes changes to the CBS the Supplier, as part of the Change Control Procedure, shall provide the Authority with:
  - 1.1.18. precise details of the amendment being proposed;
  - 1.1.19. the rationale for the proposed amendment with supporting evidence and documentation;
  - 1.1.20. the expected impact of the proposed amendment on any other MI and, where relevant, any other impact on the Agreement (including the impact on the Financial Transparency Objectives); and
  - 1.1.21. any other further information which the Authority may reasonably require in order to decide whether to Approve or reject the change.
- 1.2. In relation to all changes to the Cost MI Approved in accordance with the Change Control Procedure, the Supplier shall maintain full version control by, but not limited to:
  - 1.1.1. keeping a change control log that:
    - (a) records the version of the Cost MI subject to the change and the version of the Cost MI that contains the change;
    - (b) records the nature of the changes made to a level of detail that enables a person reasonably skilled in operating Microsoft Excel to understand and use such information;
    - (c) records the rationale for the amendment with supporting evidence and documentation;
    - (d) records the impact of the amendment including a detailed reconciliation and explanation by reference to inputs to or the logic or the presentation of the Cost MI that gives rise to a change in the outputs of the Cost MI presented;
    - (e) records who has made the changes and who has authorised the changes.
  - 1.1.2. updating the Cost MI Version Log; and
  - 1.1.3. updating the CBS Document as applicable to ensure consistency (such changes to be notified to the Authority for Approval).

#### **5. REFERENCE COST MI**

- 1.1. The Authority shall maintain a single reference version of the Cost MI. In case of any unexplained difference between the Cost MI provided by the Supplier and the reference version of the Cost MI held by the Authority, the Authority's reference version of the Cost MI shall be authoritative.
- 1.2. Subject to Paragraph 5.1 of this Part A, when a revised version of an element of Cost MI has been delivered to the Authority and accepted in accordance with this Paragraph 5, it shall become the reference version of the Cost MI held by the Authority and shall supersede any previous versions of the Cost MI and shall constitute the definitive, binding version of the Cost MI.

## **6. OPERATING INSTRUCTIONS AND TRAINING**

- 1.1. The Supplier shall provide electronic operating instructions (“Operating Instructions”) in respect of each element of Cost MI. The Operating Instructions shall:
  - 1.1.22. explain how to access the Cost MI;
  - 1.1.23. explain the operation of the Cost MI to a user familiar with working with cost and financial information who needs to use the Cost MI consistent with its stated purpose;
  - 1.1.24. explain the logical construction and derivation of the Specified MI at a level that is readily understandable to a user familiar with working with cost and financial information; and
  - 1.1.25. where the Cost MI is provided by way of Models built in Microsoft Excel provide a technical developer guide that contains enough detail for an experienced modeller to operate and amend the Models and manage them for the purposes of business continuity.
- 1.1.1. The Supplier shall provide the Authority with training (which may include the provision of appropriate material (“Training Material”)) in relation to the Cost MI, where the provision of Operating Instructions alone is deemed insufficient by the Authority to enable its users to access and use the MI consistent with its stated purpose.

## **7. FURTHER INFORMATION**

- 1.1. The Authority may upon reasonable notice require the Supplier to submit information to support or substantiate any aspect of the Cost MI, including any other supporting documentation or information required under this Agreement or reasonably required by the Authority and which the Supplier shall supply within a reasonable time at no additional cost to the Authority.

## **8. COMPLIANCE WITH THIS SCHEDULE**

- 1.2. A failure to comply with the provisions of this Schedule 7.5 by the Supplier shall not entitle the Authority to withhold any payment otherwise due to the Supplier, provided that such failure is inadvertent and is not material in scope.

## **PART B**

### **Financial Reports**

#### **1. PROVISION OF THE FINANCIAL REPORTS**

- 1.1. The Supplier shall provide the financial reports set out in this Part B in accordance with the provision stated below and in accordance with the provisions of this Agreement.
- 1.2. The Authority reserves the right during the Term to request further financial reports from the Supplier and the Supplier shall provide the requested financial reports in accordance with the Authority's reasonable requests. Pursuant to the Cost MI provisions set out in this Schedule 7.5 and the obligation on the Supplier to maintain comprehensive and readily accessible Cost MI information, the Supplier shall not be entitled to any additional costs for preparing the further Financial reports reasonably requested by the Authority.

#### **1. COST BREAKDOWN STRUCTURE DOCUMENT ("CBS Document")**

- 1.3. The CBS Document shall be delivered to the Authority within ten (10) Working Days of the Effective Date (or by such later date as is agreed) and in an updated form thereafter within ten (10) Working Days of any amendment made in accordance with the Change Control Procedure.
- 1.4. The CBS Document shall:
  - 1.4.1. contain a glossary setting out a clear definition of each CBS element;
  - 1.4.2. show the CBS Elements for each business process;
  - 1.4.3. show the same CBS as represented in the Supplier Financial Reporting Systems, except to the extent that the CBS has been amended in accordance with the change provisions of this Schedule 7.5; and
  - 1.4.4. show the definitive taxonomy of their cost centre and account code structure that will be deployed to capture costs for the delivery of this service.
- 1.5. The CBS Document shall be available at all times to the Authority both in electronic and hard copy.

#### **1. THE OUTTURN REPORT**

- 1.1. The Outturn Report provides an analysis of the actual operational volumes, costs, charges incurred in the delivery of the Services.
- 1.2. The Outturn Report also sets out all material assumptions underpinning the volumes, costs and charges applicable to this Outturn Report and the Supplier's Financial Operating Systems.
- 1.3. The Supplier shall within fifteen (15) Working Days of the end of each Service Period provide the Authority with a financial report which sets out a summary of the costs incurred for the Service Period in sufficient detail to reasonably enable the Authority to undertake validation of the Supplier's invoice in relation to that Service Period, such detail shall include (but shall not be limited to):
  - 1.1.1. full breakdown of the costs incurred in the Service Period using CBS; and



1.1.2. to the extent that the costs incurred differ from the Pricing Structure, a demonstration to the Authority's reasonable satisfaction of:

- (a) the reasons for any differences;
- (b) the effect of such differences on the Charges and Gainshare or Painshare payable.

1.4. The Outturn Report shall:

- 4.4.1. provide historical and forecast costs on a Monthly basis (and the Supplier shall update the forecast on a monthly basis) for the Term and such costs shall be presented separately according to CBS Element;
- 4.4.2. reflect the CBS;
- 4.4.3. be able to summarise monthly data on a discrete and cumulative quarterly and annual basis;
- 4.4.4. be fully and transparently aligned with the Supplier Financial Reporting Systems and use consistent values, terminology and CBS;
- 4.4.5. be provided in a format and structure agreed to the reasonable satisfaction of the Authority and maintained in this format and structure except where updated for Changes;
- 4.4.6. be certified by the Supplier's Finance Director as being true and correct and in accordance with US GAAP and UK GAAP / IFRS;
- 4.4.7. state in accordance with Schedule 7.1 (Charges and Invoicing) the Supplier's actual volumes, Actual Costs, service costs incurred, service costs payable, Pass-through Costs, Setup Costs, Fees and CBS; such information to be consistent with and aligned to the Payment Model as at the Effective Date. For the purposes of this paragraph (g), Actual Costs are all amounts supported by invoices paid or payable or amounts accrued using reasonable estimation techniques in accordance with UK GAAP;
- 4.4.8. if necessary, be updated each Month to reflect any changes in assumptions in respect of the Outturn Report and the Supplier's Financial Reporting Systems.

1.5. The Outturn Report shall be available at all times to the Authority both in an electronic copy and as an export to Microsoft Excel, and such that it may be electronically downloaded.

## **5. THE FINANCIAL REPORTS VERSION LOG**

5.1. The financial reports Version Log maintains the master log of all versions of all financial reports required under this Part B of this Schedule.

5.2. The Financial Reports Version Log shall:

- 1.1.1. Record the following details of every element of the financial reports:
  - (a) Name;
  - (b) Financial reports type, e.g, the Outturn Report, Monthly Financial Report etc.

- (c) Status, i.e, whether draft or final version;
- (d) Supplier approver name;
- (e) Approval date; and
- (f) Whether it is the current, prevailing, version of the relevant item, or has been superseded and archived.

5.2.2. Record all prior versions of each element of the Financial Report.

5.2.3. Explain the conventions used to name each element of the Financial Report, together with user instructions for naming future versions of the Financial Report as they are individually updated in accordance with the provisions of this Schedule.

5.2.4. The Financial Reports Version Log shall be available at all times to the Authority both in an electronic format and in hard copy.

## PART C

### Audit Rights

#### 1. AUDIT RIGHTS

1.1 In addition and without prejudice to the audit rights set out at Section 41 of Schedule 2.1 (Service Requirements) which relate to audits undertaken by the Independent Assessment Assurance Provider, the Authority, acting by itself or through its Audit Agents, shall have the right at any time 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 Agreement, including for the following purposes:

- 1.1.1. to verify the integrity and content of any financial report;
- 1.1.2. to verify the accuracy of the costs, Charges, Incentivisation provisions, Award Fees, Stability Award Fees, Pass-through costs, staff timesheets, investment, Cost MI, and set-up costs, and any other amounts payable by the Authority under this Agreement (and proposed or actual variations to such Charges and payments);
- 1.1.3. to verify the Costs (including the amounts paid to all Sub-contractors and any third party suppliers);
- 1.1.4. to verify the Certificate of Costs and/or the Cost MI;
- 1.1.5. to verify that the financial reports and Cost MI are consistent with the Supplier Financial Reporting Systems;
- 1.1.6. to obtain such information as is necessary to enable the Authority to consider any future expenditure or investment under the Agreement;
- 1.1.7. to verify the Supplier's and each Key Sub-contractor's compliance with this Agreement and applicable Law;
- 1.1.8. 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;
- 1.1.9. to identify or investigate any circumstances which may impact upon the financial stability of the Supplier, the Guarantor and/or any Key Sub-contractors or their ability to perform the Services;
- 1.1.10. 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;
- 1.1.11. to review any books of account and the internal contract management accounts kept by the Supplier in connection with this Agreement;
- 1.1.12. 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;
- 1.1.13. 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;

- 1.1.14. to verify the accuracy and completeness of any Management Information delivered or required by this Agreement;
  - 1.1.15. 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;
  - 1.1.16. to inspect the IT Environment (or any part of it) and the wider service delivery environment (or any part of it);
  - 1.1.17. to review the accuracy and completeness of the Registers;
  - 1.1.18. to review any records created during the design and development of the Supplier System and pre-operational environment such as information relating to testing;
  - 1.1.19. to review the Supplier's quality management systems (including all relevant quality plans and any quality manuals and procedures);
  - 1.1.20. to review the Supplier's compliance with the Standards;
  - 1.1.21. 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
  - 1.1.22. to review the integrity, confidentiality and security of the Authority Data.
- 1.2 Subject to paragraph 1.4 of this Part C and 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, or where an intention to carry out an Exceptional Audit is notified to the Supplier, the Authority may not conduct an audit of the Supplier or of the same Key Sub-contractor more than twice in any Contract Year.
- 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.
- 2. CONDUCT OF AUDITS**
- 1.1. The Authority shall provide reasonable notice prior to ordering or conducting an audit (other than in the case of Exceptional Audits) and 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.
- 1.2. 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:
- 2.2.1. all information requested by the Authority within the permitted scope of the audit, including, but not limited to, any Cost MI and Open Book Data (including data stored on IT systems) to the extent permitted under the DPA;

- 2.2.2. reasonable access to any Sites and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;
  - 2.2.3. access to the Supplier System; and
  - 2.2.4. access to Supplier Personnel.
- 1.3. 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.
  - 1.4. The Authority shall provide at least 15 Working Days' notice of its intention to conduct an audit, other than an Exceptional Audit.
  - 1.5. 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**

- 1.1. 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 require in writing that an audit is undertaken by the Supplier's own internal audit function where such audit is already planned for any of the purposes set out in Paragraph 1.1. Where an audit is not already planned by the internal audit function, the parties shall meet to agree any costs prior to any audit taking place.
- 1.2. 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:
  - 3.2.1. the resultant audit reports; and
  - 3.2.2. all relevant members of the Supplier's internal audit team for the purpose of understanding such audit reports.

### **4. RESPONSE TO AUDITS**

- 1.1. The Supplier shall have the right to respond to all audit findings and the Parties shall discuss in good faith the audit findings and attempt to resolve any disagreements. Any disagreements shall be resolved in accordance with the provisions of Clause 45. If an audit undertaken pursuant to Paragraphs 1 or 3 of this Part C identifies that:
  - 4.1.1. 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;
  - 4.1.2. there is an error in a financial report, the Supplier shall promptly rectify the error;
  - 4.1.3. the Authority has overpaid any Charges, the Supplier shall pay to the Authority:

- (a) the amount overpaid;
- (b) 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
- (c) the reasonable costs incurred by the Authority in undertaking the audit,

4.1.4. the Authority may exercise its right to deduct such amount from the Charges if it prefers; and

4.1.5. the Authority has underpaid any Charges, it will rectify such underpayment of any Charges within 30 days..

## **5.OPEN BOOK AUDITS AND REPORTING**

- 5.1 During the Term, the Supplier will provide the Authority with complete transparency (in accordance with the Financial Transparency Objectives). With regard to Financial Audits, the Supplier will provide the Authority with access to all relevant Internal Audit and Sarbanes-Oxley reports within 5 working days of being finalised and agreed internally by the Supplier.
- 5.2 Where the Supplier's Internal Audit function performs its own assurance reviews, based upon the results of a business-wide risk assessment, the results of these reviews where relevant to the Authority will be provided to the Authority.
- 5.3 The Authority will conduct regular Open Book Contract Management Assurance checks with the Supplier, in accordance with an agreed schedule of works.
- 5.4 If the internal audit reporting or reporting undertaken to meet Sarbanes-Oxley requirements, triggers a Default (as defined in Schedule 1 Definitions of the Agreement), the Supplier shall procure that the auditor who authored that report assesses whether the remedial activities undertaken by the Supplier now permit the auditor to issue an unqualified report. If the auditor issues a modified report which triggers a further Default, the Supplier shall prepare a further remedial plan and then repeat the process set out in this Clause. For clarification purposes, the Supplier Internal Audit will perform testing following remediation of any Sarbanes-Oxley control deficiencies. In the case of internal audit reviews, the Internal Audit Department charter requires follow-up when an "Improvement Needed" or "Unsatisfactory" rating is assigned (not for "Satisfactory" reports)..

## **6 EXCEPTIONAL AUDITS**

1.1. The Supplier shall permit the Authority and/or its appointed representatives access to conduct an audit (an "Exceptional Audit") of the Supplier in any of the following circumstances:

1.1.1. the Authority receives from the Supplier a qualified report on the description, design and/or operational effectiveness of the internal controls associated with the Services;

1.1.2. actual or suspected impropriety or fraud;

1.1.3. there are reasonable grounds to suspect that:

- (a) the Supplier is in Default under the Contract;
- (b) the Guarantor may be in default of the Guarantee;
- (c) the Supplier is in financial distress or at risk of insolvency or bankruptcy, or any fact, circumstance or matter which is reasonably likely to cause the Supplier financial distress and result in a risk of the Supplier becoming insolvent or bankrupt has occurred; or
- (d) a breach of the Security Policy or the Security Plan has occurred under the Contract,

(each an "Exceptional Circumstance").

- 1.2. If the Authority notifies the Supplier of an Exceptional Circumstance and that it wishes to conduct an Exceptional Audit, the Supplier shall provide access in accordance with Paragraph 2.2 as soon as reasonably practicable after such request and in any event within twenty four (24) hours.
- 1.3. The Supplier shall have the right to respond to an Exceptional Circumstance audit finding and the Parties shall discuss in good faith the audit findings and attempt to resolve any disagreements. Any disagreements shall be resolved in accordance with the provisions of Clause 45.

## **7. AUDIT COSTS**

- 7.1 The Parties shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under Paragraphs 1 to 6 of this Part C inclusive, unless any Audit identifies a material Default by the Supplier in which case (and without prejudice to all the Authority's rights and remedies in relation to such material Default whether under the Contract or otherwise) the Supplier shall reimburse:
- 7.2 the Authority for all the Authority's identifiable, reasonable costs and expenses properly incurred in the course of the audit or up to [REDACTED] (subject to indexation) per audit; and where the Authority, a Regulatory Body, or the Comptroller and Auditor General appoint another Contracting Body to conduct any audit under this Part C of Schedule 7.5, the Authority shall be able to recover on demand from the Supplier the identifiable, reasonable and properly incurred costs and expenses of the relevant Contracting Body.

## **8. PURPOSE OF AUDIT**

- 1.1. The Authority acknowledges and agrees that the purpose of any audit conducted by the Authority is to validate costs against invoices/accruals and to validate that the costs were properly incurred in the provision of the Services. The audit shall not be used to challenge the judgement of the Supplier in how the money is spent or whether a cost item could have been acquired for less.