



Department
for Work &
Pensions

SCHEDULE 7

FINANCIAL MATTERS

- 7.1 Fees and Payments
- 7.2 Payments on Termination
- 7.3 Benchmarking
- 7.4 Financial Distress
- 7.5 Financial Transparency and Audit Rights
- 7.6 Not Used

SCHEDULE 7.1 – FEES AND PAYMENTS

1 Fees

- 1.1 The Authority shall pay to the Supplier the Fees for the Services in accordance with the amounts set out in this Schedule 7.1.
- 1.2 The Supplier acknowledges and agrees that it shall have no entitlement to remuneration in respect of the Services whatsoever other than the Fees.
- 1.3 The Fees shall comprise a Delivery Fee which shall be paid in respect of the services performed by the Supplier
- 1.4 The payment rates set out in this Schedule 7.1 are to be reviewed in line with the volumes every three (3) months. If the volumes in each three month period are below seventy five (75) percent of the profile for the period, the Delivery fee will be adjusted, at least, to eighty five (85) percent of the rate set out in this Schedule 7.1, for the period it relates to. A worked example is set out in Appendix 3 to this Schedule.

2 Value Added Tax

- 2.1 Payment from the Authority to the Supplier shall be by a HMRC approved self-billing process. The Supplier hereby agrees that for the duration of the Agreement the Authority will be self-billing producing the invoices on the Suppliers behalf. The Authority will issue VAT invoices and the Supplier shall confirm, on an annual basis, the rate of VAT that should be applied to self-billing invoices. It remains the responsibility of the Supplier to accurately account for and pay any VAT included in the payments received from the Authority to HMRC.
- 2.2 If the VAT status of the Supplier changes at any time during the delivery of the Services the Supplier shall notify the Authority immediately and in any case within twenty-four (24) hours. If the Supplier intends to outsource the self-billing process to any third party it shall not do so without first having obtained the Authority's prior approval, such approval not to be unreasonably withheld or delayed.
- 2.3 The Parties acknowledge and agree that an appropriate self-billing agreement is required to be in place and signed by the Parties throughout the Term to reflect the required self-billing treatment.

3 Additional costs

- 3.1 Subject to the provisions of this Agreement (including without limitation this Schedule 7.1), the Fees are fixed and unless otherwise agreed between the Parties in accordance with Clause D3 (Change) and Schedule 8.2 (Change Control Procedure) any additional or unforeseen costs incurred by the Supplier in delivering the Services shall be borne solely by the Supplier.

4 Types of Payment

4.1 Delivery Fee

- (a) Subject to paragraph 1(b) below, a total Delivery Fee of £10050842 where due, will be payable in Delivery Fee Periodic Payments, as outlined at Appendix 4, from the end of the first full month after the Referral Period Start Date to the initial Referral

Period End Date, subject to any deductions made in respect of the Customer Service Standards as outlined in paragraph 4.20 of the specification.

- (b) Notwithstanding paragraph 1(a), where the Referral Period Start Date is not the first day of a month, the Delivery Fee Periodic Payment for that month shall accrue on a day-to-day basis starting on the Referral Period Start Date, calculated according to the number of days elapsed and a month of thirty (30) days.
- (c) Where due, the Authority will pay each Delivery Fee Periodic Payment monthly in arrears

Should the Authority choose to unilaterally extend the Referral Period in accordance with Clause D3.7, it will be at the absolute discretion of the Authority to determine whether a Delivery Fee will be payable for any such period of extension and the amount of any Delivery Fee during such period of extension.

5 Methods of payment

- 5.1 The Authority and the Supplier shall make payments using PRaP and/or other electronic methods.
- 5.2 The Authority may issue a Purchase Order to the Supplier prior to commencement of the Services.
- 5.3 All invoices payable outside of PRaP, must include the appropriate purchase order number sent to the following address:

SSCL Accounts Payable Team
Room 6124
Tomlinson House
Norcross
Blackpool
FY5 3TA
Shared Services Helpline: 0845 602 8244

Or via email in PDF format to APinvoices-DWP-U@sscl.gse.gov.uk.

- 5.4 The Authority reserves the right to set and / or alter, at its absolute discretion, the method of payment and will use reasonable endeavours to give thirty (30) days' notice to the Supplier of any change to the method of payment.

6 Payment rates

- 6.1 For the performance of the Services by the Supplier the Fees shall be paid at the prices and rates entered in this Schedule. Subject to paragraph 1.4, these rates are fixed and not subject to amendment or alteration over the Term, save where an amendment or alteration is made in accordance with the Change Control Procedure.
- 6.2 All payments will be subject to the provisions of this Schedule 7.1 and Clause **Error! Reference source not found.** (Payment, Taxation and Value for Money Provisions). The payment of any Delivery Fee shall not constitute acceptance.

Appendix 1

VAT Confirmation

The format of appendix is subject to change from time to time at the Authority's absolute discretion

Company Name: [Insert Supplier name]

VAT Registration Number: [Supplier to complete]

Registered Office Address: [Supplier to complete]

Company Registration Number: [Supplier to complete]

Please mark an X in the box that identifies the VAT rate to be applied to the Payment type:

Supply	Zero	Reduced	Standard	Exempt Supply	Outside the scope of VAT
Delivery Fee					

The Supplier hereby confirms that the VAT rates indicated in the above table are the correct VAT rates in respect of the supply of Services under the Agreement for [XXX] (Contract Reference Number: [XX/XXX] dated [XX XXX XXXX]).

For and on behalf of the Supplier [Supplier to complete]

Signature of Director

Name

Date

Appendix 2

Self-Billing Agreement

The format of appendix is subject to change from time to time at the Authority's absolute discretion

Authority: The Secretary of State for the Department of Work and Pensions

VAT Number: 8888 15554

and

Supplier: [Supplier to complete]

VAT Number: [Supplier to complete]

The Authority agrees:

1. to issue self-billed invoices for all supplies made to them by the Supplier until xx xx xxxx;
2. to complete self-billed invoices showing the Supplier's name, address and VAT registration number, together with all the other details which constitute a full VAT Invoice;
3. to make a new self-billing agreement in the event that its VAT registration number changes; and
4. to inform the Supplier if the issue of self-billed invoices will be outsourced to a third party.

The Supplier agrees:

1. to accept invoices raised by the Authority until [XX XXXX XXXX];
2. not to raise sales invoices for the transactions covered by this self-billing agreement;
3. to notify the Authority immediately if it:
 - changes its VAT registration number;
 - ceases to be VAT registered; or
 - sells its business, or part of its business.

Authority Signature: XXXX

For and on behalf of: The Secretary of State for the Department of Work and Pensions

Date: XXX

Supplier Signature: [Supplier to complete]

For and on behalf of: [Supplier to complete]

Date: [Supplier to complete]

APPENDIX 3

REDACTED

Appendix 4 DELIVERY FEE PAYMENTS

REDACTED

SCHEDULE 7.2 - PAYMENTS ON TERMINATION

Payments on Termination

1 Definitions

1.1 In this Schedule, the following definitions shall apply:

“Applicable Supplier Personnel”	<p>any Supplier Personnel who:</p> <ul style="list-style-type: none"> (i) at the Termination Date: <ul style="list-style-type: none"> a) are employees of the Supplier; b) are Dedicated Supplier Personnel; c) have not transferred (and are not in scope to transfer at a later date) to the Authority or the Replacement Supplier by virtue of the Employment Regulations; and (ii) are dismissed or given notice of dismissal by the Supplier within: <ul style="list-style-type: none"> d) forty (40) Working Days of the Termination Date; or e) such longer period required by Law, their employment contract (as at the Termination Date) or an applicable collective agreement; and (iii) have not resigned or given notice of resignation prior to the date of their dismissal by the Supplier; and (iv) the Supplier can demonstrate to the satisfaction of the Authority: <ul style="list-style-type: none"> a) are surplus to the Supplier's requirements after the Termination Date notwithstanding its obligation to provide services to its other customers; b) are genuinely being dismissed for reasons of redundancy; and c) have been selected for redundancy by the Supplier on objective grounds other than the fact that the Supplier is entitled to reimbursement under this provision in respect of such employees;
“Breakage Costs Payment”	an amount equal to the Redundancy Costs and the Contract Breakage Costs as at the Termination Date as determined in accordance with Paragraph 3;
“Compensation Payment”	the payment calculated in accordance with Paragraph 6;
“Contract Breakage Costs”	the amounts payable by the Supplier to its Sub-contractors for terminating all relevant Sub-contracts as a direct result of the early termination of this Agreement;
“Dedicated”	all Supplier Personnel then assigned to the Services or any part

Supplier Personnel	of the Services. If the Supplier is unsure as to whether Supplier Personnel are or should be regarded as so assigned, it shall consult with the Authority whose view shall be determinative provided that the employee has been materially involved in the provision of the Services or any part of the Services;
“Profit Already Paid”	the Supplier Profit paid or payable to the Supplier under this Agreement for the period from the Effective Date up to (and including) the Termination Date;
“Redundancy Costs”	<p>the total sum of any of the following sums paid to Applicable Supplier Personnel, each amount apportioned between the Supplier and the Authority based on the time spent by such employee on the Services as a proportion of the total Service duration:</p> <ul style="list-style-type: none"> (a) any statutory redundancy payment; and (b) in respect of an employee who was a Transferring Former Supplier Employee or a Transferring Authority Employee, any contractual redundancy payment (or where such a contractual benefit on redundancy is a benefit payable from a pension scheme, the increase in cost to the Supplier as a net present value compared to the benefit payable on termination of employment without redundancy), provided that such employee was entitled to such contractual redundancy payment immediately prior to his or her transfer to the Supplier under the Employment Regulations;
“Request for Estimate”	a written request sent by the Authority to the Supplier, requiring that the Supplier provide it with an accurate estimate of the Termination Payment and Compensation Payment that would be payable if the Authority exercised its right under Clause 11.1(a) (Termination by the Authority) to terminate this Agreement for convenience on a specified Termination Date;
“Shortfall Period”	has the meaning given in Paragraph 6.2;
“Termination Estimate”	has the meaning given in Paragraph 11.2;
“Total Costs Incurred”	the Costs incurred by the Supplier up to the Termination Date in the performance of this Agreement and detailed in the Financial Model (but excluding Contract Breakage Costs, Redundancy Costs and any costs the Supplier would not otherwise be able to recover through the Fees) less any Deductions up to (and including) the Termination Date;
“Unrecovered Costs”	the Costs incurred by the Supplier in the performance of this Agreement (as summarised in the Financial Model) to the extent that the same remain at the Termination Date to be recovered through Fees that but for the termination of this Agreement would have been payable by the Authority after the Termination Date in accordance with Schedule 7.1 (Fees and Payment) as such Costs and Fees are forecast in the Financial Model;
“Unrecovered	an amount equal to the lower of:

Payment”	(a) the sum of the Unrecovered Costs and the Unrecovered Profit; and
	(b) the amount specified in Paragraph 4; and
“Unrecovered Profit”	(Total Costs Incurred x Anticipated Contract Life Profit Margin) - Profit Already Paid remaining unpaid at the Termination Date.

2 Termination Payment

The Termination Payment payable pursuant to Clause 12.3(a) (Payments by the Authority) shall be an amount equal to the aggregate of the Breakage Costs Payment and the Unrecovered Payment.

3 Breakage Costs Payment

3.1 The Supplier may recover through the Breakage Costs Payment only those costs incurred by the Supplier directly as a result of the termination of this Agreement which:

- (a) would not have been incurred had this Agreement continued until the scheduled expiry of the Term;
- (b) are unavoidable, proven, reasonable, and not capable of recovery;
- (c) are incurred under arrangements or agreements that are directly associated with this Agreement;
- (d) are not Contract Breakage Costs relating to contracts or Sub-contracts with Affiliates of the Supplier; and
- (e) relate directly to the termination of the Services.

Limitation on Breakage Costs Payment

3.2 The Breakage Costs Payment shall not exceed the lower of:

- (a) the relevant limit set out in Annex 1; and
- (b) one-hundred and twenty percent (120%) of the estimate for the Breakage Costs Payment set out in any relevant Termination Estimate.

Redundancy Costs

3.3 The Authority shall not be liable under this Schedule for any costs associated with Supplier Personnel (whether relating to redundancy, redeployment or otherwise) other than the Redundancy Costs.

3.4 Where the Supplier can demonstrate that a member of Supplier Personnel will be made redundant following termination of this Agreement, but redeployment of such person is possible and would offer value for money to the Authority when compared with redundancy, then the Authority shall pay the Supplier the actual direct costs incurred by the Supplier or its Sub-contractor arising out of the redeployment of such person (including retraining and relocation costs) subject to a maximum amount of thirty-thousand pounds (£30,000) per relevant member of the Supplier Personnel.

Contract Breakage Costs

3.5 The Supplier shall be entitled to Contract Breakage Costs only in respect of Sub-contracts which:

- (a) are not assigned or novated to a Replacement Supplier at the request of the Authority in accordance with Schedule 8.5 (Exit Management); and
- (b) the Supplier can demonstrate:
 - (i) are surplus to the Supplier's requirements after the Termination Date, whether in relation to use internally within its business or in providing services to any of its other customers; and
 - (ii) have been entered into by it in the ordinary course of business.

3.6 The Supplier shall seek to negotiate termination of any Sub-contracts with the relevant Sub-contractor (as the case may be) using all reasonable endeavours to minimise the cancellation or termination charges.

3.7 Except with the prior written agreement of the Authority, the Authority shall not be liable for any costs (including cancellation or termination charges) that the Supplier is obliged to pay in respect of:

- (a) the termination of any contractual arrangements for occupation of, support of and/or services provided for Supplier premises which may arise as a consequence of the termination of this Agreement; and/or
- (b) Assets not yet installed at the Termination Date.

4 Unrecovered Payment

The Unrecovered Payment shall not exceed the lowest of:

- (a) the relevant limit set out in Annex 1;
- (b) one-hundred and twenty percent (120%) of the estimate for the Unrecovered Payment set out in any relevant Termination Estimate; and
- (c) the Fees that but for the termination of this Agreement would have been payable by the Authority after the Termination Date in accordance with Schedule 7.1 (Fees and Payment) as forecast in the Financial Model.

5 Mitigation of Contract Breakage Costs, Redundancy Costs and Unrecovered Costs

5.1 The Supplier agrees to use all reasonable endeavours to minimise and mitigate Contract Breakage Costs, Redundancy Costs and Unrecovered Costs by:

- (a) the appropriation of Assets, employees and resources for other purposes;
- (b) at the Authority's request, assigning any Sub-contracts to the Authority or a third party acting on behalf of the Authority; and
- (c) in relation Sub-contract that is not to be assigned to the Authority or to another third party, terminating those contracts at the earliest possible date without breach or where contractually permitted.

5.2 If Assets, employees and resources can be used by the Supplier for other purposes, then there shall be an equitable reduction in the Contract Breakage Costs, Redundancy Costs and Unrecovered Costs payable by the Authority or a third party to the Supplier. In the event of any Dispute arising over whether the Supplier can use any Assets, employees and/or resources for other purposes and/or over the amount of the relevant equitable reduction, the Dispute shall be referred to an Expert for determination in accordance with

the procedure detailed in Schedule 8.3 (Dispute Resolution Procedure).

6 Compensation Payment

- 6.1 The Compensation Payment payable pursuant to Clause I2.3(b) (Payments by the Authority) shall be an amount equal to the total forecast Fees over the Shortfall Period (as stated in the Financial Model) multiplied by the Anticipated Contract Life Profit Margin.
- 6.2 For the purposes of Paragraph 6.1, the “**Shortfall Period**” means:
- (a) where the Authority terminates this Agreement pursuant to Clause I1.1(a) (Termination by the Authority), a number of days equal to the number of days by which the notice given (or deemed given pursuant to Clause J10) falls short of three-hundred and sixty-five (365) days; or
 - (b) where the Supplier terminates this Agreement pursuant to Clause I1.3(a) (Termination by the Supplier), a number of days equal to the number of days by which the period from (and including) the date of the non-payment by the Authority to (and including) the Termination Date falls short of three-hundred and sixty-five (365) days.
- but in each case subject to the limit set out in Paragraph 6.3.
- 6.3 The Compensation Payment shall be no greater than the lower of:
- (a) the relevant limit set out in Annex 1; and
 - (b) one-hundred and twenty percent (120%) of the estimate for the Compensation Payment set out in the relevant Termination Estimate.

7 Full and final settlement

Any Termination Payment and/or Compensation Payment paid under this Schedule shall be in full and final settlement of any claim, demand and/or proceedings of the Supplier in relation to any termination by the Authority pursuant to Clause I1.1(a) (Termination by the Authority) or termination by the Supplier pursuant to Clause I1.3(a) (Termination by the Supplier) (as applicable), and the Supplier shall be excluded from all other rights and remedies it would otherwise have been entitled to in respect of any such termination.

8 Invoicing for the Payments on Termination

All sums due under this Schedule shall be payable by the Authority to the Supplier in accordance with the payment terms set out in Schedule 7.1 (Fees and Payment).

9 Set off

The Authority shall be entitled to set off any outstanding liabilities of the Supplier against any amounts that are payable by it pursuant to this Schedule.

10 No double recovery

- 10.1 If any amount payable under this Schedule (in whole or in part) relates to or arises from any Transferring Assets then, to the extent that the Authority makes any payments pursuant to Schedule 8.5 (*Exit Management*) in respect of such Transferring Assets, such payments shall be deducted from the amount payable pursuant to this Schedule.
- 10.2 The value of the Termination Payment and/or the Compensation Payment shall be reduced or extinguished to the extent that the Supplier has already received the Fees or the financial benefit of any other rights or remedy given under this Agreement so that

there is no double counting in calculating the relevant payment.

- 10.3 Any payments that are due in respect of the Transferring Assets shall be calculated in accordance with the provisions of the Exit Plan.

11 Estimate of Termination Payment and Compensation Payment

- 11.1 The Authority may issue a Request for Estimate at any time during the Term provided that no more than two (2) Requests for Estimate may be issued in any six (6) month period.
- 11.2 The Supplier shall within twenty (20) Working Days of receiving the Request for Estimate (or such other timescale agreed between the Parties), provide an accurate written estimate of the Termination Payment and the Compensation Payment that would be payable by the Authority based on a postulated Termination Date specified in the Request for Estimate (such estimate being the “**Termination Estimate**”). The Termination Estimate shall:
- (a) be based on the relevant amounts set out in the Financial Model;
 - (b) include:
 - (i) details of the mechanism by which the Termination Payment is calculated;
 - (ii) full particulars of the estimated Contract Breakage Costs in respect of each Sub-contract and appropriate supporting documentation; and
 - (iii) such information as the Authority may reasonably require; and
 - (c) state the period for which that Termination Estimate remains valid, which shall be not less than twenty (20) Working Days.
- 11.3 The Supplier acknowledges that issue of a Request for Estimate shall not be construed in any way as to represent an intention by the Authority to terminate this Agreement.
- 11.4 If the Authority issues a Termination Notice to the Supplier within the stated period for which a Termination Estimate remains valid, the Supplier shall use the same mechanism to calculate the Termination Payment as was detailed in the Termination Estimate unless otherwise agreed in writing between the Supplier and the Authority.

ANNEX 1: MAXIMUM PAYMENTS ON TERMINATION

The table below sets out, by Contract Year, the maximum amount of the Unrecovered Payment, Breakage Costs Payment and Compensation Payment that the Authority shall be liable to pay to the Supplier pursuant to this Agreement:

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SCHEDULE 7.3 - BENCHMARKING NOT USED

SCHEDULE 7.4 - FINANCIAL DISTRESS

Financial Distress

1 Definitions

In this Schedule, the following definitions shall apply:

“Board”	means the Supplier’s board of directors;
“Board Confirmation”	means written confirmation from the Board in accordance with Paragraph 8 of this Schedule;
“FDE Group”	means the Supplier, Key Sub-contractors, and the Guarantor;
“Financial Indicators”	in respect of the Supplier, Key Sub-contractors and the Guarantor, means each of the financial indicators set out at paragraph 5.1 of this Schedule;
“Financial Target Thresholds”	means the target thresholds for each of the Financial Indicators set out at paragraph 5.1 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) Not used.
 - (b) the financial position or, as appropriate, the financial performance of each of the Supplier, Guarantor and Key Sub-contractors satisfies the Financial Target Thresholds.
- 2.2 Not used.
- 2.3 The Supplier shall:
- (a) Not used.
 - (b) monitor and report on the Financial Indicators for each entity in the FDE Group against the Financial Target Thresholds 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 Not used.
- 2.5 Each report submitted by the Supplier pursuant to paragraph 2.3(b) 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 Indicator reported by the Supplier in graph form to enable the Authority to easily analyse and assess the trends in financial performance.

3 Financial Distress Events

3.1 The following shall be Financial Distress Events, and for the purposes of this Schedule are categorised as “Risk Level 1” Financial Distress Events:

- (a) Not used.
- (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) Not used.
- (g) any of the Financial Indicators set out at Paragraph 5 for any of the FDE Group entities falling within Risk Level 1.

3.2 The following shall be Financial Distress Events, and for the purposes of this Schedule are categorised as “Risk Level 2” Financial Distress Events:

- (a) any of the following:
 - (i) commencement of any litigation against an FDE Group entity with respect to financial indebtedness greater than five million pounds (£5m) or obligations under a service contract with a total contract value greater than five million pounds (£5m);
 - (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 an 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 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 Services in accordance with this Agreement; and

- (b) any of the Financial Indicators set out at Paragraph 5 for any of the FDE Group entities falling within Risk Level 2.

4 Consequences of Financial Distress Events

- 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.
- 4.2 In the event of a late or non-payment of a Key Sub-contractor pursuant to Paragraph 3.1(e), the Authority shall not exercise any of its rights or remedies under Paragraph 4.3 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 the 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 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) that the Financial Distress Event could impact on the continued performance and delivery of the 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, provide such information relating to the Supplier, Key Sub-contractors and/or the Guarantor as the Authority may reasonably require in order to understand the risk to the 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.

- 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.
- 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 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), submit an updated Financial Distress Remediation Plan to the Authority for its approval, and the provisions of Paragraphs 4.4 and 4.5 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 4.1 (or the circumstance or matter which has caused or otherwise led to it) no longer exists, and the Supplier is able to demonstrate this to the satisfaction of the Authority, the Supplier shall notify the Authority and the Parties may agree that the Supplier shall be relieved of its obligations under Paragraph 4.6.
- 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 and/or the Guarantor 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 and/or the Guarantor a form of confidentiality agreement to be entered 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, anonymization 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 4 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:

Financial Indicator	Calculation ¹	Financial Target Threshold:	Risk Level 1	Risk Level 2
Debt Ratio	Total Liabilities / Total Assets	Debt ratio is less than or equal to 1.0	Debt ratio is greater than 1.0 but less than or equal to 1.2	Debt ratio is greater than 1.2
Acid Test	(Current liabilities – inventory) / Current liabilities	Acid test is greater than or equal to 0.8	Acid test is less than 0.8 but greater than or equal to 0.6	Acid test is less than 0.6
Operating cash flow ratio	Operating cash flow / Revenue	Operating cash flow ratio is greater than or equal to 4%	Operating cash flow ratio is less than 4% but greater than or equal to 2%	Operating cash flow ratio is less than 2%

Key: ¹ – See Annex 4 of this Schedule which sets out the calculation methodology to be used in the calculation of each Financial Indicator.

- 5.2 Not used.

6 Termination rights

The Authority shall be entitled to terminate this Agreement under Clause I1.1(b) (Termination by the Authority) if:

- the Supplier fails to notify the Authority of a Financial Distress Event in accordance with Paragraph 2.3(c);
- 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; and/or
- 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).

7 Not used

- 7.1 Not used.

8 Board confirmation

- 8.1 If this Agreement has been specified as a Critical Service Contract under Paragraph 10.1 of Part 2 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 Board Confirmation (whichever is the earlier) provide a Board Confirmation to the Authority in the form set out at Annex 5 of this Schedule, confirming that to the best of the 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 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 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 Board Confirmation to be provided under this Agreement, the Supplier shall provide the 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 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 Board Confirmation, a statement from the Board of Directors 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.

ANNEX 1: 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
Debt Ratio	$\text{Debt ratio} = \text{total liabilities} / \text{total assets}$ <p><i>All elements used to calculate the debt ratio are available on the face of the Balance Sheet in a standard set of financial statements.</i></p>
Acid Test	$\text{Acid test} = (\text{current liabilities} - \text{inventory}) / \text{current liabilities}$ <p><i>All elements used to calculate the acid test are available on the face of the Balance Sheet in a standard set of financial statements.</i></p>
Operating Cash Flow Ratio	$\text{Operating Cash Flow Ratio} = \text{Operating Cash Flow} / \text{Revenue}$ <p><i>All elements used to calculate the operating cash flow ratio are available in the Profit and Loss account and Cash Flow statement in a standard set of financial statements.</i></p>

ANNEX 5: BOARD CONFIRMATION

Supplier Name:

Contract Reference Number:

The Board of Directors acknowledge 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 Board to prepare this statement.

The Board of Directors confirms, to the best of its knowledge and belief, that as at the date of this 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 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 Board of Directors:

Chair

Signed

Date

Director

Signed

Date

SCHEDULE 7.5 - FINANCIAL TRANSPARENCY AND AUDIT RIGHTS

1 Definitions

In this Schedule, the following definitions shall apply:

“Audit Agents”	<ul style="list-style-type: none"> (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) the European Commission; (f) the European Court of Auditors; (g) any party formally appointed by the Authority and/or by the Crown and/or by the European Commission and/or by the European Court of Auditors to carry out audit or similar review functions; and (h) successors or assigns of any of the above;
“Financial Model”	the Contract Cost Register submitted by the Supplier in its Tender, or where the Supplier has provided an updated Contract Cost Register at the Authority’s request, that updated Contract Cost Register;
“Financial Transparency Objectives”	has the meaning given in Paragraph 1 of Part A;
“Onerous Contract”	a contract in which the unavoidable costs of meeting the obligations under the contract exceed the economic benefits expected to be received under it, as defined under International Accounting Standard 37;
“Onerous Contract Report”	means a report provided by the Supplier pursuant to Paragraph 3 of Part A to this Schedule;
“Open Book Data”	<p>complete and accurate financial and non-financial information which is sufficient to enable the Authority to verify the Fees already paid or payable and Fees forecast to be paid during the remainder of the Term, including details and all assumptions relating to:</p> <ul style="list-style-type: none"> (a) the Supplier’s Costs broken down against each 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 Services including an analysis showing: <ul style="list-style-type: none"> (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 Services;
- (e) the Supplier Profit achieved over the Term and on an annual basis;
- (f) 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;
- (g) an explanation of the type and value of risk and contingencies associated with the provision of the Services, including the amount of money attributed to each risk and/or contingency; and
- (h) the actual Costs profile for each Service Period.

PART A: FINANCIAL TRANSPARENCY OBJECTIVES AND OPEN BOOK DATA

1 Financial Transparency Objectives

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:

Understanding the Fees

- (a) 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 Services and the Supplier Profit Margin;
- (b) 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;
- (c) Not Used;

Agreeing the impact of Change

- (d) 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 Fees;
- (e) for both Parties to be able to review, address issues with and re-forecast progress in relation to the provision of the Services;

Continuous improvement

- (f) for the Parties to challenge each other with ideas for efficiency and improvements; and
 - (g) to enable the Authority to demonstrate that it is achieving value for money for the tax payer 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 Fees 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.

3 Onerous Contracts

- 3.1 If the Supplier publicly designates the Agreement as an Onerous Contract (including where the Supplier has identified the Agreement as such in any published accounts or

public reports and announcements), the Supplier shall promptly notify the Authority of the designation and shall prepare and deliver to the Authority within the timescales agreed by the Parties (an in any event, no later than two (2) months following the publication of the designation) a draft Onerous Contract Report which includes the following:

- (a) An initial root cause analysis of the issues and circumstances which may have contributed to the Agreement being designated as an Onerous Contract;
- (b) An initial risk analysis and impact assessment on the provision of the Services as a result of the Supplier's designation of the Agreement as an Onerous Contract;
- (c) the measures which the Supplier intends to put in place to minimise and mitigate any adverse impact on the provision on the Services;
- (d) details of any other options which could be put in place to remove the designation of the Agreement as an Onerous Contract and/or which could minimise and mitigate any adverse impact on the provision of the Services.

- 3.2 Following receipt of the Onerous Contract Report, the Authority shall review and comment on the report as soon as reasonably practicable and the Parties shall cooperate in good faith to agree the final form of the report, which shall be submitted to the Programme Board, such final form report to be agreed no later than one (1) month following the Authority's receipt of the draft Onerous Contract Report.
- 3.3 The Programme Board shall meet within fourteen (14) Working Days of the final Onerous Contract Report being agreed by the Parties to discuss the contents of the report; and the Parties shall procure the attendance at the meeting of any key participants where reasonably required (including the Cabinet Office Markets and Suppliers team where the Supplier is a Relevant Supplier; representatives from any Monitored Suppliers; and the project's senior responsible officers (or equivalent) for each Party).
- 3.4 The Supplier acknowledges and agrees that the report is submitted to the Authority and Programme Board on an information only basis and the Authority and Programme Board's receipt of and comments in relation to the report shall not be deemed to be an acceptance or rejection of the report nor shall it relieve the Supplier of any liability under this Agreement. Any Changes to be agreed by the Parties pursuant to the report shall be subject to the Change Control Procedure.

PART B: NOT USED

PART C: AUDIT RIGHTS

1 Audit rights

- 1.1 The Authority, acting by itself or through its Audit Agents, shall have the right during the Term and for a period of eighteen (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:
- (a) Not Used;
 - (b) to verify the accuracy of the Fees and any other amounts payable by the Authority under this Agreement (and proposed or actual variations to such Fees and payments);
 - (c) to verify the Costs (including the amounts paid to all Sub-contractors and any third party suppliers);
 - (d) to verify 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, the Guarantor and/or any Key Sub-contractors or their ability to perform the 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 records relating to the Supplier's performance of the 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;
 - (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, 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
- (t) to review the integrity, confidentiality and security of the Authority Data.

- 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.
- 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

- 2.1 The Authority shall during each audit comply with those security, sites, systems and facilities operating procedures of the Supplier that the Authority deems reasonable and use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.
- 2.2 Subject to the Authority's obligations of confidentiality, the Supplier shall on demand provide the Authority and the Audit Agents with all reasonable co-operation and assistance (and shall procure such co-operation and assistance from its Sub-contractors) in relation to each audit, including:
- (a) all information requested by the Authority within the permitted scope of the audit;
 - (b) reasonable access to any Sites and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;
 - (c) access to the Supplier System; and
 - (d) access to Supplier Personnel.
- 2.3 The Supplier shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Supplier's performance of the Services against the applicable Customer Service Standards, Tender Minimum Performance Levels and RNOs at a level of detail sufficient to verify compliance with the Customer Service Standards, Tender Minimum Performance Levels and RNOs.
- 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, 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 and External Audit Teams

- 3.1 As an alternative to the Authority's right pursuant to Paragraph 1.1 to exercise an audit either itself or through its Audit Agents, the Authority may require in writing that an audit is undertaken by the Supplier's own internal and/or external audit function for any of the purposes set out in Paragraph 1.1.
- 3.2 Following the receipt of a request from the Authority under Paragraph 3.1 above, the Supplier shall procure that the relevant audit is undertaken as soon as reasonably practicable and that the Authority has unfettered access to:
- (a) the resultant audit reports; and
 - (b) all relevant members of the Supplier's internal and/or external audit team for the purpose of understanding such audit reports.

4 Response to Audits

- 4.1 If an audit undertaken pursuant to Paragraphs 1 or 3 identifies that:
- (a) the Supplier has committed a Default, the Authority may (without prejudice to any rights and remedies the Authority may have) require the Supplier to correct such Default as soon as reasonably practicable;
 - (b) Not Used;
 - (c) the Authority has overpaid any Fees, 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 Fees if it prefers; and
 - (d) the Authority has underpaid any Fees, the Supplier shall not be entitled to increase the Fees paid or payable by the Authority.

SCHEDULE 7.6 – NOT USED