

COMMERCIAL IN CONFIDENCE

SCHEDULE 7.1

CHARGES AND INVOICING

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Charges and Invoicing

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

- “Achieved Profit Margin”** the cumulative Supplier Profit Margin calculated from (and including) the Effective Date (or, if applicable, the date of the last adjustment to the Charges made pursuant to Paragraph 2.2 of Part D) to (and including) the last day of the previous Contract Year;
- “Anticipated Contract Life Profit Margin”** the anticipated Supplier Profit Margin relating to all Services in aggregate over the Term as reflected in the Financial Model;
- “Anticipated Service Cost”** the estimated cost associated with each Service Charge for the relevant year, excluding any Supplier Profit Margin, as set out in Annex 2;
- “Certificate of Costs”** a certificate of costs signed 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 certificate) and substantially in the format set out in Annex 3;
- “Costs”** the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Services:
- (a) the cost to the Supplier or the Key Sub-contractor (as the context requires), calculated per Man Day, of engaging the Supplier Personnel, including:
 - (i) base salary paid to the Supplier Personnel;
 - (ii) employer’s national insurance contributions;
 - (iii) pension contributions;
 - (iv) car allowances;
 - (v) any other contractual employment benefits;
 - (vi) staff training;
 - (vii) work place accommodation;
 - (viii) work place IT equipment and tools reasonably necessary to perform the services (but not including items included within limb (b) below); and

- (ix) reasonable recruitment costs, as agreed with the Authority;
- (b) costs incurred in respect of those Exclusive Hardware Assets which are detailed on the Asset Register and which would be treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Assets by the Supplier to the Authority or (to the extent that risk and title in any Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Assets;
- (c) operational costs which are not included within (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Supplier in the delivery of the Services;
- (d) Reimbursable Expenses to the extent these are incurred in delivering any Services where the Charges for those Services are to be calculated on a Fixed Price or Firm Price pricing mechanism;

but excluding:

- (i) Overhead;
- (ii) financing or similar costs;
- (iii) maintenance and support costs to the extent that these relate to maintenance and/or support services provided beyond the Term, whether in relation to Assets or otherwise;
- (iv) taxation;
- (v) fines and penalties;
- (vi) amounts payable under Schedule 7.3 (*Benchmarking*); and
- (vii) non-cash items (including depreciation, amortisation, impairments and movements in provisions);

“Gain Share”

means the mechanism by which reductions in costs relating to the Service Charges are shared between the Parties, as set out in Part C; paragraph 4;

“Guaranteed Price”

Maximum

in relation to a Milestone or Milestone Group, 110% of the Target Price for the relevant Milestone or Milestone Group;

“Incurred Costs”	<p>in relation to a Milestone or Milestone Group, the sum of:</p> <ul style="list-style-type: none">(a) the fixed day rates set out in Table 3 of Annex 1 multiplied by the number of Man Days that have been expended by the Supplier Personnel in Achieving the relevant Milestone; and(b) any amount that would fall within limbs (b) or (c) of the definition of “Costs” (but subject to exceptions (i) to (vii) in that definition), to the extent that such amount has been incurred in Achieving the relevant Milestone; <p>in relation to a Service Charge, the actual cost incurred as reported in the Annual Contract Report;</p>
“Indexation” and “Index”	<p>the adjustment of an amount or sum in accordance with Paragraph 6 of Part C;</p>
“Investment Fund”	<p>the fund made available by the Supplier for the Authority to commission work to drive further innovation into the Services and deliver potential additional business benefits as described in Paragraph 8 of Part A of this Schedule 7.1 (<i>Charges and Invoicing</i>),</p>
“Man Day”	<p>7.5 Man Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day;</p>
“Man Hours”	<p>the hours spent by the Supplier Personnel properly working on the Services including time spent travelling (other than to and from the Supplier’s offices, or to and from the Sites) but excluding lunch breaks;</p>
“Maximum Permitted Profit Margin”	<p>the Anticipated Combined Contract Life Profit Margin plus <i>Information redacted under section 43 of the FOIA</i>;</p>
“Milestone Group”	<p>each of the groups of Milestones that make Transition, Exit, the Mid Term Strategic Review, annual Hardware Refresh projects or any of the Projects under Component 3 – Enhance or otherwise as more particularly set out in Table 4 of Annex 1;</p>
“Milestone Retention”	<p>has the meaning given in Paragraph 1.3 of Part B;</p>
“Overhead”	<p>those amounts which are intended to recover a</p>

proportion of the Supplier's or the Key Sub-contractor's (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Personnel and accordingly included within limb (a) of the definition of "Costs" or the day rate set out in Table 3 of Annex 1;

"Reimbursable Expenses"	<p>reasonable out of pocket travel and subsistence (for example, hotel and food) expenses, properly and necessarily incurred in the performance of the Services, calculated at the rates and in accordance with the Authority's expenses policy current from time to time, but not including:</p> <ul style="list-style-type: none"> (a) travel expenses incurred as a result of Supplier Personnel travelling to and from their usual place of work, or to and from the premises at which the Services are principally to be performed, unless the Authority otherwise agrees in advance in writing; and (b) subsistence expenses incurred by Supplier Personnel whilst performing the Services at their usual place of work, or to and from the premises at which the Services are principally to be performed;
"Reward KPI"	<p>means the Key Performance Indicators designated as such in Schedule 2.2 (<i>Performance Levels</i>);</p>
"Reward Payment"	<p>means the proportion of the Reward Pool payable to the Supplier as reward payment in accordance with Paragraph 9.3 of Part C;</p>
"Reward Percentage"	<p>Payment has the meaning given in Paragraph 6 of Part A of Schedule 2.2 (<i>Performance Levels</i>);</p>
"Reward Pool"	<p>means the maximum sum of <i>Information redacted under Section 43 of the FOIA</i> per annum available to the Supplier as at the Effective Date;</p>
"Supplier Profit"	<p>in relation to a period, a Component or a Milestone (as the context requires), the difference between the total Charges (in nominal cash flow terms but excluding any Deductions) and total Costs (in nominal cash flow terms) for the relevant period or in relation to the relevant Component or</p>

	Milestone;
“Supplier Profit Margin”	the Supplier Profit expressed as a percentage of the total Charges for that Component (over the same period or Milestone as the case requires), as set out in Annex 6;
“Supporting Documentation”	sufficient information in writing to enable the Authority reasonably to assess whether the Charges, Reimbursable Expenses and other sums due from the Authority detailed in the information are properly payable, including copies of any applicable Milestone Achievement Certificates or receipts;
“Target Cost”	has the meaning given in Paragraph 3.1(a) of Part A;
“Target Price”	has the meaning given in Paragraph 3.1(b) of Part A;
“Transition Milestone 8”	the ATP Milestone 8 for Component 1 - Transition as defined in Schedule 6.2 (Testing Procedures);
“Verification Period”	in relation to an Allowable Assumption, the period from (and including) the Effective Date to (and including) the date at which the relevant Allowable Assumption expires, as set out against the relevant Allowable Assumption in column 11 in the table in Annex 5.

PART A

Pricing

1 APPLICABLE PRICING MECHANISM

- 1.1 Milestone Payments and Service Charges shall be calculated using the pricing mechanism specified in Annex 2 and on the basis of the rates and prices specified in Annex 1 as more particularly set out in this Schedule.
- 1.2 Table 1 of Annex 2 sets out which pricing mechanism shall be used to calculate each Milestone Payment, which shall be one or more of the following:
- (a) “**Time and Materials**”, in which case the provisions of Paragraph 2 shall apply;
 - (b) “**Guaranteed Maximum Price with Target Cost**”, in which case the provisions of Paragraph 3 shall apply;
 - (c) “**Fixed Price**”, in which case the provisions of Paragraph 4 shall apply; or
 - (d) “**Firm Price**”, in which case the provisions of Paragraph 5 shall apply.
- 1.3 Table 2 of Annex 2 sets out which pricing mechanism shall be used to calculate each Service Charge, which shall be one or more of the following:
- (a) “**Time and Materials**”, in which case the provisions of Paragraph 2 shall apply;
 - (b) “**Volume Based**” pricing, in which case the provisions of Paragraph 6 shall apply; or
 - (c) “**Fixed Price**” in which case the provisions of Paragraph 4 shall apply.

2 TIME AND MATERIALS MILESTONE PAYMENTS OR SERVICE CHARGES

- 2.1 Where Table 1 or Table 2 of Annex 2 indicates that a Milestone Payment or Service Charge (as applicable) is to be calculated by reference to a Time and Materials pricing mechanism:
- (a) the day rates set out in Table 1 of Annex 1 shall be used to calculate the relevant Charges, provided that the Supplier (or its Sub-contractor) shall:
 - (i) not be entitled to include any uplift for risks or contingencies within its day rates;
 - (ii) not be paid any Charges to the extent that they exceed the cap specified against the relevant Charge in Table 2 of Annex 1 unless the Supplier has obtained the Authority’s prior written consent. The Supplier shall monitor the amount of each Charge incurred in relation to the relevant cap and notify the Authority immediately in the event of any risk that the cap may be exceeded and the Authority shall instruct the Supplier on how to proceed; and

- (iii) only be entitled to be paid Charges that have been properly and reasonably incurred, taking into account the Supplier’s obligation to deliver the Services in a proportionate and efficient manner; and
 - (b) the Supplier shall keep records of hours properly worked by Supplier Personnel (in the form of timesheets) and expenses incurred and submit a summary of the relevant records with each invoice. If the Authority requests copies of such records, the Supplier shall make them available to the Authority within 10 Working Days of the Authority’s request.
- 2.2 The Supplier shall be entitled to Index the rates set out in Table 1 of Annex 1 in accordance with Paragraph 5 of Part C, but any caps set out in Table 2 of Annex 1 shall not be subject to Indexation.

3 GUARANTEED MAXIMUM PRICE WITH TARGET COST INCENTIVE MILESTONE PAYMENTS

- 3.1 Where Table 1 of Annex 2 indicates that a Milestone Payment is to be calculated by reference to the Guaranteed Maximum Price with Target Cost pricing mechanism, the target Costs (the “**Target Cost**”) and the target Charge (the “**Target Price**”) for the relevant Milestone or Milestone Group shall be as set out in Table 4 of Annex 1
- 3.2 If the Incurred Costs relating to a Milestone or Milestone Group are lower than the Target Cost for that Milestone or Milestone Group, the difference between the Incurred Costs and the Target Cost shall be shared equally between the Authority and the Supplier (resulting in the Supplier receiving a higher Supplier Profit Margin in relation to that Milestone or Milestone Group), and the Milestone Payment shall be calculated as follows:

$$\text{Milestone Payment} = \text{TP} - ((\text{TC} - \text{IC})/2)$$

where:

- TP is the Target Price for the relevant Milestone or Milestone Group;
- TC is the Target Cost for the relevant Milestone or Milestone Group; and
- IC is the Incurred Costs relating to the relevant Milestone or Milestone Group.

- 3.3 If the Incurred Costs relating to a Milestone or Milestone Group are greater than the Target Cost for that Milestone or Milestone Group, the difference between the Incurred Costs and the Target Cost shall be borne equally between the Authority and the Supplier (resulting in the Supplier receiving a lower Supplier Profit Margin in relation to that Milestone or Milestone Group), provided that the maximum Milestone Payment payable by the Authority for the relevant Milestone or Milestone Group shall not exceed an amount equal to the guaranteed maximum price for that Milestone or Milestone Group as set out in Table 4 of Annex 1 (the “**Guaranteed Maximum Price**”). Represented numerically, this means:

(a) if:
 (i) $IC > TC$; and
 (ii) $TP + ((IC - TC)/2) < GMP$,
 then Milestone Payment = $TP + ((IC - TC)/2)$; or

(b) if:
 (i) $IC > TC$; and
 (ii) $TP + ((IC - TC)/2) \geq GMP$,
 then Milestone Payment = GMP

where:

IC is the Incurred Costs relating to the relevant Milestone or Milestone Group;
 TC is the Target Cost for the relevant Milestone or Milestone Group;
 TP is the Target Price for the relevant Milestone or Milestone Group; and
 GMP is $TP * 1.1$, being the Guaranteed Maximum Price for the relevant Milestone.

3.4 The Supplier shall be entitled to Index the day rates set out in Table 3 of Annex 1 annually, but the Target Cost, Target Price and Guaranteed Maximum Price shall not be subject to Indexation.

4 FIXED PRICE MILESTONE PAYMENTS OR SERVICE CHARGES

4.1 Where Table 1 of Annex 2 indicates that a Milestone Payment is to be calculated by reference to a Fixed Price pricing mechanism, the relevant Charge shall be the amount set out against that Charge in Table 5 of Annex 1.

4.2 Where Table 2 of Annex 2 indicates that a Service Charge is to be calculated by reference to a Fixed Price pricing mechanism, the relevant Charge shall be calculated in accordance with the following formula:

$$\text{Service Charge} = \frac{\text{Anticipated Service Cost}}{(1 - \text{Relevant Component Profit Margin})}$$

Where the Relevant Component Profit Margin is the percentage set out in Annex 6 relating to that Service Charge.

4.3 Charges calculated by reference to a Fixed Price pricing mechanism, shall be subject to increase by way of Indexation.

5 FIRM PRICE MILESTONE PAYMENTS

- 5.1 Where Table 1 of Annex 2 indicates that a Milestone Payment is to be calculated by reference to a Firm Price pricing mechanism, the relevant Charge shall be the amount set out against that Charge in Table 6 of Annex 1.
- 5.2 Charges calculated by reference to a Firm Price pricing mechanism shall not be subject to increase by way of Indexation.
- 5.3 To support the Authority in budgeting for the provision of the expenses solution, the overall price of ***Information redacted under Section 43 of the FOIA***. The actual implementation charges will be in accordance with the firm price table detailed in this Schedule 7.1 (Charges and Invoicing) under Annex 1, Paragraph 6.

6 VOLUME BASED SERVICE CHARGES

- 6.1 Where Table 2 of Annex 2 indicates that a Service Charge is to be calculated by reference to a Volume Based pricing mechanism, the relevant Charges shall be calculated on the basis of the unit costs set out against that Service Charge in Table 7 of Annex 1.
- 6.2 In the event that the volume of any Services that are to be calculated by reference to a Volume Based pricing mechanism fall outside the relevant volume bands set out against that Service Charge in Table 7 of Annex 1, the relevant Service Charges shall be calculated in accordance with the Change Control Procedure and Paragraph 4 of Part C.
- 6.3 The Charge per unit set out in Table 7 of Annex 1 shall be subject to annual Indexation. To support the Authority in budgeting for the provision of the expenses solution, the overall price of ***Information redacted under Section 43 of the FOIA***. The actual maintenance charges will be in accordance with the volume price table detailed in this Schedule 7.1 (Charges and Invoicing) under Annex 1, Paragraph 7. For the purposes of these charges an Expenses Active User is defined as any individual who has submitted a claim via the expenses solution for the current month and the previous 3 months.
- 6.4 Future Supplier's Software and Supplier's Hardware purchases made under this Agreement as part of a managed service where ownership of the software and hardware remains with the Supplier will be subject to a discount of at least 50% as detailed in tabs s_I_IBM Hardware List and 's_I_IBM Software List' of the Financial Model, Annex 2 of Schedule 7.5. Any further discount will be subject to the scope and timing of the request. Should the ownership of any of these software or hardware products be sold by the Supplier to another supplier the ***Information redacted under Section 43 of the FOIA*** will no longer be guaranteed.

7 REIMBURSEABLE EXPENSES

- 7.1 Where:
- (a) Services are to be charged using the Time and Materials or Guaranteed Maximum Price with Target Cost pricing mechanism; and
 - (b) the Authority so agrees in writing,

the Supplier's Day Direct Cost shall be exclusive of expenses and the Supplier shall be entitled to be reimbursed by the Authority for Reimbursable Expenses (in addition to being paid the relevant Charges), provided that such Reimbursable Expenses are supported by Supporting Documentation.

- 7.2 The Authority shall provide a copy of its current expenses policy to the Supplier upon request.
- 7.3 Except as expressly set out in Paragraph 7.1, the Charges including the Service Charges and the Charges payable pursuant to Table 4 of Annex 1 shall include all costs and expenses relating to the Deliverables, the Services and/or the Supplier's performance of its obligations under this Agreement and no further amount shall be payable by the Authority to the Supplier in respect of such performance, including in respect of matters such as:
- (a) any incidental expenses that the Supplier incurs, including travel, subsistence and lodging, document or report reproduction, shipping, desktop or office equipment costs required by the Supplier Personnel, network or data interchange costs or other telecommunications charges; or
 - (b) any amount for any services provided or costs incurred by the Supplier prior to the Effective Date.

8 INVESTMENT FUND

- 8.1 The Supplier will make ***Information redacted under Section 43 of the FOIA***, of investment available from the Effective Date for the duration of the Term. This fund will be made available at the beginning of each contract year as ***Information redacted under Section 43 of the FOIA*** investments and will be available for proposals for new innovation ideas and Projects which will be presented to the quarterly Joint Technology and Innovation Board by the Supplier and also potentially the Authority (see Schedule 8.1). Once approved the Supplier will provide the agreed resources to undertake the Project, with those resources costed in accordance with Table 3 of Annex 1 of Schedule 7.1 (Charges and Invoicing).
- 8.2 Each Contract Year, the Authority will pay into the Investment Fund up to ***Information redacted under Section 43 of the FOIA*** of any Reward Payment realised by the Supplier through achievement of the Reward KPIs in accordance with the process detailed in Schedule 2.2 (Performance Levels). This applies to all Contract Years except in relation to the final Contract Year where in the first month of the final Contract Year the Parties shall agree in advance the estimated Reward Pool for that final Contract Year and the Investment Fund shall be adjusted accordingly. At the end of the final contract year the parties will agree the actual Reward Pool that would have been due the Supplier and any funds due back to the Authority due to over estimation will be subject to ***Information redacted under Section 43 of the FOIA*** Gain Share in favour of the Authority.
- 8.3 The funds within the Investment Fund related to Reward Payments will be utilised first and will not roll over to the following Contract Year should these funds not be spent. The running total in the Investment Fund will be monitored jointly by the Supplier ESR Programme Delivery Executive and the Authority NHS ESR Programme Director.

- 8.4 These innovation Projects will follow the same governance procedure as the Enhance Service Component Projects as follows:
- (a) '7 Keys' reporting
 - (b) Agile with Discipline' delivery approach
 - (c) Project status reported through the ESR Service Dashboard Portal
 - (d) Full impact assessment, change plan, training and roll-out strategy for each Project
 - (e) Monthly reporting of Project progress to the Joint Project Board
- 8.5 These Projects will not be subject to Milestone Retentions, Gain Share, Guaranteed Maximum Price Target Cost and/or any other Agreement mechanisms. Milestones will be agreed. If the Project delivers under the allocated budget any shortfall against the approved budget will remain within the Investment Fund. If the Project overruns then additional funding may be approved from the Investment Fund by agreement of the Joint Technology and Innovation Board, the Supplier ESR Programme Delivery Executive and the Authority NHS ESR Programme Director.

PART B
Charging Mechanisms

1 MILESTONE PAYMENTS

1.1 Subject to the provisions of Paragraph 1.3 of Part C in relation to the deduction of Delay Payments, on the Achievement of a Milestone the Supplier shall be entitled to invoice the Authority for the Milestone Payment associated with that Milestone less the applicable Milestone Retention in accordance with this Part B.

1.2 Each invoice relating to a Milestone Payment shall be supported by:

- (a) a Milestone Achievement Certificate; and
- (b) where the Milestone Payment is to be calculated by reference to a Guaranteed Maximum Price with Target Cost or Time and Materials pricing mechanism, a Certificate of Costs with Supporting Documentation.

1.3 The “**Milestone Retention**” for each Milestone shall be calculated as follows:

- (a) where the Milestone Payment for the relevant Milestone is determined by reference to a Guaranteed Maximum Price with Target Cost pricing mechanism, *Information redacted under Section 43 of the FOIA* of the Target Price for the Milestone;
- (b) where the Milestone Payment for the relevant Milestone is determined by reference to a Time and Materials, Fixed Price or Firm Price pricing mechanism, *Information redacted under Section 43 of the FOIA* of the Charges for that Milestone,

and, in the case of a Key Milestone, prior to deduction from the Milestone Payment of any Delay Payment attributable to that Milestone.

Guaranteed Maximum Price with Target Cost pricing mechanism

1.4 Where a Milestone Payment relating to a single Milestone is to be calculated by reference to a Guaranteed Maximum Price with Target Cost pricing mechanism, then the following payment process shall apply:

- (a) upon the issue of a Milestone Achievement Certificate for the Milestone, the Supplier may invoice the Authority for the Target Price for the relevant Milestone, less the Milestone Retention calculated using such Target Price; and
- (b) no later than 60 Working Days after the invoice referred to in Paragraph 1.4(a) has been issued, the Supplier shall:
 - (i) submit to the Authority a report setting out the Incurred Costs and actual Milestone Payment for the Milestone;
 - (ii) issue to the Authority an invoice for the difference between the actual Milestone Payment payable and the Target Price invoiced for the

Milestone (in each case, after deducting the applicable Milestone Retention) or, where the difference shows that an overpayment has been made by the Authority, the Supplier shall:

- (A) deduct a sum equal to such difference from the Service Charges payable for the immediately following Service Period; or;
 - (B) if no invoice is due to be issued by the Supplier within 30 days, promptly issue a credit note and repay to the Authority a sum equal to such difference as a debt within 10 Working Days of issue of the credit note; and
- (iii) issue a Certificate of Costs with Supporting Documentation, which shall exclude any accruals, prepayments and provisions.

1.5 Where Milestones are stated in Table 4 of Annex 1 to constitute a group of Milestones (a “**Milestone Group**”) and the Milestone Payments relating to the Milestones in that Milestone Group are each to be calculated by reference to a Guaranteed Maximum Price with Target Cost pricing mechanism, then the following payment process shall apply:

- (a) in respect of each Milestone within the Milestone Group, the Supplier may invoice the Authority for the Target Price for the relevant Milestone, less the Milestone Retention calculated using such Target Price, upon the issue of the associated Milestone Achievement Certificate. In the case of a Component 2 Hardware Refresh Milestone, approval by the Authority of the Annual Contract Report (or relevant content as agreed between the parties) shall constitute the issue of a Milestone Achievement Certificate; and
- (b) no later than 60 Working Days after the issue of the invoice for the final Milestone Payment relating to the Milestone Group, the Supplier shall:
 - (i) submit to the Authority a report setting out the Incurred Costs and actual Milestone Payments for the Milestone Group. In the case of a Component 2 Hardware Refresh Milestone, the relevant information should be included within the Annual Contract Report;
 - (ii) issue to the Authority an invoice or credit note for the difference between the aggregate of the actual Milestone Payments payable and Target Prices invoiced for Milestones in the Milestone Group (in each case, after deducting all Milestone Retentions relating to that Milestone Group);
 - (iii) where a credit note is to be issued to the Authority pursuant to Paragraph 1.5(b)(ii), repay to the Authority a sum equal to such difference as a debt within 10 Working Days of issue of the credit note; and
 - (iv) issue a Certificate of Costs with Supporting Documentation, which shall exclude any accruals, prepayments and provisions.

- 1.6 If the Supplier does not repay any such sum as is referred to in Paragraph 1.4(b)(ii) or 1.5(b)(ii) within 10 Working Days of issue of the relevant credit note, it shall repay such sum together with interest on such sum at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from (and including) the due date up to (but excluding) the date of actual payment, whether before or after judgment.
- 1.7 Following the issue of a Certificate of Costs in accordance with Paragraph 1.2, 1.4(b)(iii) or 1.5(b)(iii), the Supplier shall not be entitled to invoice the Authority for any additional Charges relating to the Milestone or Milestone Group (as applicable) save as provided in Paragraph 1.8.

Release of Milestone Retentions

- 1.8 On Achievement of a CPP Milestone, the Supplier shall be entitled to invoice the Authority for an amount equal to all Milestone Retentions that relate to Milestones identified in the “*CPP Milestone Charge Number*” as referenced within the Contract Inception Report Annex 2 of Schedule 7.5 Financial Reports as being payable in respect of that CPP Milestone and have not been paid before such CPP Milestone.
- 1.9 In addition to and without prejudice to Paragraph 1.8 of this Part A, the Supplier shall be entitled to invoice the Authority for an amount equal to the Milestone Retention that relates to Transition Milestone 8 identified in the Financial Model as detailed in Annex 2 of Schedule 7.5 (Financial Reports) as being payable in respect of that Transition Milestone 8 and have not been paid before such Transition Milestone 8.

2 SERVICE CHARGES

- 2.1 Each Service to which a Service Charge relates shall commence on the Achievement of the Milestone set out against that Service in the “*Service Charge Trigger Event*” column of Table 2 of Annex 2.
- 2.2 Service Charges shall be invoiced by the Supplier for each Service Period in arrears in accordance with the requirements of Part E.
- 2.3 If a Service Charge is to be calculated by reference to a Fixed Price pricing mechanism and the relevant Service:
 - (a) commences on a day other than the first day of a month; and/or
 - (b) ends on a day other than the last day of a month,

the Service Charge for the relevant Service Period shall be pro-rated based on the proportion which the number of days in the month for which the Service is provided bears to the total number of days in that month.
- 2.4 Any Service Credits that accrue during a Service Period shall be deducted from the Service Charges payable for the immediately following Service Period. An invoice for a Service Charge shall not be payable by the Authority unless all adjustments (including Service Credits) relating to the Service Charges for the immediately preceding Service Period have been agreed.

- 2.5 Any Reward Payments that accrue for a Contract Year shall be payable with the Service Charges payable for the immediately following Service Period.

PART C

Adjustments to the Charges

1 DELAY PAYMENTS

1.1 If a Key Milestone has not been Achieved on or before the relevant Milestone Date, the Supplier shall pay Delay Payments to the Authority. Delay Payments shall accrue:

- (a) at the monthly rate set out in Table 1 of Annex 2 against the relevant Key Milestone;
- (b) from (but excluding) the relevant Milestone Date to (and including) the later of:
 - (i) the date on which the Key Milestone is Achieved; and
 - (ii) the expiry of the Delay Deduction Period; and
- (c) on a monthly basis, with any part month's Delay counting as a month.

1.2 The Parties agree that the Delay Payments are a genuine pre-estimate of the Losses which the Authority will incur as a result of any failure by the Supplier to Achieve the relevant Key Milestone by the Milestone Date. The Delay Payments are stated exclusive of VAT.

1.3 Delay Payments in respect of a Key Milestone shall be shown as a deduction from the amount due from the Authority to the Supplier in the next invoice due to be issued by the Supplier after each month of delay and or by the date on which the relevant Key Milestone is Achieved (as the case may be). If no invoice is due to be issued by the Supplier within 10 Working Days of the end of the month of delay, then the Supplier shall within 10 Working Days of the end of the month of delay:

- (a) issue a credit note to the Authority in respect of the relevant amount of the Delay Payments; and
- (b) repay to the Authority as a debt a sum equal to the relevant amount of the Delay Payments together with interest on such amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from (and including) the due date up to (but excluding) the date of actual payment, whether before or after judgment.

2 PAYMENTS FOR DELAYS DUE TO AUTHORITY CAUSE

2.1 If the Supplier is entitled in accordance with Clause 31.2(iii)(D) (*Authority Cause*) to compensation for failure to Achieve a Milestone by its Milestone Date, then, subject always to Clause 25 (*Limitations on Liability*), such compensation shall be determined in accordance with the following principles:

- (a) the compensation shall reimburse the Supplier for additional Costs incurred and revenue lost by the Supplier in each case that the Supplier:
 - (i) can demonstrate it has incurred solely and directly as a result of the Authority Cause; and

- (ii) is, or has been, unable to mitigate, having complied with its obligations under Clause 31.1 (*Authority Cause*);
- (b) the compensation shall not operate so as to put the Supplier in a better position than it would have been in but for the occurrence of the Authority Cause;
- (c) where the Milestone Payment for the relevant Milestone is to be calculated by reference to the Guaranteed Maximum Price with Target Cost pricing mechanism, then:
 - (i) the Target Price for the Milestone shall be increased in accordance with the following formula:

$$NTP = TP + (AC \times 1.x)$$

where:

- NTP is the revised Target Price for the relevant Milestone;
 - TP is the original Target Price for the relevant Milestone;
 - AC is an amount equal to any additional Costs incurred by the Supplier in Achieving the Milestone to the extent that the Supplier can demonstrate that such additional Costs were caused by the Authority Cause; and
 - x is the Supplier Profit Margin that the Supplier would have received in respect of the relevant Milestone on the basis of the unadjusted Target Cost and unadjusted Target Price for that Milestone, as set out in Table 4 of Annex 1, expressed as a decimal; and
- (ii) the Guaranteed Maximum Price shall be increased to an amount equal to ***Information redacted under Section 43 of the FOIA*** of the Target Price as adjusted pursuant to Paragraph 2.1(c)(i);
 - (d) where the relevant Milestone Payment is to be calculated based upon a Fixed Price or a Firm Price pricing mechanism, the compensation shall include such amount as is appropriate to maintain the Supplier Profit Margin set out in respect of the relevant Milestone in Table 5 or Table 6 of Annex 1;
 - (e) where the Milestone Payment includes any Charges which are capped, then to the extent that the compensation agreed pursuant to this Paragraph 2 results in the Authority paying additional Time and Materials Charges for resources or effort which the Supplier demonstrates are required as a result of the Authority Cause, such additional Time and Materials Charges shall be disregarded for the purposes of calculating the relevant cap; and
 - (f) no Delay Payments shall be payable by the Supplier.

2.2 The Supplier shall provide the Authority with any information the Authority may reasonably require in order to assess the validity of the Supplier's claim to compensation.

3 SERVICE CREDITS

3.1 Service Credits shall be calculated by reference to the number of Service Points accrued in any one Service Period pursuant to the provisions of Schedule 2.2 (*Performance Levels*).

3.2 For each Service Period:

(a) the Service Points accrued shall be converted to a percentage deduction from the Service Charges for the relevant Service Period on the basis of one point equating to a ***Information redacted under Section 43 of the FOIA*** deduction in the Service Charges; and

(b) the total Service Credits applicable for the Service Period shall be calculated in accordance with the following formula:

$$SC = TSP \times X \times AC$$

where:

SC is the total Service Credits for the relevant Service Period;

TSP is the total Service Points that have accrued for the relevant Service Period;

X is ***Information redacted under Section 43 of the FOIA***; and

AC is the total Services Charges payable for the relevant Service Period (prior to deduction of any applicable Gain Share and/or Service Credits).

3.3 The liability of the Supplier in respect of Service Credits shall be subject to Clause 25.2(b) (*Financial Limits*) provided that, for the avoidance of doubt, the operation of the Service Credit Cap shall not affect the continued accrual of Service Points in excess of such financial limit in accordance with the provisions of Schedule 2.2 (*Performance Levels*).

3.4 Service Credits are a reduction of the Service Charges payable in respect of the relevant Services to reflect the reduced value of the Services actually received and are stated exclusive of VAT.

3.5 Service Credits shall be shown as a deduction from the amount due from the Authority to the Supplier in the invoice for the Service Period to which they relate.

4 GAIN SHARE ON SERVICE CHARGES

4.1 A Gain Share calculation shall be performed annually by the Supplier and set out within the Annual Contract Report. This Gain Share calculation shall compare the Anticipated Service Cost for the relevant Contract Year, as set out in Annex 1 Table 4, and after adjustment for Indexation where Indexation is applicable, with the Incurred Cost for each Service Charge, as reported in the Annual Contract Report.

4.2 If the Incurred Cost relating to any other Service Charge during the relevant Contract Year is lower than the Anticipated Service Cost relating to that Service

Charge, then the Gain Share amount due to the Authority will be calculated as follows:

$$\text{Gain Share Amount} = \text{Gain Share Percentage} \times \frac{(\text{Anticipated Service Cost} - \text{Incurred Cost})}{(1 - \text{Relevant Component Margin})}$$

Where:

For the Change Pipeline Service Charge the Gain Share Percentage shall be **Information redacted under Section 43 of the FOIA** payable to the Authority; and

For all other Service Charges, the Gain Share Percentage shall be **Information redacted under Section 43 of the FOIA** payable to the Authority; and

The Relevant Component Profit Margin is the Component 2 or Component 3 Profit Margin percentage set out in Annex 6 as applicable.

- 4.3 If the Incurred Cost relating to a Service Charge during that relevant Contract Year is greater than the Anticipated Service Cost relating to that Service Charge, then the Gain Share amount due to the Authority shall be nil.
- 4.4 Each Service Charge shall be considered separately for the purposes of the Gain Share Calculation, and aggregated for the purpose of payment.
- 4.5 The Anticipated Service Cost and Incurred Cost amounts used within the Gain Share calculation will exclude any amounts associated with periods prior to the occurrence of the relevant Service Charge Trigger Event.
- 4.6 Gain Share amounts are stated exclusive of VAT.
- 4.7 No later than 10 Working Days after acceptance of the Annual Contract Report by the Authority, the Supplier shall issue to the Authority a credit note for any Gain Share amount due to the Authority.
- 4.8 The Supplier shall repay to the Authority a sum equal to Gain Share amount as a debt within 10 Working Days of issue of the credit note.

5 CHANGES TO CHARGES

- 5.1 Any Changes to the Charges shall be developed and agreed by the Parties in accordance with Schedule 8.2 (*Change Control Procedure*) and on the basis that the Supplier Profit Margin on such Charges shall:
 - (a) be no greater than that applying to Charges using the same pricing mechanism as at the Effective Date (as set out in the Contract Inception Report); and
 - (b) in no event exceed the Maximum Permitted Profit Margin.
- 5.2 The Authority may request that any Impact Assessment presents Charges without Indexation for the purposes of comparison.

6 INDEXATION

- 6.1 Any amounts or sums in this Agreement which are expressed to be “subject to Indexation” shall be adjusted in accordance with the provisions of this Paragraph 6 to reflect the effects of inflation.
- 6.2 Where Indexation applies, the relevant adjustment shall be:
- (a) applied on the first day of the second April following the Effective Date and on the first day of April in each subsequent year (each such date an “**adjustment date**”); and
 - (b) determined by multiplying the relevant amount or sum by the percentage increase or decrease in the Consumer Price Index published for the 12 months ended on the 31 January immediately preceding the relevant adjustment date.
- 6.3 Except as set out in this Paragraph 6, neither the Charges nor any other costs, expenses, fees or charges shall be adjusted to take account of any inflation, change to exchange rate, change to interest rate or any other factor or element which might otherwise increase the cost to the Supplier or Sub-contractors of the performance of their obligations. For the avoidance of doubt no Indexation will be permitted on Hardware and Software purchase cost (except in relation to Oracle where maintenance is not subject to Indexation as more particularly set out in Table 2 of Annex 2).

7 ALLOWABLE ASSUMPTIONS

- 7.1 The Supplier shall determine whether each Allowable Assumption is accurate within its Verification Period.
- 7.2 During each Verification Period, the Authority shall provide the Supplier with reasonable assistance and access to information within its possession or reasonable control and which the Authority deems is relevant to the Allowable Assumption being verified.
- 7.3 Within 10 Working Days of the end of each Verification Period, the Supplier shall provide the Authority with a written report setting out the results of the Supplier's verification activity for the relevant Allowable Assumption, including whether the Allowable Assumption is accurate or whether the Implementation Plan and/or the Contract Inception Report require adjustment.
- 7.4 Each Allowable Assumption shall be deemed accurate unless adjusting for the relevant Allowable Assumption has an impact:
- (a) on the Financial Model greater than the associated trigger for invocation, as set out in column 9 of the table in Annex 5; or
 - (b) on the Implementation Plan which would require adjustment under the Change Control Procedure, as identified in column 3 of the table in Annex 5,
- in which case Paragraph 7.5 shall apply.

- 7.5 Where the Parties agree that an Allowable Assumption is not accurate and the Financial Model and/or Implementation Plan require adjusting:
- (a) the Supplier shall take all reasonable steps to mitigate the impact of the Allowable Assumption on the Financial Model and/or the Implementation Plan;
 - (b) the Supplier may (subject to Paragraph 7.5(c)) propose a Change to take account of the impact of the adjustment of the Allowable Assumption and such Change Request shall be considered in accordance with the Change Control Procedure; and
 - (c) where the Supplier proposes a Change to the Charges under Paragraph 7.5(b), the Change Request shall reflect the requirements of the table in Annex 5, including the requirement that any proposed adjustment to the Charges shall not exceed the maximum impact on the relevant Charges as specified in column 7 of the table in Annex 5.

8 Not used

9 REWARD PAYMENT

- 9.1 The Reward Pool is subject to Indexation.
- 9.2 The maximum amount of the Reward Pool available each Contract Year for each Reward KPI is calculated by dividing the Reward Pool (after Indexation) by the number of Reward KPIs, i.e. by three (3) (the "**Maximum KPI Reward**").
- 9.3 At the end of each Contract Year, the Parties shall:
- (a) review the Supplier's annual performance against each Reward KPI and calculate the Reward Payment Percentages;
 - (b) calculate the reward payment for each Reward KPI by multiplying the Maximum KPI Reward by the Reward Payment Percentage applicable to that Reward KPI; and
 - (c) add all the reward payments calculated pursuant to Paragraph 9.3 (b) above to calculate the total reward payment payable to the Supplier (the "**Reward Payment**").
- 9.4 For the avoidance of doubt, for any Reward KPI where performance is equal to or below the Service Threshold, the reward payment for that Reward KPI will be zero. Where performance is equal to or above the Target Performance Level for that Reward KPI, the reward payment will be equal to the maximum amount of the Reward Pool available for that Reward KPI.
- 9.5 Any unpaid amount of the Reward Pool shall not be carried forward to a future Contract Year.

PART D

Excessive Supplier Profit Margin

1 LIMIT ON SUPPLIER PROFIT MARGIN

- 1.1 The Supplier acknowledges that the Achieved Profit Margin applicable over the Term shall not exceed the Maximum Permitted Profit Margin.
- 1.2 The Supplier shall include in each Annual Contract Report the Achieved Profit Margin as at the end of the Contract Year to which the Annual Contract Report is made up and the provisions of Paragraph 2 of Part B of Schedule 7.5 (*Financial Reports and Audit Rights*) shall apply to the approval of the Annual Contract Report.

2 ADJUSTMENT TO THE CHARGES IN THE EVENT OF EXCESS SUPPLIER PROFIT

- 2.1 If an Annual Contract Report demonstrates (or it is otherwise determined pursuant to Paragraph 2 of Part B of Schedule 7.5 (*Financial Reports and Audit Rights*)) that the Achieved Profit Margin as at the end of the Contract Year to which the Annual Contract Report is made up exceeds the Maximum Permitted Profit Margin:
- (a) the Supplier shall, within 5 Working Days of delivery to the Authority of the Annual Contract Report, propose such adjustments to the Charges as will ensure that the Achieved Profit Margin both over the Contract Year to which the next Annual Contract Report will relate and over the Term will not exceed the Maximum Permitted Profit Margin;
 - (b) the Authority (acting reasonably) may agree or reject the proposed adjustments;
 - (c) if the Authority rejects the proposed adjustments it shall give reasons and the Supplier shall propose revised adjustments within 10 Working Days of receiving those reasons; and
 - (d) if the Parties cannot agree such revised adjustments and the Authority terminates this Agreement by issuing a Termination Notice to the Supplier pursuant to Clause 33.1(a) (*Termination by the Authority*), then for the purpose of calculating any Compensation Payment due to the Supplier, the Termination Notice shall be deemed to have been served as at the date of receipt by the Authority of the relevant Annual Contract Report.
- 2.2 Pending agreement of a proposed adjustment to the Charges pursuant to this Part D, the Charges then in force shall continue to apply. Once the adjustments to the Charges are agreed in accordance with Paragraph 2.1, the Parties shall document the adjustment in a Change Authorisation Note and the adjusted Charges shall apply with effect from the first day of the Service Period that immediately follows the Service Period in which the Change Authorisation Note is executed or such other date as is specified in the Change Authorisation Note.

PART E

Invoicing and Payment Terms

1 SUPPLIER INVOICES

- The Supplier shall prepare and provide to the Authority for approval of the format a template invoice within 10 Working Days of the Effective Date which shall include, as a minimum, the details set out in Paragraph 1.2 together with such other information as the Authority may reasonably require to assess whether the Charges that will be detailed therein are properly payable. If the template invoice is not approved by the Authority then the Supplier shall make such amendments as may be reasonably required by the Authority.
- The Supplier shall ensure that each invoice contains the following information:
 - (a) the date of the invoice;
 - (b) a unique invoice number;
 - (c) the Service Period or other period(s) to which the relevant Charge(s) relate;
 - (d) the correct reference for this Agreement;
 - (e) the reference number of the purchase order to which it relates (if any);
 - (f) the dates between which the Services subject of each of the Charges detailed on the invoice were performed;
 - (g) a description of the Services;
 - (h) the pricing mechanism used to calculate the Charges (such as Guaranteed Maximum Price with Target Cost, Fixed Price, Time and Materials etc);
 - (i) any payments due in respect of Achievement of a Milestone, including the Milestone Achievement Certificate number for each relevant Milestone;
 - (j) the total Charges gross and net of any applicable deductions or additional payments and, separately, the amount of any Reimbursable Expenses properly chargeable to the Authority under the terms of this Agreement, and, separately, any VAT or other sales tax payable in respect of each of the same;
 - (k) details of any Gain Share, Service Credits, Delay Payments Reward Payments or similar deductions or additional payment amounts that shall apply to the Charges detailed on the invoice;
 - (l) reference to any reports required by the Authority in respect of the Services to which the Charges detailed on the invoice relate (or in the case of reports issued by the Supplier for validation by the Authority, then to any such reports as are validated by the Authority in respect of the Services);
 - (m) a contact name and telephone number of a responsible person in the Supplier's finance department in the event of administrative queries; and

- (n) the banking details for payment to the Supplier via electronic transfer of funds (i.e. name and address of bank, sort code, account name and number).
- The Supplier shall invoice the Authority in respect of Services in accordance with the requirements of Part B. The Supplier shall first submit to the Authority a draft invoice setting out the Charges payable. The Parties shall endeavour to agree the draft invoice within 5 Working Days of its receipt by the Authority, following which the Supplier shall be entitled to submit its invoice.
 - Each invoice shall at all times be accompanied by Supporting Documentation. Any assessment by the Authority as to what constitutes Supporting Documentation shall not be conclusive and the Supplier undertakes to provide to the Authority any other documentation reasonably required by the Authority from time to time to substantiate an invoice.
 - The Supplier shall submit all invoices and Supporting Documentation to:

Department of Health
Accounts Payable
Room 530, Richmond House
79 Whitehall
London
SW1A 2NS

with a copy (again including any Supporting Documentation) to such other person and at such place as the Authority may notify to the Supplier from time to time.
 - All Supplier invoices shall be expressed in sterling or such other currency as shall be permitted by the Authority in writing.
 - The Authority shall regard an invoice as valid only if it complies with the provisions of this Part E. Where any invoice does not conform to the Authority's requirements set out in this Part E, the Authority shall return the disputed invoice to the Supplier and the Supplier shall promptly issue a replacement invoice which shall comply with such requirements.

2 PAYMENT TERMS

- Subject to the relevant provisions of this Schedule, the Authority shall make payment to the Supplier within 30 days of receipt of a valid invoice by the Authority at its nominated address for invoices.
- Unless the Parties agree otherwise in writing, all Supplier invoices shall be paid in sterling by electronic transfer of funds to the bank account that the Supplier has specified on its invoice.

ANNEX 1

Pricing Mechanism

1. **TABLE 1: SUPPLIER PERSONNEL RATE CARD FOR CALCULATION OF TIME AND MATERIALS CHARGES**

[NOT USED]
2. **TABLE 2: MAXIMUM TIME AND MATERIALS CHARGES**

[NOT USED]
3. **TABLE 3: DAY RATE AND YEAR RATE FOR CALCULATION OF TIME AND MATERIALS AND GUARANTEED MAXIMUM PRICE WITH TARGET COST CHARGES**

Daily

*Information redacted under Section 43
of the FOIA*

Yearly

*Information redacted under Section 43
of the FOIA*

4. TABLE 4: GUARANTEED MAXIMUM PRICE WITH TARGET COSTS CHARGES

These costs are detailed within the Contract Inception Report attached in Annex 2, Schedule 7.5 - Financial Reports. Within The Financial Model, the relevant table is within tab a_O_Financial Terms table A1-Milestone Payments

Enhance Project 6 has been included for budgetary purposes within this table but will be billed in accordance with Table 6 - Firm Prices

5. TABLE 5: ANTICIPATED SERVICE COST AMOUNTS

These costs are detailed within the Contract Inception Report attached in Annex 2, Schedule 7.5 - Financial Reports. Within The Financial Model, the relevant table is within tab a_O_Financial Terms table A2-Service Charges and Anticipated Service Cost Amounts

Enhance Support 6 has been included for budgetary purposes within this table but will be billed in accordance with Table 7 - Volume Charges

6. TABLE 6: FIRM PRICES

INFORMATION REDACTED UNDER SECTION 43 OF THE FOIA

7. TABLE 7: VOLUME CHARGES

INFORMATION REDACTED UNDER SECTION 43 OF THE FOIA

ANNEX 2

Charging mechanism and adjustments

1. TABLE 1: MILESTONE PAYMENTS AND DELAY PAYMENTS

These payments are detailed within the Contract Inception Report attached in Annex 1, Schedule 7.5 - Financial Reports. Within The Financial Model, the relevant table is within tab a_O_Financial Terms table A1-Milestone Payments

Enhance Project 6 has been included for budgetary purposes within this table but will be billed in accordance with Table 6 - Firm Prices

2. TABLE 2: SERVICE CHARGES

These charges are detailed within the Contract Inception Report attached in Annex 1, Schedule 7.5 - Financial Reports. Within the Financial Model, the relevant table is within tab a_O_PriceSum_U and table A3 - Service Charges provides the relevant data.

Enhance Support 6 has been included for budgetary purposes within this table but will be billed in accordance with Table 7 - Volume Charges

ANNEX 3

Pro-forma Certificate of Costs

I *[name of CFO or Director of Finance or equivalent as agreed in advance in writing with the Authority]* of *[insert name of Supplier]*, certify that the financial information provided as part of this Certificate of Costs, incurred in relation to the *[insert name/reference for the Agreement]* (the “Agreement”) in relation to the following *[Milestone/Milestone Group]*:

[Insert details of Milestone/Milestone Group]

- 1 has been reasonably and properly incurred in accordance with *[name of Supplier]*'s books, accounts, other documents and records;
- 2 is accurate and not misleading in all key respects; and
- 3 is in conformity with the Agreement and with all generally accepted accounting principles within the United Kingdom.

Signed *[Director of Finance or equivalent]*

[Name of Supplier]

COMMERCIAL IN CONFIDENCE – SUBJECT TO CONTRACT

ANNEX 4

Not used

COMMERCIAL IN CONFIDENCE – SUBJECT TO CONTRACT

ANNEX 5

Information redacted under section 43 of the FOIA

ANNEX 6

Supplier Profit Margin

Information redacted under section 43 of the FOIA