

SCHEDULE D: AUDIT

PART 1: AUDITS

1. INTRODUCTION

1.1 Background

This Schedule provides for audit of the Provider and the Sub-Contractors and their respective activities in relation to this Contract by the Authority Audit Agents ("**Authority Audit Rights**").

1.2 Effect of Audit

1.2.1 The exercise of the Authority Audit Rights and any associated reports and courses of action arising from the exercise of the Authority Audit Rights shall not prejudice or constitute a waiver or exclusion of any:

(a) obligation or liability of the Provider; and/or

(b) right or remedy of the Authority,

under or in relation to this Contract.

2. AUTHORITY AUDIT RIGHTS AND RESPONSIBILITIES

2.1 Provider Responsibility

2.1.1 The Provider shall, and shall procure that each of its Sub-Contractors shall, comply with the obligations of the Provider under this Schedule and provide all further reasonable assistance to enable each Authority Audit Agent to exercise the Authority Audit Rights.

2.1.2 The Provider shall (and shall procure that each of its Sub-Contractors shall) implement all measurement and monitoring tools and procedures necessary to measure and report on the Provider's performance of the Services against the applicable Contract Delivery Indicators at a level of detail sufficient to verify compliance with the Contract Delivery Indicators.

2.2 Authority Audit Agents

2.2.1 The "**Authority Audit Agents**" shall include:

(a) internal and external auditors of the Authority;

(b) statutory or regulatory auditors of the Authority;

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- (c) the Comptroller and the Auditor General and his or her representatives, and/or any appointed representatives of the National Audit Office;
- (d) any person formally appointed by the Authority to carry out audit or similar review functions, provided that he or she:
 - (i) enters into reasonable confidentiality arrangements with the Authority in relation to Confidential Information of the Provider;
 - (ii) satisfies any reasonable security clearance requirements of the Provider; and
 - (iii) would not create a material conflict of interest for the Provider that could not be managed through the use of ethical walls;
- (e) any Relevant Authority; and
- (f) successors to any person specified in this paragraph 2.2.1.

2.3 Audit Access

2.3.1 For the purposes of Part 1 (Audits) of this Schedule, the term "**access**" shall include access by the Authority Audit Agents to:

- (a) the Open Book Data set out in paragraph 4.1.2 ;
- (b) hard and (if available) soft copies of all records and/or documentation relating to the Services and/or this Contract including:
 - (i) relevant shared network data; and
 - (ii) electronic mail data and handwritten notes (including data from the Provider's archives) of the Provider's Personnel or any person who is a former Provider's Personnel member,and access to review, duplicate and remove copies of these records and documents;
- (c) all books of account and financial records kept by the Provider in connection with the provision of the Services;

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- (d) all Provider's Premises, Provider's Personnel (including IT staff) and all other property, accommodation and facilities used by the Provider in relation to this Contract;
- (e) all Personal Data used by the Provider and/or the Sub-Contractors in performing or facilitating the Services;
- (f) all of the equipment in the possession or control of the Provider and/or any Sub-Contractor that relates to the Services and/or this Contract;
- (g) all oral and written information that relates to this Contract required by the Authority Audit Agents for the purposes of the audit;
- (h) all documentation, designs or models required to be developed by the Provider under this Contract; and/or
- (i) all other information, equipment, document management systems, personnel, software, materials (including meeting notes) and locations as reasonably required within the scope of an audit,

in each case (as applicable) in its original, unaltered form and to evidentiary standards acceptable to the Authority.

2.3.2 The Authority Audit Agents shall have the right to obtain and use all items referred to in paragraph 2.3.1 above in the manner determined by the relevant Authority Audit Agent, including by copying, reformatting or reconfiguring any information or data or using forensic imaging and forensic data capturing and processing technologies.

2.3.3 The Provider shall, and shall procure that each Provider's Personnel member shall, give to each Authority Audit Agent all necessary assistance in connection with the exercise of the Authority Audit Rights.

2.3.4 The Provider shall procure access by each Authority Audit Agent to the equivalent information set out in paragraph 2.3.1 with respect to each of its Sub-Contractors.

2.3.5 The Provider shall ensure that any information or data transferred to the Authority or an Authority Audit Agent in accordance with this Schedule shall be encrypted as required by the Authority.

2.4 Purpose of Audits

2.4.1 Each Authority Audit Agent may exercise the Authority Audit Rights and the Provider shall facilitate and grant access to each Authority Audit Agent:

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- (a) to conduct internal and statutory audits for the Authority;
- (b) to prepare, examine and/or certify the annual and interim reports and accounts of the Authority;
- (c) to verify the accuracy of the Contract Price and/or any other amounts payable by the Authority under this Contract (including any proposed or actual variations to the Contract Price and payments), including reviewing the payment mechanism referred to in Schedule E (Payment Mechanism and Profit Share) of this Contract and its application;
- (d) to verify the accuracy of the Employment Management Fee and/or any other amounts payable by the Operators to the Provider (including any proposed or actual variations to the Employment Management Fee and other payments);
- (e) to verify the accuracy of the Profit Share and/or any other amounts payable by the Operators to the Authority (including any proposed or actual variations to the Profit Share and other payments);
- (f) to verify the Provider's compliance with Law relevant to the performance of the Provider's obligations under this Contract;
- (g) to review, verify and quality assess any reports and Management Information provided pursuant to this Contract (including operational and financial information);
- (h) to verify the integrity, confidentiality and security of the data being processed, stored and/or accessed by the Provider and/or the Sub-Contractors pursuant to this Contract;
- (i) to identify or investigate actual or suspected fraud, impropriety or accounting mistakes or an actual or potential breach or threatened breach of security, provided that the Authority and an Authority Audit Agent will be under no obligation to inform the Provider or any of the Sub-contractors of the purpose or objective of its investigations;
- (j) to identify or investigate any circumstances which may impact upon the financial stability of the Provider and/or any Sub-Contractors or their ability to perform the Services;
- (k) to obtain all necessary information to fulfil the obligations of the Authority to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;

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- (l) to inform any statute driven examination of the economy, efficiency and effectiveness of the Authority and the use of its resources, including an examination by the National Audit Office pursuant to Section 6(1) of the National Audit Act 1983;
- (m) to inspect the Services and monitor compliance by the Provider with its obligations under this Contract;
- (n) to review any books of account and the internal contract management records kept by the Provider and/or the Sub-Contractors in connection with this Contract;
- (o) to review any relevant performance reports and/or other records relating to the Provider's and/or the Sub-Contractors' performance of the Services, including to verify that these reflect the Provider's and/or the Sub-Contractors' own internal reports and records;
- (p) to review the Provider's and/or the Sub-Contractors' quality management systems (including all relevant quality plans and any quality manuals and procedures);
- (q) to review the integrity, confidentiality and security of the Authority Data;
- (r) to assist, perform or satisfy any other audit that may be required by any Relevant Authority; and/or
- (s) to verify the technical or financial aspects of any Change pursuant to Schedule I (Change Mechanism) of this Contract.

2.4.2 If an audit identifies that:

- (a) the Provider has failed to perform its obligations in any material respect, the Authority shall be entitled to initiate the Improvement Plan process set out in Schedule F (Performance and Monitoring Mechanism) of this Contract and if the Provider's failure relates to a failure to provide any information to the Authority about the Contract Price (or any part thereof) or the Provider's costs, the Improvement Plan shall include a requirement for the provision of that information;
- (b) the Authority has overpaid any part of the Contract Price, the Provider shall pay to the Authority the amount overpaid within twenty (20) Working Days after the date of the report referred to in paragraph 2.7 and the Authority may deduct the relevant amount in addition to the cost of audit incurred by the Authority in accordance

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with paragraph 2.8 from any part of the Contract Price if the Provider fails to make this payment;

- (c) the Authority has underpaid any part of the Contract Price, the Authority shall pay to the Provider the amount of the under-payment less the cost of audit incurred by the Authority in accordance with paragraph 2.8, if applicable, within twenty (20) Working Days after the date of the report referred to in paragraph 2.7; and
- (d) the Provider has, at any time, incorrectly charged the Operator the Employment Management Fee including where such charge was not made on an arm's length basis then without limitation to the Authority's rights and remedies under this Contract the Provider shall, with the prior Approval of the Authority, correct the erroneous Employment Management Fee and pay to the Operator the amount of any over-payment or shall procure that the Operator pays to the Provider the amount of any under-payment as applicable within twenty (20) Working Days after the date of the report referred to in paragraph 2.7; the Operator has overpaid to the Authority any part of the Profit Share, the Authority shall pay to the Operator the amount of any over-payment less the cost of the audit incurred by the Authority in accordance with paragraph 2.8, if applicable, within twenty (20) Working Days after the report referred to in paragraph 2.7; or
- (e) the Operator has underpaid to the Authority any part of the Profit Share, the Provider shall procure that the Operator pays to the Authority the amount of the underpayment in addition to the cost of the audit incurred by the Authority in accordance with paragraph 2.8, if applicable, within twenty (20) Working Days after the date of the report referred to in paragraph 2.7.

2.4.3 Without prejudice to the Authority's rights under clause 54 (Termination on Default) of this Contract and to any other express rights under this Contract, where the Provider submits a fraudulent claim for payment under clause 25 (Charges, Payment and VAT) or Schedule E (Payment Mechanism and Profit Share) of this Contract, the Authority may, by notice to the Provider, audit the Provider at more frequent intervals (as specified by the Authority) until such time as the Provider has demonstrated to the reasonable satisfaction of the Authority that it is capable of performing and will perform such obligations in accordance with the requirements of this Contract.

2.4.4 For the purposes of paragraph 2.4.3, the Authority acknowledges that if:

- (a) the Provider has removed the person or persons responsible for the fraudulent reporting; or

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- (b) in the following consecutive three (3) Month period after the date of the Authority's notice there have been no further material errors of any kind,

this shall be regarded as sufficient demonstration that the Provider will perform and is capable of performing its relevant obligations.

- 2.4.5 If the Authority issues a notice under paragraph 2.4.3, the Provider shall bear its own costs and indemnify and keep indemnified in full the Authority from and against all reasonable costs and expenses incurred by or on behalf of the Authority in relation to such increased level of auditing arising due to the circumstances described in paragraph 2.4.3.

2.5 Notification of Audit

- 2.5.1 Except in the case of an Emergency Audit, the Authority shall endeavour to (but is not obliged to) provide at least ten (10) Working Days' notice of any audit it intends to carry out, specifying each location to be audited, the anticipated time of arrival and the name and title of each attendee, together with the organisation he or she represents.

- 2.5.2 Following notification of an audit, the Provider shall, and shall procure that its Sub-contractors shall, provide the Authority Audit Agents with audit access (as set out in paragraph 2.3 and for any of the purposes set out in paragraph 2.4.1) as the Authority and/or Authority Audit Agent requests.

2.6 Emergency Audit

- 2.6.1 The Provider shall provide, and shall procure that its Sub-contractors provide, each Authority Audit Agent with immediate audit access (as set out in paragraph 2.3 and for any of the purposes set out in paragraph 2.4.1) for each Emergency Audit in the following circumstances:

- (a) the audit is required for reasons of actual or suspected impropriety or fraud;
- (b) there are reasonable grounds to suspect that the Provider may be in default under this Contract;
- (c) circumstances have arisen, or are believed to have arisen, which would give the Authority the right to terminate this Contract;
- (d) there are reasonable grounds to suspect that a security breach has occurred in relation to the Services and/or this Contract; and/or

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- (e) the Authority wishes to carry out occasional unannounced security testing or inspections to establish compliance with its security requirements under this Contract and any Sub-contract,

2.7 Response to Audits

2.7.1 Following an audit that identifies areas of non-compliance with this Contract by the Provider (including any act or omission of any of the Sub-Contractors) that the Authority wishes to address with the Provider in accordance with paragraph 2.4.2, the Authority shall provide to the Provider, within a reasonable time after that audit, a report indicating:

- (a) without prejudice to any of its other rights or remedies under this Contract, including any termination rights, any specific issues of non-compliance with this Contract which the Provider is required to rectify or procure that its Sub-Contractor rectifies (which the Provider agrees may not be a complete list of all areas of non-compliance); and
- (b) any issues not concerning non-compliance but which the Authority may (without commitment by the Authority) wish to consider further with the Provider,

in each case as identified as a result of the conducted audit.

2.7.2 If the Provider disputes an audit report provided in accordance with paragraph 2.7.1, the Provider shall, within ten (10) Working Days after receiving the relevant report, provide details of the basis for that dispute together with documentation to support the Provider's position to the Authority. If the matter cannot be resolved, it shall be dealt with in accordance with the Dispute Resolution Procedure at clause 67 (involving, where appropriate and possible, the applicable Authority Audit Agents).

2.7.3 Any matters raised by the Authority pursuant to paragraph 2.7.1(b) shall be dealt with by the Parties through Schedule I (Change Mechanism) if required in accordance with this Contract.

2.8 Audit Costs

2.8.1 Each Party shall pay the costs and expenses incurred by it in complying with its obligations under this Schedule save that, if an audit identifies a Default by the Provider or its Operators, the Provider shall pay the Authority's reasonable costs and expenses in relation to and arising from such Default .

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3. INDEMNITY

- 3.1.1 The Provider shall be responsible for, and shall release and indemnify the Authority on demand from and against, all losses suffered or incurred by the Authority as a result of the exercise of the Authority Audit Rights where that audit identified any material non-compliance by the Provider with this Contract, including as a result of the exercise of its rights under paragraph 2.4 and the content or disclosure of any report referred to in paragraph 2.7.

PART 2: RECORDS AND PROVISION OF INFORMATION**4. PROVIDER'S RECORDS AND PROVISION OF INFORMATION****4.1 Records and Open Book Accounting**

- 4.1.1 The Provider shall (and shall procure that each of its Sub-Contractors shall) at all times:

- (a) maintain and retain the Open Book Data;
- (b) upon request by the Authority, provide a written summary of the Open Book Data in such form and detail as the Authority may reasonably require to enable the Authority to monitor the performance by the Provider of its obligations under this Contract;
- (c) provide such facilities as the Authority may reasonably require for its representatives to visit any place where the records are held and examine the records maintained under this paragraph 4; and
- (d) not store any records outside of the United Kingdom without the prior written consent of the Authority.

- 4.1.2 In this Contract "**Open Book Data**" means complete and accurate financial and non-financial (including operational) information which is used by the Provider and the Sub-contractors and is sufficient for the Authority to verify:

- (a) each component part of the Contract Price and/or each of the other amounts paid, payable or forecast to be paid by the Authority to the Provider during the remainder of the Contract Period under this Contract (including any proposed or actual variations to the Contract Price and other payments);
- (b) the Employment Management Fee and/or any other amounts paid, payable or forecast to be paid by the Operators to the Provider

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(including any proposed or actual variations to the Employment Management Fee and other payments);

- (c) the Profit Share and/or any other amounts paid, payable or forecast to be paid by the Operators to the Authority (including any proposed or actual variations to the Profit Share and other payments).

and which includes details and all assumptions relating to the Provider's and any Sub-contractors':

- (i) costs broken down against each element of the Services, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all hardware and software;
- (ii) operating expenditure relating to the provision of the Services including an analysis showing:
 - (1) the unit costs and quantity of consumables and bought-in services;
 - (2) manpower resources broken down into the number and grade/role of all Provider's Personnel (free of any contingency) and any Sub-contractors' Personnel together with a list of agreed rates against each manpower grade;
 - (3) a list of costs underpinning those rates for each manpower grade, being the agreed rate less the Provider's or any Sub-contractors' profit margin;
- (iii) overheads;
- (iv) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services;
- (v) the Provider's and any Sub-contractors' profit achieved over the term of this Contract and on an annual basis;
- (vi) confirmation that all methods of cost apportionment and overhead allocation are consistent with and not more onerous than such methods applied generally by the Provider and any Sub-contractors; and
- (vii) an explanation of the type and value of risk and contingencies associated with the provision of the

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Services, including the amount of money attributed to each risk and/or contingency.

4.2 Books of Account

4.2.1 Compliance with paragraph 4.1 shall require the Provider to keep (and where appropriate to procure that each of its Sub-Contractors shall keep) books of account in accordance with best accountancy practices with respect to this Contract showing in detail the Open Book Data and such other items as the Authority may reasonably require from time to time to conduct costs audits for verification of cost expenditure or estimated expenditure, for the purpose of this Contract.

4.2.2 The Provider shall have (and procure that its Sub-Contractors shall have) the books of account referred in paragraph 4.2.1 available for inspection by the Authority (and Authority Audit Agents upon reasonable notice, and shall present a written report of these to the Authority as and when requested.

4.3 Maintenance of Records

4.3.1 The Provider shall maintain and procure the maintenance by its Sub-contractors of detailed records relating to the provision of the Services, in each case in accordance with Good Industry Practice and any applicable Law.

4.3.2 Without prejudice to paragraph 4.3.1, the Provider shall procure that the following are maintained:

- (a) a full record of all incidents relating to health, safety and security which occur during the term of this Contract; and
- (b) full records of all maintenance procedures carried out during the term of this Contract,

and the Provider shall have the items referred to in this paragraph 4.3.2 available for inspection by the Authority and the Authority Audit Agents (including for an audit performed under Part 1 (Audits) of this Schedule) upon reasonable notice, and shall present a report of them to the Authority as and when requested.

4.4 Auditor

The Provider shall permit, and shall procure its Sub-contractors permit all records referred to in this paragraph 4 to be examined and copied by the Authority and the Authority Audit Agents (for clarity, including by the Comptroller and Auditor General and his or her representatives).

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4.5 Retention

The records referred to in this paragraph 4 shall be retained in accordance with and for the periods specified in paragraph 4.7, or if not so specified for a period of at least six (6) Years after the Provider's obligations under this Contract have come to an end.

4.6 Confidentiality

All information referred to in this paragraph 4 is subject to the obligations set out in clause 34 (Confidentiality) of this Contract.

4.7 Retention of Records

4.7.1 Subject to paragraph 4.7.2 and without prejudice to the Provider's obligations under Schedule M (Exit Management) of this Contract, the Provider shall retain all documents held by it in relation to or as a result of this Contract for a period of six (6) Years after the Expiry Date.

4.7.2 From the Commencement date, the Provider shall retain the following types of document set out below for the minimum periods specified opposite such documents from the creation of the relevant document:

Document Type	Retention Period
Staffing details	2 Years
Administrative records	2 Years

4.7.3 The Provider shall determine (and shall promptly notify the Authority) if there are any requirements of Law, Relevant Authorities or otherwise, that would necessitate the retention of any documents for longer retention periods than those specified in paragraphs 4.5 and 4.7.2.

4.7.4 The retention periods specified in paragraphs 4.5 and 4.7.2 apply to the primary source documents and any electronic or other types of documents for such records produced.

4.8 Alternative Methods of Documentation Storage

4.8.1 The Provider may propose alternative means of storing the records and documents referred to in this paragraph 4 for the Authority's Approval. The Provider shall ensure that any such proposals:

- (a) comply with applicable Law, including the Public Records Acts 1958 and 1967, the Taxes Management Act 1970, the Value Added Tax

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Act 1994, the Companies Act 2006, EU Regulations and the Statute of Limitations;

- (b) state methods of minimising any potential risks of such alternative means of storage that may arise; and
- (c) offer no opportunity for the records or documents referred to in this paragraph 4 to be amended.

4.8.2 The Provider shall promptly provide the National Audit Office with such documents including this Contract and such other contracts, agreements, guarantees and titles to property that the National Audit Office may request from time to time.

4.9 Interpretation

4.9.1 Paragraphs 1.1 to 4.8 (inclusive) shall be without prejudice to any other provisions of this Contract.

4.10 Data Loss

The Provider acknowledges that:

- 4.10.1 the security of data, including Personal Data is of paramount importance to the Authority; and
- 4.10.2 loss of such data may have a significant impact on the operation and reputation of the Authority, the Provider and the Contract.