

**OFFICIAL–SENSITIVE (COMMERCIAL)**

**SCHEDULE 7.1**

**CHARGES AND INVOICING**

[Note to bidders: please review the PPIM and related documents and once principles and approaches are confirmed following bidder feedback, this Schedule 7.1 shall be uplifted accordingly. Until then, the main terms of this Schedule 7.1 have remained largely unchanged from the model standard contract, and are to provide context only.]

## Charges and Invoicing

### 1 DEFINITIONS

In this Schedule, the following definitions shall apply:

<b>“Achieved Profit Margin”</b>	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;
<b>“Anticipated Contract Life Profit Margin”</b>	[the anticipated Supplier Profit Margin over the Term as reflected in the Financial Model];
<b>“Capped ADR”</b>	in relation to a Milestone Payment or Service Charge means a capped average day rate calculated by reference to a Time and Materials pricing mechanism, £[ <i>insert amount</i> ];
<b>“Certificate of Costs”</b>	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 the issuance of the relevant certificate) and substantially in the format as set out in Annex 3;
<b>“Costs”</b>	<p>the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Services:</p> <ul style="list-style-type: none"><li>(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:<ul style="list-style-type: none"><li>(i) base salary paid to the Supplier Personnel;</li><li>(ii) employer’s national insurance contributions;</li><li>(iii) the Employer Pension Contributions;</li><li>(iv) car allowances;</li><li>(v) any other contractual employment benefits;</li><li>(vi) staff training;</li><li>(vii) work place accommodation;</li><li>(viii) work place IT equipment and tools reasonably necessary to perform the Services (but not including items</li></ul></li></ul>

included within limb (b) below); and

- (ix) reasonable recruitment costs, as agreed with the Authority;
- (b) costs incurred in respect of those Assets which are detailed on the Registers 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) Forecast Contingency Costs;
- (e) 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);

**“Delay Payment Rate”**

has the meaning given in Paragraph 1.1(a) of Part C;

**“Employer Pension Contributions”**

means:

- (a) in respect of CSPS Eligible Employees those sums set out at Clauses 7.1.1 (annual administration charges covering core services), 7.1.5 (employer contributions), 7.1.7 (the ASLC) and 7.1.8 (flat charges applicable to the Partnership Pension Account) of the Admission Agreement;
- (b) in respect of [REDACTED] Eligible Employees, the standard employer contribution rate applicable to [REDACTED] Pension Scheme employers during the Term and payable by the Supplier (but no other costs, contributions, charges or surcharges payable by the Supplier to or in respect of the [REDACTED] Pension Scheme or in respect of any [REDACTED] Premature Retirement Rights, unless otherwise agreed in writing by the Authority);
- (c) in respect of [REDACTED] Eligible Employees the standard employer contribution rate applicable to [REDACTED] Eligible Employees during the Term and payable by the Supplier (but no other costs, contributions, charges or surcharges payable by the Supplier to or in respect of the [REDACTED] or in respect of any Beckmann Liabilities, unless otherwise agreed in writing by the Authority), and

such other employer pension contributions, charges or costs incurred by the Supplier which have been expressly agreed by the Authority in writing to constitute 'Employer Pension Contributions';

**“European Standard”**

in relation to an electronic invoice means the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870.

**“Forecast Contingency Costs”**

the costs which the Supplier forecasts may be incurred in relation to the risks and contingencies that are identified in the Risk Register, such costs being those set out in the column headed 'Forecast Contingency Costs' in the Risk Register (as such costs are updated from time to time);

**“Guaranteed Maximum Price”**

in relation to a Milestone, [x]% of the Target Price for the relevant Milestone;

**“Incurred Costs”**

in relation to a Milestone, the sum of:

- (a) the fixed day costs set out in Table 3 of

**OFFICIAL-SENSITIVE (COMMERCIAL)**

	<p>Annex 1 multiplied by the number of Man Days that have been expended by the Supplier Personnel in Achieving the relevant Milestone; and</p> <p>(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>
<b>“Indexation” and “Index”</b>	the adjustment of an amount or sum in accordance with Paragraph 5 of Part C;
<b>“Man Day”</b>	7.5 Man Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day;
<b>“Man Hours”</b>	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;
<b>“Maximum Permitted Profit Margin”</b>	the Anticipated Contract Life Profit Margin plus [x]%;
<b>“Milestone Group”</b>	has the meaning given in Paragraph 1.5 of Part B;
<b>“Milestone Retention”</b>	has the meaning given in Paragraph 1.3 of Part B;
<b>“Overhead”</b>	<p>those amounts which are intended to recover a 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 cost set out in Table 3 of Annex 1;</p>
<b>“Reimbursable Expenses”</b>	<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> <p>(a) travel expenses incurred as a result of Supplier Personnel travelling to and from their usual place of work, or to and from the</p>

**OFFICIAL-SENSITIVE (COMMERCIAL)**

premises from 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;

**“Supplier Profit”**

in relation to a period 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 Milestone;

**“Supplier Profit Margin”**

in relation to a period or a Milestone (as the context requires), the Supplier Profit for the relevant period or in relation to the relevant Milestone divided by the total Charges over the same period or in relation to the relevant Milestone and expressed as a percentage;

**“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 of Part A;

**“Target Price”**

has the meaning given in Paragraph 3.1 of Part A;

**“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 (1) 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 would otherwise 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;

**OFFICIAL-SENSITIVE (COMMERCIAL)**

- (iii) unless otherwise agreed by the Authority in relation to the relevant Milestone Payment or Service Charge (as the case may be), not be paid any Charges to the extent that they would otherwise exceed the amount calculated by multiplying:
    - (A) the total number of days expended by the Supplier in relation to the relevant Milestone; or
    - (B) the total number of days expended by the Supplier during the relevant Service Period in relation to the relevant Service,by the Capped ADR; and
  - (iv) 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 ten (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 and the Capped ADR 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 shall be as set out in Table 4 of Annex 1.
- 3.2 If the Incurred Costs relating to a Milestone are lower than the Target Cost for that Milestone, 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), 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;
- TC is the Target Cost for the relevant Milestone; and
- IC is the Incurred Costs relating to the relevant Milestone.



- 3.3 If the Incurred Costs relating to a Milestone are greater than the Target Cost for that Milestone, 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), provided that the maximum Milestone Payment payable by the Authority for the relevant Milestone shall not exceed an amount equal to the guaranteed maximum price for that Milestone as set out in Table 4 of Annex 1 (the “**Guaranteed Maximum Price**”) Represented numerically:

(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;
TC	is the Target Cost for the relevant Milestone;
TP	is the Target Price for the relevant Milestone; 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 costs 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 or Table 2 of Annex 2 indicates that a Milestone Payment or Service Charge 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 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.

**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.

**7 REIMBURSABLE 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 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 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 amounts 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 and report reproduction, shipping, desktop and office equipment costs required by the Supplier Personnel, including 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.

**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, [Redacted]% 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, [Redacted]% 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 Key Milestone and without taking account of any amount payable by the Supplier pursuant to Paragraph 1.3 of Part C.

**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 sixty (60) Working Days after the invoice referred to in Paragraph 1.3(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 or credit note 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);

**OFFICIAL-SENSITIVE (COMMERCIAL)**

- (iii) where a credit note is to be issued to the Authority pursuant to Paragraph 1.4(b)(ii), repay to the Authority a sum equal to such difference as a debt within ten (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.
- 1.5 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; and
  - (b) no later than sixty (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;
    - (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 ten (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 ten (10) Working Days of the 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 for in Paragraph 1.8.

### Release of Milestone Retentions

- 1.8 On Achievement of a CPP Milestone relating to the Supplier Solution or one or more Services (as the case may be), 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*” column of Table 1 (or, in relation to Milestone Retentions in respect of Optional Services, Table 4) of Annex 2 and corresponding CPP Milestone Charge Number identified in Table 2 of Annex 4 of Schedule 6.2 (*Testing Procedures*) as being payable in respect of that CPP Milestone and have not been paid before such CPP Milestone.

## 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 next 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.

## 3 OPTIONAL SERVICES

If the Authority gives notice pursuant to Clause 5.14 (*Optional Services*) that it requires the Supplier to provide any or all of the Optional Services:

- (a) the Milestone Payments (if any) for the relevant Optional Services shall be calculated by reference to the pricing mechanism for those Optional Services set out in Table 3 of Annex 2; and
- (b) the Service Charges for the relevant Optional Services shall be calculated by reference to the pricing mechanism for those Optional Services set out in Table 4 of Annex 2,

in both cases using the relevant rates and prices specified in Annex 1.

PART C: ADJUSTMENTS TO THE CHARGES AND RISK REGISTER

1 DELAY PAYMENTS

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

- (a) at the daily rate (the “**Delay Payment Rate**”) determined in accordance with Paragraph 1.2;
- (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 daily basis, with any part day’s Delay counting as a day.

1.2 Where a Delay Payment is payable in respect of a Key Milestone, the Delay Payment Rate shall be:

- (a) where the Supplier has given the Authority less than three (3) months’ prior notice of the Delay, the amount set out in column 4 of Table 1 of Annex 2 for the Key Milestone;
- (b) where the Supplier has given the Authority between three (3) months’ and six (6) months’ prior notice of the Delay, the amount set out in column 5 of Table 1 of Annex 2 for the Key Milestone; or
- (c) where the Supplier has given the Authority more than six (6) months’ prior notice of the Delay, the amount set out in column 6 of Table 1 of Annex 2 for the Key Milestone.

1.3 Where the Supplier serves a notice pursuant to Paragraph 1.2(b) or 1.2(c), the Supplier shall, within five (5) Working Days of the date the notice is served:

- (a) pay to the Authority in cleared funds on account of the relevant Delay Payment (but subject always to Paragraph 1.4) an amount equal to:
  - (i) in the case of a notice served pursuant to Paragraph 1.2(b), five (5) days of Delay Payments; or
  - (ii) in the case of a notice served pursuant to Paragraph 1.2(c), ten (10) days of Delay Payments in accordance with Paragraph 1.4,

in each case calculated at the applicable Delay Payment Rate; and

- (b) issue a credit note to the Authority in respect of the relevant amount.

Failure to make payment within ten (10) Working Days of the Supplier’s notice shall invalidate the notice.

**OFFICIAL-SENSITIVE (COMMERCIAL)**

- 1.4 Any amounts paid to the Authority pursuant to Paragraph 1.3 shall not be refundable to the Supplier in any circumstances, including where a Delay as referred to in the Supplier's notice:
- (a) does not occur; or
  - (b) does occur but continues for fewer days during the relevant Delay Deduction Period than the number of days referred to in Paragraph 1.3(a) or 1.3(b) as the case may be.
- 1.5 The Parties agree that Delay Payments calculated in accordance with the applicable Delay Payment Rates are in each case 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. Delay Payment Rates are stated exclusive of VAT.
- 1.6 The Delay Payment in respect of a Key Milestone (net of any payment made in respect of that Key Milestone pursuant to Paragraph 1.3) 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 the date on which the relevant Key Milestone is Achieved or the expiry of the Delay Deduction Period (as the case may be). If the relevant Key Milestone is not Achieved by the expiry of the Delay Deduction Period and no invoice is due to be issued by the Supplier within ten (10) Working Days of the expiry of the Delay Deduction Period, then the Supplier shall within ten (10) Working Days of the expiry of the Delay Deduction Period:
- (a) issue a credit note to the Authority in respect of the total amount of the Delay Payment in respect of the Key Milestone (net of any payment made in respect of the Key Milestone pursuant to Paragraph 1.3); and
  - (b) pay to the Authority as a debt a sum equal to the total amount of the Delay Payment in respect of the Key Milestone 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 27.1 (*Authority Cause*) to compensation for failure to Achieve a Milestone by its Milestone Date, then, subject always to Clause 21 (*Limitations on Liability*), such compensation shall be determined in accordance with the following principles:
- (a) the compensation shall reimburse the Supplier for all reasonable additional Costs incurred by the Supplier that the Supplier:
    - (i) can demonstrate to the satisfaction of the Authority (including providing any evidence as the Authority may reasonably require) that it has incurred solely and directly as a result of the Authority Cause; and

**OFFICIAL-SENSITIVE (COMMERCIAL)**

- (ii) is, has been, or will be unable to mitigate, having complied with its obligations under Clause 27.1 (*Authority Cause*),

together with an amount equal to the Anticipated Contract Life Profit Margin thereon;

- (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 [x]% 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; and
- (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.



## OFFICIAL-SENSITIVE (COMMERCIAL)

- 2.2 The Supplier shall provide the Authority with any information the Authority may 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 **[Insert Percentage]**% 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 **[Insert percentage deduction per Service Point]**%; and
- AC is the total Services Charges payable for the relevant Service Period (prior to deduction of applicable Service Credits).

- 3.3 The liability of the Supplier in respect of Service Credits shall be subject to Clause 21.4(c) (*Financial and other 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 immediately succeeding the Service Period to which they relate.

### 4 CHANGES TO CHARGES

- 4.1 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.

4.2 The Authority may request that any Impact Assessment presents Charges without Indexation for the purposes of comparison.

## 5 INDEXATION

5.1 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 5 to reflect the effects of inflation.

5.2 From [insert date] onwards, the Charges may be varied to reflect Indexation at the rate of [x]. **[Note to bidders: The indexation policy will be confirmed during dialogue]**

5.3 Except as set out in this Paragraph 5, neither the Charges nor any other Costs, expenses, or fees 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.

## 6 ALLOWABLE ASSUMPTIONS

6.1 The Supplier shall determine whether each Allowable Assumption is accurate within its Verification Period.

6.2 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.

6.3 Within ten (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.

6.4 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 6.5 shall apply.

6.5 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 6.5(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 6.5(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

## **7 RISK REGISTER**

The Parties shall review the Risk Register set out in Annex 4 from time to time and as otherwise required for the purposes of Schedule 8.1 (*Governance*).

**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 five (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 ten (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 29.1(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 INVOICING

- 1.1 Invoicing shall be carried out in accordance with DEFCON 522 (Edn 11/17) Payment and Recovery of Sums Due.
- 1.2 Payment for Services by the Authority under this Agreement shall be made via the Contracting, Purchasing & Finance (CP&F) electronic procurement tool.
- 1.3 The Authority shall pay properly submitted, valid and undisputed invoices submitted by the Supplier via CP&F on or before the day which is thirty (30) days after the later of:
  - (a) the day upon which a valid request for approval of payment is received by the Authority; and
  - (b) the date of completion of the element of the Services to which the request for approval of payment relates ("**Due Date**").
- 1.4 The Supplier shall ensure that each invoice:
  - (a) specifies the Service Period to which the invoice relates;
  - (b) specifies the Services to which the invoice relates;
  - (c) lists the relevant identification numbers which relate to the Charges and any changes to the Charges;
  - (d) sets out the calculations used to reach the amount of the Charges that are being invoiced;
  - (e) separately itemises any expense or taxes said to be payable by the Authority;
  - (f) specifies the Supplier's VAT code;
  - (g) specifies any relevant purchase order number; and
  - (h) contains any other information reasonably required by the Authority, from time to time.
- 1.5 The Charges are to be invoiced and paid in pounds sterling.
- 1.6 The Supplier shall maintain complete and accurate records of, and supporting documents for, the amounts billable to and payments made by the Authority under this Agreement in accordance with generally accepted accounting principles, applied on a consistent basis, for a minimum period of seven (7) years (unless a longer period is required by law or regulation in which case such longer period shall be deemed to apply) following the end of the Term or the Termination Assistance Period, whichever is the later.

## **OFFICIAL-SENSITIVE (COMMERCIAL)**

- 1.7 The Supplier will provide the Authority with all such documentation and other information as the Authority may reasonably require with respect to each invoice in order to verify its accuracy and compliance with the provisions of this Agreement.
- 1.8 The Authority may at any time require the Supplier to provide with every invoice a schedule of supporting information relating to that invoice.
- 1.9 Without prejudice to any Milestone Payments, if the Supplier does not invoice the Authority within ninety (90) days of the end of the month in such Services were performed, the Supplier shall be deemed to have waived its right to be paid for such Services.

## **2 DISPUTED INVOICES**

- 2.1 The Authority may withhold payment of particular Charges (or elements of the Charges) it disputes, acting reasonably, or if the Supplier has not performed or is not performing the Services in accordance with the terms of this Agreement. If the Authority withholds any payment, it shall notify the Supplier with reasonable promptness giving reasonable details to the Supplier as to which elements of the Charges are disputed and the reasons for the Dispute. If any portion of an invoice is disputed by the Authority, then, provided that the Supplier credits the disputed invoice in full to the Authority and then issues two (2) invoices, one in respect of the disputed amount and the other in respect of the undisputed amount, the Authority shall pay the invoice for the undisputed amount in accordance with the provisions for payment set out above and the Parties shall use commercially reasonable endeavours to resolve the Dispute for the other amount.
- 2.2 Upon resolution of the Dispute in respect of the remainder of the original invoice the Authority shall pay any amounts determined or agreed to be payable to the Supplier in accordance with the payment terms set out in this Schedule.
- 2.3 Pending resolution of the Dispute, the Supplier shall continue to provide the Services in accordance with this Agreement.

## **3 TAX**

- 3.1 All prices and charges are exclusive of applicable sales tax, service tax and any other applicable taxes and duties, in each case to the extent payable by the Authority under relevant Law, at the rate and in the manner from time to time prescribed by such Law and provided these are properly set out in a valid tax invoice. Unless otherwise agreed between the Parties, the Supplier shall be responsible for all other taxes which are incurred as a result of this Agreement and the Services being provided.
- 3.2 The Authority shall be entitled to deduct the sums required to pay any withholding taxes demanded by any taxation authority from payment to the Supplier, so that the Supplier receives an amount net of such withholding taxes. If the Authority does deduct such amounts, it shall pay such sums to the relevant taxation authority within the period for payment permitted by Law, and furnish the Supplier with evidence of payment to the relevant tax authority of the relevant amount.

- 3.3 If VAT or other taxes are payable on damages payable or paid under this Agreement then the Party liable for payment of such damages must pay any such VAT or other taxes in addition to the relevant amount of damages upon production of a valid VAT or other appropriate tax invoice by the other Party.

## ANNEX 1: PRICING MECHANISM

- 1 TABLE 1: SUPPLIER PERSONNEL RATE CARD FOR CALCULATION OF [TIME AND MATERIALS CHARGES AND/OR] [CHARGES TO BE USED FOR THE PURPOSES OF CHANGE REQUESTS AT ALL TIMES USING THE MOST APPROPRIATE STAFF GRADE]

Staff Grade / Description of Role	Day Rate (£)
<b>[IT Staff]</b>	
[Service Delivery Manager]	
[CLAS Consultant]	
[Systems Engineer]	
[Programme Manager]	
[Solutions Architect]	
[Project Manager]	
[Business Analyst]	
[Developer]	
[Systems Analyst / Test Manager]	
[DBA]	
<b>[Management]</b>	
[Service Delivery Director]	
[Finance / Commercial Director]	
[Transformation Director]	
<b>[Ops/Service Delivery]</b>	
[Operations Director]	
[Operations Manager]	
[Recruitment Agent]	
[Trainer]	
<b>Finance]</b>	
[Finance Manager]	



**OFFICIAL-SENSITIVE (COMMERCIAL)**

[Other]	
[Facilities Manager]	
[etc]	

**2 TABLE 2: MAXIMUM TIME AND MATERIALS CHARGES**

Charge Number	Maximum Time and Materials Charges (the cap) (£)
[Service Line 1]	
[e.g. S1M1]	
[e.g. S2M2]	
[Service Line 2]	
[e.g. S2M1]	
[e.g. S2M2]	
[Service Line [X] - insert further rows as necessary]	
[etc.]	

**3 [TABLE 3: DAY COST FOR CALCULATION OF GUARANTEED MAXIMUM PRICE WITH TARGET COST CHARGES]**

Supplier Personnel Grade	Day Cost (£)

## 4 Table 4: GUARANTEED MAXIMUM PRICE WITH TARGET COSTS CHARGES

Charge Number	Milestone Group applicable (if applicable)	Target Cost (£)	Target Price (£)	Guaranteed Maximum Price ([Redacted]% of Target Price) (£)
<b>[Service Line 1]</b>				
[e.g. SL1M1]	[e.g. S1MG1]			
[e.g. SL2M2]	[e.g. S1MG2]			
<b>[Service Line 2]</b>				
[e.g. SL2M3]	[e.g. S2MG1]			
[e.g. SL2M4]	[e.g. S2MG2]			
<b>[Service Line [X] - insert further rows as necessary]</b>				
[etc.]	...			

## 5 TABLE 5: FIXED PRICES

Charge	Fixed Charge (£) [            ]
<b>[Service Line 1]</b>	
[e.g. SL1M3]	
[e.g. SL1SC1]	
[e.g. SL1SC3]	
<b>[Service Line 2]</b>	
[e.g. SL2M3]	
[e.g. SL2SC1]	
[e.g. SL2SC3]	
<b>[Service Line [X] - insert further rows as necessary]</b>	
[etc.]	

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**6 TABLE 6: FIRM PRICES**

Charge	Firm Charge (£)
<b>[Service Line 1]</b>	
[e.g. SL1M4]	
[e.g. SL1MS3]	
<b>[Service Line 2]</b>	
[e.g. SL2M4]	
[e.g. SL2MS3]	
<b>[Service Line [X] - insert further rows as necessary]</b>	
[etc.]	...

**7 TABLE 7: VOLUME CHARGES**

Charge Number	Unit	Number of units per Service Period	Charge per unit (£)
<b>[Service Line 1]</b>			
[e.g. SL1VC1]		[ ] - [ ]	[ ]
		[ ] - [ ]	[ ]
		[ ] - [ ]	[ ]
[e.g. SL1VC2]		[ ] - [ ]	[ ]
		[ ] - [ ]	[ ]
		[ ] - [ ]	[ ]
[e.g. SL1VC3]		[ ] - [ ]	[ ] - [ ]
		[ ] - [ ]	[ ] - [ ]
		[ ] - [ ]	[ ] - [ ]

OFFICIAL-SENSITIVE (COMMERCIAL)

[Service Line 2]			
[e.g. SL2VC1]		[     ] - [     ]	[             ]
		[     ] - [     ]	[             ]
		[     ] - [     ]	[             ]
[e.g. SL2VC2]		[     ] - [     ]	[             ]
		[     ] - [     ]	[             ]
		[     ] - [     ]	[             ]
[e.g. SL2VC3]		[     ] - [     ]	[     ] - [     ]
		[     ] - [     ]	[     ] - [     ]
		[     ] - [     ]	[     ] - [     ]
[Service Line [X] - insert further rows as necessary]			
[etc.]	....	[     ] - [     ]	[             ]
		[     ] - [     ]	[             ]
		[     ] - [     ]	[             ]

## ANNEX 2: CHARGING MECHANISM AND ADJUSTMENTS

1 TABLE 1: MILESTONE PAYMENTS AND DELAY PAYMENTS

Charge Number	Pricing Mechanism (FIX / FIRM / GMPTC / T&M)	CPP Milestone Charge Number	Delay Payments (if Key Milestone) (£ per day)		
			<3 months' notice	3-6 months' notice	>6 months' notice
[Service Line 1]					
[e.g. SL1M1]	[FIRM]	[e.g. S2M2]			
[e.g. SL1M2]	[FIRM]	[e.g. S2M2]			
[Service Line 2]					
[e.g. SL2M1]	[FIRM]	[e.g. S2M2]			
[e.g. SL2M2]	[FIRM]	[e.g. S2M2]			
[Service Line [X] - insert further rows as necessary]					
[etc.]					

2 TABLE 2: SERVICE CHARGES

Charge Number	Pricing Mechanism (VOL / FIX / T&M)	Service Charge Trigger Event	Service Charge Expiration Trigger Event
[Service Line 1]			
[e.g. SL1C1]	[VOL]	[e.g. Achievement of Milestone 4]	
[e.g. SL1C2]	[FIX]		
[Service Line 2]			
[e.g. SL2C1]	[VOL]	[e.g. Achievement of Milestone 4]	

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[e.g. SL2C2]	[FIX]		
<b>[Service Line [X] - insert further rows as necessary]</b>			
[e.g. SLXC1]	[VOL]	[e.g. Achievement of Milestone 4]	
[e.g. SLXC2]	[FIX]		

**3 TABLE 3: OPTIONAL SERVICES MILESTONE PAYMENTS**

Charge Number	Pricing Mechanism (FIX / FIRM / GMPTC / T&M)	CPP Milestone Charge Number	Delay Payments (if Key Milestone) (£ per day)
[e.g. OMS1]	[FIRM]	[e.g. OMS2]	
[e.g. OMS2]	[FIRM]	[e.g. OMS2]	

**4 TABLE 4: OPTIONAL SERVICES SERVICE CHARGES**

Charge Number	Pricing Mechanism (VOL / FIX / T&M)	Service Charge Trigger Event	Service Charge Expiration Trigger Event
[e.g. OSC1]	[VOL]	[e.g. Achievement of Milestone 6]	
[e.g. OSC2]	[FIX]		

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 the Supplier]*, certify that the financial information provided as part of this Certificate of Costs, incurred in relation to the *[insert name/reference for this 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 the 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 the Supplier]*

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## **ANNEX 4: RISK REGISTER**

**[Note to bidders: The template risk register will be shared during the dialogue process.]**



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**ANNEX 5: ALLOWABLE ASSUMPTIONS**

**[Note to bidders: This table will be developed as part of the dialogue process. The below is an example only.]**

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
Ref	Description of proposed Allowable Assumption	Impact on the Implementation Plan if the Allowable Assumption is not accurate	Cost Impact  (maximum, minimum and most likely values if the Allowable Assumption is not accurate)	Basis of Calculation of Cost Impact	Applicable Profit Margin	Charge Impact  (maximum, minimum and most likely values if the Allowable Assumption is not accurate)	Verification Method  (how the Supplier will verify the Allowable Assumption)	Trigger for Invocation  (what will determine that the Implementation Plan and/or Financial Model may require adjustment for the Allowable Assumption)	Period of Impact  (period that the updated assumption will have an impact)	Expiry Date  (Date at which the Allowable Assumption expires)

**OFFICIAL-SENSITIVE (COMMERCIAL)**

**SCHEDULE 7.2**

**PAYMENTS ON TERMINATION**

Payments on Termination

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

- |  |  |
|--|--|
| <b>“Applicable Supplier Personnel”</b> | any Supplier Personnel who: <ul style="list-style-type: none"><li>(i) at the Termination Date:<ul style="list-style-type: none"><li>a) are employees of the Supplier;</li><li>b) are Dedicated Supplier Personnel;</li><li>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</li></ul></li><li>(ii) are dismissed or given notice of dismissal by the Supplier within:<ul style="list-style-type: none"><li>d) forty (40) Working Days of the Termination Date; or</li><li>e) such longer period required by Law, their employment contract (as at the Termination Date) or an applicable collective agreement; and</li></ul></li><li>(iii) have not resigned or given notice of resignation prior to the date of their dismissal by the Supplier; and</li><li>(iv) the Supplier can demonstrate to the satisfaction of the Authority:<ul style="list-style-type: none"><li>a) are surplus to the Supplier's requirements after the Termination Date notwithstanding its obligation to provide services to its other customers;</li><li>b) are genuinely being dismissed for reasons of redundancy; and</li><li>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;</li></ul></li></ul> |
| <b>“Breakage Costs Payment”</b>        | an amount equal to the Redundancy Costs and the Contract Breakage Costs as at the Termination Date as determined in accordance with Paragraph 3;   |

**OFFICIAL-SENSITIVE (COMMERCIAL)**

<b>“Compensation Payment”</b>	the payment calculated in accordance with Paragraph 6;
<b>“Contract Breakage Costs”</b>	the amounts payable by the Supplier to its Key Sub-contractors or other third parties (as applicable) for terminating all relevant Key Sub-contracts or Third Party Contracts as a direct result of the early termination of this Agreement;
<b>“Dedicated Supplier Personnel”</b>	all Supplier Personnel then assigned to the Services or any part 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;
<b>“Profit Already Paid”</b>	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;
<b>“Redundancy Costs”</b>	<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"><li>(a) any statutory redundancy payment; and</li><li>(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;</li></ul>
<b>“Request for Estimate”</b>	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 29.1(a) ( <i>Termination by the Authority</i> ) to terminate this Agreement for convenience on a specified Termination Date;
<b>“Shortfall Period”</b>	has the meaning given in Paragraph 6.2;

**OFFICIAL-SENSITIVE (COMMERCIAL)**

<b>“Termination Estimate”</b>	has the meaning given in Paragraph 10.2;
<b>“Third Party Contract”</b>	a contract with a third party entered into by the Supplier exclusively for the purpose of delivering the Services;
<b>“Total Costs Incurred”</b>	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 Charges) less any Deductions up to (and including) the Termination Date;
<b>“Unrecovered Costs”</b>	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 Charges 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 ( <i>Charges and Invoicing</i> ) as such Costs and Charges are forecast in the Financial Model;
<b>“Unrecovered Payment”</b>	<p>an amount equal to the lower of:</p> <ul style="list-style-type: none"><li>(a) the sum of the Unrecovered Costs and the Unrecovered Profit; and</li><li>(b) the amount specified in Paragraph 4; and</li></ul>
<b>“Unrecovered Profit”</b>	$(\text{Total Costs Incurred} \times \text{Anticipated Contract Life Profit Margin}) - \text{Profit Already Paid} + \text{Milestone Retentions remaining unpaid at the Termination Date.}$

## **2 TERMINATION PAYMENT**

The Termination Payment payable pursuant to Clause 30.3(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 expiry of the Initial Term, or in the event that the Term has been extended, the expiry of the Extension Period;
- (b) are unavoidable, proven, reasonable, and not capable of recovery;

**OFFICIAL-SENSITIVE (COMMERCIAL)**

- (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) [Redacted]% 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 [REDACTED] 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 Third Party Contracts or 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 Third Party Contracts or Sub-contracts with the relevant third party or 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) [Redacted]% of the estimate for the Unrecovered Payment set out in any relevant Termination Estimate; and
- (c) the Charges 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 (*Charges and Invoicing*) 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 Third Party Contracts and Sub-contracts to the Authority or a third party acting on behalf of the Authority; and
- (c) in relation Third Party Contracts and Sub-contracts that are 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 30.3(b) (*Payments by the Authority*) shall be an amount equal to the total forecast Charges 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 29.1(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 Paragraph 2.1(a) of Part D of Schedule 7.1 (*Charges and Invoicing*)) falls short of three-hundred and sixty-five (365) days; or
- (b) where the Supplier terminates this Agreement pursuant to Clause 29.3(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) [Redacted]% 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 29.1(a) (*Termination by the Authority*) or termination by the Supplier pursuant to Clause 29.3(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 (*Charges and Invoicing*).

## 9 NO DOUBLE RECOVERY

- 9.1 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.
- 9.2 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 Charges 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.
- 9.3 Any payments that are due in respect of the Transferring Assets shall be calculated in accordance with the provisions of the Exit Plan.



**10 ESTIMATE OF TERMINATION PAYMENT AND COMPENSATION PAYMENT**

- 10.1 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.
- 10.2 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 or Third Party 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.
- 10.3 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.
- 10.4 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.

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**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:

**[Note to bidders: These amounts will be agreed during dialogue.]**

Termination Date	Maximum Unrecovered Payment	Maximum Breakage Costs Payment	Maximum Compensation Payment
Anytime in the first Contract Year			
Anytime in the second Contract Year			
Anytime from Contract Year 3 onwards			

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**SCHEDULE 7.3**

**BENCHMARKING**

## Benchmarking

### 1 DEFINITIONS

In this Schedule, the following definitions shall apply:

<b>“Benchmarked Service”</b>	a Service or any part of a Service that the Authority elects to include in a Benchmark Review under Paragraph 2.3;
<b>“Benchmarker”</b>	the independent third party appointed under Paragraph 3.1;
<b>“Benchmark Report”</b>	the report produced by the Benchmarker following the Benchmark Review as further described in Paragraph 5;
<b>“Benchmark Review”</b>	a review of one or more of the Services carried out in accordance with Paragraph 4 to determine whether those Services represent Good Value;
<b>“Comparable Service”</b>	in relation to a Benchmarked Service, a service that is identical or materially similar to the Benchmarked Service (including in terms of scope, specification, volume and quality of performance);
<b>“Comparison Group”</b>	in relation to a Comparable Service, a sample group of organisations providing the Comparable Service identified by the Benchmarker under Paragraph 4.8 which consists of organisations which are either of similar size to the Supplier or which are similarly structured in terms of their business and their service offering so as to be (in the Benchmarker's professional opinion) fair comparators with the Supplier or which, in the professional opinion of the Benchmarker, are best practice organisations and, where there are a reasonable number of such organisations, referencing only those organisations that are carrying on at least a significant part of their business within the United Kingdom;
<b>“Equivalent Data”</b>	<b>Services</b> in relation to a Comparable Service, data derived from an analysis of the Comparable Service provided by the Comparison Group as adjusted in accordance with Paragraphs 4.8(a) and 4.9 provided that the Benchmarker shall not use any such data that relates to a period which ended more than thirty-six (36) months prior to the date of the appointment of the Benchmarker;

## **OFFICIAL-SENSITIVE (COMMERCIAL)**

### **“Good Value”**

in relation to a Benchmarked Service, that:

- (a) having taken into account the Performance Indicators and Target Performance Levels, the value for money of the Charges attributable to that Benchmarked Service is at least as good as the value for money of the Upper Quartile; and
- (b) any Performance Indicators and Target Performance Levels applicable to that Benchmarked Service are, having taken into account the Charges, equal to or better than the median service levels for the Comparable Service using Equivalent Services Data; and

### **“Upper Quartile”**

the top [Redacted]% of instances of provision of a Comparable Service by members of the Comparison Group ranked by best value for money to the recipients of that Comparable Service.

## **2 FREQUENCY, PURPOSE AND SCOPE OF BENCHMARK REVIEW**

- 2.1 The Authority may, by written notice to the Supplier, require a Benchmark Review of any or all of the Services in order to establish whether a Benchmarked Service is, and/or the Benchmarked Services as a whole are, Good Value.
- 2.2 The Authority shall not be entitled to carry out a Benchmark Review of any Services during the twelve (12) month period from the Operational Service Commencement Date for those Services, nor at intervals of less than twelve (12) months after any previous Benchmark Review relating to the same Services.
- 2.3 The Services that are to be the Benchmarked Services shall be identified by the Authority in the notice given under Paragraph 2.1.

## **3 APPOINTMENT OF BENCHMARKER**

- 3.1 The Authority shall appoint as the Benchmarker to carry out the Benchmark Review such organisation as may be agreed in writing between the Parties (both acting reasonably).
- 3.2 The Authority shall, at the written request of the Supplier, require the Benchmarker to enter into a confidentiality agreement with the Supplier in, or substantially in, the form set out in Annex 1.
- 3.3 The costs and expenses of the Benchmarker and the Benchmark Review shall be shared equally between both Parties provided that each Party shall bear its own internal costs of the Benchmark Review. The Benchmarker shall not be compensated on a contingency fee or incentive basis.
- 3.4 The Authority shall be entitled to pay the Benchmarker's costs and expenses in full and to recover the Supplier's share from the Supplier.

#### **4 BENCHMARK REVIEW**

- 4.1 The Authority shall require the Benchmarker to produce, and to send to each Party for approval, a draft plan for the Benchmark Review within ten (10) Working Days after the date of the appointment of the Benchmarker, or such longer period as the Benchmarker shall reasonably request in all the circumstances. The plan must include:
- (a) a proposed timetable for the Benchmark Review;
  - (b) a description of the information that the Benchmarker requires each Party to provide;
  - (c) a description of the benchmarking methodology to be used;
  - (d) a description that clearly illustrates that the benchmarking methodology to be used is capable of fulfilling the benchmarking objectives under Paragraph 2.1;
  - (e) an estimate of the resources required from each Party to underpin the delivery of the plan;
  - (f) a description of how the Benchmarker will scope and identify the Comparison Group;
  - (g) details of any entities which the Benchmarker proposes to include within the Comparison Group; and
  - (h) if in the Benchmarker's professional opinion there are no Comparable Services or the number of entities carrying out Comparable Services is insufficient to create a Comparison Group, a detailed approach for meeting the relevant benchmarking objective(s) under Paragraph 2.1 using a proxy for the Comparison Services and/or Comparison Group as applicable.
- 4.2 The Parties acknowledge that the selection and or use of proxies for the Comparison Group (both in terms of number and identity of entities) and Comparable Services shall be a matter for the Benchmarker's professional judgment.
- 4.3 Each Party shall give notice in writing to the Benchmarker and to the other Party within ten (10) Working Days after receiving the draft plan either approving the draft plan or suggesting amendments to that plan which must be reasonable. Where a Party suggests amendments to the draft plan pursuant to this Paragraph 4.3, the Benchmarker shall, if it believes the amendments are reasonable, produce an amended draft plan. Paragraph 4.1 and this Paragraph 4.3 shall apply to any amended draft plan.
- 4.4 Failure by a Party to give notice under Paragraph 4.3 shall be treated as approval of the draft plan by that Party. If the Parties fail to approve the draft plan within thirty (30) Working Days of its first being sent to them pursuant to Paragraph 4.1 then the Benchmarker shall prescribe the plan.

**OFFICIAL-SENSITIVE (COMMERCIAL)**

- 4.5 Once the plan is approved by both Parties or prescribed by the Benchmarker, the Benchmarker shall carry out the Benchmark Review in accordance with the plan. Each Party shall procure that all the information described in the plan, together with any additional information reasonably required by the Benchmarker is provided to the Benchmarker without undue delay. If the Supplier fails to provide any information requested from it by the Benchmarker and described in the plan, such failure shall constitute a material Default for the purposes of Clause 23.1(c) (*Rectification Plan Process*).
- 4.6 Each Party shall co-operate fully with the Benchmarker, including by providing access to records, technical documentation, premises, equipment, systems and personnel at times reasonably requested by the Benchmarker, provided that the Benchmarker shall be instructed to minimise any disruption to the Services.
- 4.7 Either Party may provide additional materials to the Benchmarker to assist the Benchmarker in conducting the Benchmark Review.
- 4.8 Once it has received the information it requires, the Benchmarker shall:
- (a) finalise the sample of entities constituting the Comparison Group and collect data relating to Comparable Services. The final selection of the Comparison Group (both in terms of number and identity of entities) and of the Comparable Services shall be a matter for the Benchmarker's professional judgment;
  - (b) derive the Equivalent Services Data by applying the adjustment factors listed in Paragraph 4.9 and from an analysis of the Comparable Services;
  - (c) derive the relative value for money of the charges payable for the Comparable Services using the Equivalent Services Data and from that derive the Upper Quartile;
  - (d) derive the median service levels relating to the Comparable Services using the Equivalent Services Data;
  - (e) compare the value for money of the Charges attributable to the Benchmarked Services (having regard in particular to the applicable Performance Indicators and Target Performance Levels) to the value for money of the Upper Quartile;
  - (f) compare the Performance Indicators and Target Performance Levels attributable to the Benchmarked Services (having regard to the Charges and Service Credits) with the median service levels using the Equivalent Services Data; and
  - (g) determine whether or not each Benchmarked Service is and/or the Benchmarked Services as a whole are, Good Value.

- 4.9 The Benchmarker shall have regard to the following matters when performing a comparative assessment of a Benchmarked Service and a Comparable Service in order to derive Equivalent Services Data:
- (a) the contractual and business environment under which the Services are being provided (including the scope, scale, complexity and geographical spread of the Services);
  - (b) any front-end investment and development costs of the Supplier;
  - (c) the Supplier's risk profile including the financial, performance or liability risks associated with the provision of the Services as a whole;
  - (d) the extent of the Supplier's management and contract governance responsibilities;
  - (e) any other reasonable factors demonstrated by the Supplier, which, if not taken into consideration, could unfairly cause the Supplier's pricing to appear non-competitive (such as erroneous costing, non-sustainable behaviour including excessive consumption of energy or over-aggressive pricing).

## **5 BENCHMARK REPORT**

- 5.1 The Benchmarker shall be required to prepare a Benchmark Report and deliver it simultaneously to both Parties, at the time specified in the plan approved under Paragraph 4, setting out its findings. The Benchmark Report shall:
- (a) include a finding as to whether or not each Benchmarked Service is and/or whether the Benchmarked Services as a whole are, Good Value;
  - (b) include other findings (if any) regarding the quality and competitiveness or otherwise of those Services;
  - (c) if any Benchmarked Service is not Good Value, or the Benchmarked Services as a whole are not Good Value, specify the changes that would be required to the Charges, Performance Indicators and/or Target Performance Levels, that would be required to make that Benchmarked Service or those Benchmarked Services as a whole, Good Value; and
  - (d) illustrate the method used for any normalisation of the Equivalent Services Data.
- 5.2 The Benchmarker shall act as an expert and not as an arbitrator.
- 5.3 If the Benchmark Report states that any Benchmarked Service is not Good Value or that the Benchmarked Services as a whole are not Good Value, then the Supplier shall (subject to Paragraphs 5.5 and 5.6) implement the changes set out in the Benchmark Report as soon as reasonably practicable within timescales agreed with the Authority but in any event within no more than three (3) months. Any associated changes to the Charges shall take effect only from the same date and shall not be retrospective.



**OFFICIAL-SENSITIVE (COMMERCIAL)**

- 5.4 The Supplier acknowledges and agrees that Benchmark Reviews shall not result in any increase to the Charges, disapplication of the Performance Indicators or any reduction in the Target Performance Levels.
- 5.5 The Supplier shall be entitled to reject any Benchmark Report if the Supplier reasonably considers that the Benchmarker has not followed the procedure for the related Benchmark Review as set out in this Schedule in any material respect.
- 5.6 The Supplier shall not be obliged to implement any Benchmark Report to the extent this would cause the Supplier to provide the Services at a loss (as determined, by reference to the Financial Model), or to the extent the Supplier cannot technically implement the recommended changes.
- 5.7 In the event of any Dispute arising over whether the Benchmarker has followed the procedure for the related Benchmark Review under Paragraph 5.5 and/or any matter referred to in Paragraph 5.6, the Dispute shall be referred to Expert Determination. For the avoidance of doubt in the event of a Dispute between the Parties, the Authority shall continue to pay the Charges to the Supplier in accordance with the terms of this Agreement and the Performance Indicators and Target Performance Levels shall remain unchanged pending the conclusion of the Expert Determination.
- 5.8 On conclusion of the Expert Determination:
- (a) if the Expert determines that all or any part of the Benchmark Report recommendations regarding any reduction in the Charges shall be implemented by the Supplier, the Supplier shall immediately repay to the Authority the difference between the Charges paid by the Authority up to and including the date of the Expert's determination and the date upon which the recommended reduction in Charges should have originally taken effect pursuant to Paragraph 5.3 together with interest thereon at the applicable rate under the Late Payment Of Commercial Debts (Interest) Act 1998; and
  - (b) if the Expert determines that all or any part of the Benchmark Report recommendations regarding any changes to the Performance Indicators and/or Target Performance Levels shall be implemented by the Supplier:
    - (i) the Supplier shall immediately implement the relevant changes;
    - (ii) the Supplier shall immediately pay an amount equal to any Service Credits which would have accrued up to and including the date of the Expert's determination if the relevant changes had taken effect on the date determined pursuant to Paragraph 5.3 together with interest thereon at the applicable rate under the Late Payment Of Commercial Debts (Interest) Act 1998; and
    - (iii) the relevant changes shall thereafter be subject to the Change Control Procedure for the purposes of formalising and documenting the relevant change or amendment for the purposes of this Agreement.

**OFFICIAL-SENSITIVE (COMMERCIAL)**

- 5.9 Any failure by the Supplier to implement the changes as set out in the Benchmark Report in accordance with the relevant timescales determined in accordance with Paragraph 5.3 (unless the provisions of Paragraph 5.6 and/or Paragraph 5.7 apply) or in accordance with Paragraph 5.8 shall, without prejudice to any other rights or remedies of the Authority, constitute a Supplier Termination Event.

ANNEX 1: CONFIDENTIALITY AGREEMENT

CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is made on [date]

BETWEEN:

- (1) [insert name] of [insert address] (the “Supplier”); and
- (2) [insert name] of [insert address] (the “Benchmarker” and together with the Supplier, the “Parties”).

WHEREAS:

- (A) [insert name of Authority] (the “Authority”) and the Supplier are party to a contract dated [insert date] (the “Contract”) for the provision by the Supplier of [insert brief description of services] to the Authority.
- (B) The Benchmarker is to receive Confidential Information from the Supplier for the purpose of carrying out a benchmarking review for the Authority of one or more of such services pursuant to the terms of the Contract (the “Permitted Purpose”).

IT IS AGREED as follows:

1 Interpretation

1.1 In this Agreement, unless the context otherwise requires:

“Confidential Information”

means:

- a) Information, including all personal data within the meaning of the Data Protection Act 2018, and however it is conveyed, provided by the Supplier to the Benchmarker pursuant to this Agreement that relates to:
  - (i) the Supplier; or
  - (ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Supplier;
- b) other Information provided by the Supplier pursuant to this Agreement to the Benchmarker that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential which comes (or has come) to the Benchmarker’s attention or into the Benchmarker’s possession in connection with the Permitted Purpose;
- c) discussions, negotiations, and correspondence between the Supplier or any of its directors, officers, employees, consultants or professional advisers and the Benchmarker or any of its directors, officers, employees, consultants

**OFFICIAL-SENSITIVE (COMMERCIAL)**

and professional advisers in connection with the Permitted Purpose and all matters arising therefrom; and

d) Information derived from any of the above,

but not including any Information that:

e) was in the possession of the Benchmarkers without obligation of confidentiality prior to its disclosure by the Supplier;

f) the Benchmarkers obtained on a non-confidential basis from a third party who is not, to the Benchmarkers' knowledge or belief, bound by a confidentiality agreement with the Supplier or otherwise prohibited from disclosing the information to the Benchmarkers;

g) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality; or

h) was independently developed without access to the Confidential Information;

**“Information”** means all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form); and

**“Permitted Purpose”** has the meaning given to that expression in recital (B) to this Agreement.

**1.2 In this Agreement:**

- (a) a reference to any gender includes a reference to other genders;
- (b) the singular includes the plural and vice versa;
- (c) the words “include” and cognate expressions shall be construed as if they were immediately followed by the words “without limitation”;
- (d) references to any statutory provision include a reference to that provision as modified, replaced, amended and/or re-enacted from time to time (before or after the date of this Agreement) and any prior or subsequent subordinate legislation made under it;
- (e) headings are included for ease of reference only and shall not affect the interpretation or construction of this Agreement; and
- (f) references to Clauses are to clauses of this Agreement.

## **2 Confidentiality Obligations**

2.1 In consideration of the Supplier providing Confidential Information to the Benchmarker, the Benchmarker shall:

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

## **3 Permitted Disclosures**

3.1 The Benchmarker may disclose Confidential Information to those of its directors, officers, employees, consultants and professional advisers who:

- (a) reasonably need to receive the Confidential Information in connection with the Permitted Purpose; and
- (b) have been informed by the Benchmarker of the confidential nature of the Confidential Information; and
- (c) have agreed to terms similar to those in this Agreement.

3.2 The Benchmarker shall be entitled to disclose Confidential Information to the Authority for the Permitted Purpose and to any Expert appointed in relation to a Dispute as referred to in Paragraph 5.7 of Schedule 7.3 (*Benchmarking*) to the Contract.

**OFFICIAL-SENSITIVE (COMMERCIAL)**

- 3.3 The Benchmarker shall be entitled to disclose Confidential Information to the extent that it is required to do so by applicable law or by order of a court or other public body that has jurisdiction over the Benchmarker.
- 3.4 Before making a disclosure pursuant to Clause 3.3, the Benchmarker shall, if the circumstances permit:
- (a) notify the Supplier in writing of the proposed disclosure as soon as possible (and if possible before the court or other public body orders the disclosure of the Confidential Information); and
  - (b) ask the court or other public body to treat the Confidential Information as confidential.

**4 General**

- 4.1 The Benchmarker acknowledges and agrees that all property, including intellectual property rights, in Confidential Information disclosed to it by the Supplier shall remain with and be vested in the Supplier.
- 4.2 This Agreement does not include, expressly or by implication, any representations, warranties or other obligations:
- (a) to grant the Benchmarker any licence or rights other than as may be expressly stated in this Agreement;
  - (b) to require the Supplier to disclose, continue disclosing or update any Confidential Information; or
  - (c) as to the accuracy, efficacy, completeness, capabilities, safety or any other qualities whatsoever of any Information or materials provided pursuant to or in anticipation of this Agreement.
- 4.3 The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers or remedies provided by law. No failure or delay by either Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.
- 4.4 Without prejudice to any other rights or remedies that the Supplier may have, the Benchmarker acknowledges and agrees that damages alone may not be an adequate remedy for any breach by the Benchmarker of any of the provisions of this Agreement. Accordingly, the Benchmarker acknowledges that the Supplier shall be entitled to the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of this Agreement and/or breach of confidence and that no proof of special damages shall be necessary for the enforcement of such remedies.
- 4.5 The maximum liability of the Benchmarker to the Supplier for any breach of this Agreement shall be limited to [REDACTED] pounds ([REDACTED]).
- 4.6 For the purposes of the Contracts (Rights of Third Parties) Act 1999 no one other than the Parties has the right to enforce the terms of this Agreement.

**OFFICIAL-SENSITIVE (COMMERCIAL)**

- 4.7 Each Party shall be responsible for all costs incurred by it or on its behalf in connection with this Agreement.
- 4.8 This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.

**5 Notices**

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

5.2 Any Notice:

- (a) if to be given to the Supplier shall be sent to:

[Address]

Attention: [Contact name and/or position, e.g. “The Finance Director”]

- (b) if to be given to the Benchmarker shall be sent to:

[Name of Organisation]  
[Address]

Attention: [ ]

**6 Governing law**

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

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

**For and on behalf of [name of Supplier]**

**OFFICIAL-SENSITIVE (COMMERCIAL)**

Signature:

---

Date:

Name:

Position:

**For and on behalf of [*name of Benchmark*]**

Signature:

---

Date:

Name:

Position:



**OFFICIAL-SENSITIVE (COMMERCIAL)**

**SCHEDULE 7.4**

**FINANCIAL DISTRESS**

## Financial Distress

[Note to bidders: Bidders will be aware that the purpose of this Schedule is to ensure financial viability and to receive advance notification of any issues in relation to this. The Schedule is currently drafted with a prime / sub-contractor relationship in mind and will need to be tailored in the event a consortia becomes the contracting entity. Depending of the make-up of the successful bidder / bidding team, the Authority may deem it appropriate for this Schedule to apply to some or all Key Sub-contractors as well.]

### 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 7 of this Schedule;
"FDE Group"	means the Supplier [and the Guarantor]; and
"Financial Indicator"	in respect of the FDE Group means each of the financial indicators set out at Annex 2 of this Schedule;
"Financial Target Threshold"	means the target thresholds for each Financial Indicator as set out at Annex 2 of this Schedule;
"Indicator Threshold"	means as set out at Annex 1 of this Schedule.

### 2 Warranties and duty to notify

- 2.1 The Supplier warrants and represents to the Authority, for the benefit of the Authority, that as at the Effective Date the Company Watch H-Score issued for each entity in the FDE Group by Company Watch are as set out in Annex 1 of this Schedule.
- 2.2 The Supplier shall promptly notify (or shall procure that its auditors promptly notify) the Authority in writing if there is any downgrade in the Company Watch H-Score for any entity in the FDE Group (and in any event within five (5) Working Days of the occurrence of the downgrade).
- 2.3 If there is a downgrade Company Watch H-Score for any entity in the FDE Group, the Supplier shall ensure that the Supplier's auditors thereafter provide the Authority, within ten (10) Working Days of the end of each Contract Year, and within ten (10) Working Days of written request by the Authority, written calculations of the quick ratio for the Supplier as at the end of each Contract Year or such other date as may be requested by the Authority. For these purposes the "quick ratio" on any date means:

$$(A + B + C) / D$$

where:

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A is the value at the relevant date of all cash in hand and at the bank of the Supplier [or the Guarantor, (as the case may be)];

B is the value of all marketable securities held by the Supplier [or the Guarantor, (as the case may be)] determined using closing prices on the Working Day preceding the relevant date;

C is the value at the relevant date of all accounts receivable of the Supplier [or the Guarantor, (as the case may be)]; and

D is the value at the relevant date of the current liabilities of the Supplier [or the Guarantor, (as the case may be)].

### 2.4 The Supplier shall:

- (a) regularly and in any event on no less than a quarterly basis, monitor the Company Watch H-Score of each entity in the FDE Group;
- (b) monitor and report on the Financial Indicators for each entity in the FDE Group against the Financial Target Thresholds at least at the frequency set out in Annex **Error! Reference source not found.** and in any event, on a regular basis and no less than once a year within one hundred and twenty (120) days after the Accounting Reference Date; and
- (c) promptly notify (or shall procure that its auditors promptly notify) the Authority in writing following the occurrence of a Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event (and in any event, ensure that such notification is made within ten (10) Working Days (unless stated otherwise in this Schedule) 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).

## 3 Financial Distress Events

### 3.1 The following shall be Financial Distress Events:

- (a) the Company Watch H-Score of a FDE Group entity, drops below the Indicator Threshold;
- (b) a 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 a FDE Group entity;
- (d) a FDE Group entity, committing a material breach of covenant to its lenders;
- (e) a Key Sub-contractor notifying the Authority that the Supplier has not satisfied any material sums properly due under a specified invoice and not subject to a genuine dispute;
- (f) any of the following:

**OFFICIAL-SENSITIVE (COMMERCIAL)**

- (i) commencement of any litigation against a FDE Group entity with respect to financial indebtedness greater than [REDACTED] or obligations under a service contract with a total contract value greater than [REDACTED];
- (ii) non-payment by a FDE Group entity, [or the Guarantor] of any financial indebtedness;
- (iii) any financial indebtedness of a FDE Group entity, [or the Guarantor] becoming due as a result of an event of default;
- (iv) the cancellation or suspension of any financial indebtedness in respect of a FDE Group entity, [or the Guarantor]; or
- (v) the external auditor of a 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; or

- (g) any one of the Financial Indicators set out Annex 2 of this Schedule for any of the FDE Group entities failing to meet the required Financial Target Threshold.

#### **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 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

**OFFICIAL-SENSITIVE (COMMERCIAL)**

- (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 [and/or the Guarantor] as the Authority may reasonably require as part of the monthly report 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 this 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;

**OFFICIAL-SENSITIVE (COMMERCIAL)**

- (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, it 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, anonymisation and any other techniques to permit disclosure of the information without breaching a duty of confidentiality.

**5 Termination rights**

- 5.1 The Authority shall be entitled to terminate this Agreement (in whole or part) under clause 29.1 (*Termination by the Authority*) if:
  - (a) the Supplier fails to notify the Authority of a Financial Distress Event in accordance with paragraph 2.4(c);
  - (b) the Parties fail to agree a Financial Distress Remediation Plan (or any updated Financial Distress Remediation Plan) in accordance with paragraphs 4.3 to 4.5; and/or

**OFFICIAL-SENSITIVE (COMMERCIAL)**

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

**6 Primacy of Company Watch H-Score**

- 6.1 Without prejudice to the Supplier's obligations and the Authority's rights and remedies under paragraph 2, if, following the occurrence of a Financial Distress Event pursuant to any of paragraphs 3.1(a) to 3.1(f), the Company Watch review and report subsequently that the Company Watch H-Score for the FDE Group entities do not drop below the Indicator Threshold, then:
  - (a) the Supplier shall be relieved automatically of its obligations under paragraphs 4.3 to 4.6; and
  - (b) the Authority shall not be entitled to require the Supplier to provide financial information in accordance with paragraph 4.3(b)(ii).

**7 Board confirmation**

- 7.1 Subject to paragraph 7.4 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.
- 7.2 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.
- 7.3 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 7.1 of this Schedule.
- 7.4 Where the Supplier is unable to provide a Board Confirmation in accordance with paragraphs 7.1 to 7.3 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) 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.

**OFFICIAL-SENSITIVE (COMMERCIAL)**



OFFICIAL-SENSITIVE (COMMERCIAL)

ANNEX 1: COMPANY WATCH H-SCORE

[Note to bidders: The use of indicators may be varied depending on the nature and make-up of the bidder. For example, whether H scores are obtainable and/or most appropriate.]

Entity	Indicator (long term)	Indicator Threshold <i>(insert the actual rating (e.g 25))</i>
<i>SI</i>	[Company Watch H-Score]	[Company Watch H-Score - [below 25 is designated as FDE]
<b>[Guarantor]</b>	[Company Watch H-Score]	[Company Watch H-Score - [below 25 is designated as FDE]

## ANNEX 2: FINANCIAL INDICATORS

**[Note to bidders: The financial target thresholds will be confirmed during the dialogue process.]**

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.

**5 Monitoring and Reporting Frequency:** All metrics should be tested and reported yearly in arrears within one hundred and twenty (120) days of each accounting reference date based upon figures for the twelve (12) months ending on the relevant accounting reference date.

Financial Indicator	Calculation	Financial Target Threshold
Operating Margin	Operating Margin = Operating Profit / Revenue	[Redacted]
Free Cash Flow to Net Debt Ratio	Free Cash Flow / Net Debt	[Redacted]
Net Debt to EBITDA Ratio	Net Debt / EBITDA	[Redacted]
Acid Ratio	(Current Assets - Inventories) / Current Liabilities	[Redacted]
Net Assets	Net Assets	[Redacted]
Group Exposure Ratio	Group Exposure / Gross Assets	[Redacted]

**OFFICIAL-SENSITIVE (COMMERCIAL)**

ANNEX 5: BOARD CONFIRMATION

Supplier Name:

Contract Reference Number:

The Board of Directors acknowledge the requirements set out at paragraph 7 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:

1. that a Financial Distress Event has occurred since the later of the previous Board Confirmation and the Effective Date or is subsisting; or
2. 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 .....

**OFFICIAL-SENSITIVE (COMMERCIAL)**

**SCHEDULE 7.5**

**FINANCIAL REPORTS AND AUDIT RIGHTS**

Financial Reports and Audit Rights

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

<b>“Annual Contract Report”</b>	the annual contract report to be provided by the Supplier to the Authority pursuant to Paragraph 1 of Part B;
<b>“Audit Agents”</b>	<ul style="list-style-type: none"><li>(a) the Authority’s internal and external auditors;</li><li>(b) the Authority’s statutory or regulatory auditors;</li><li>(c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;</li><li>(d) HM Treasury or the Cabinet Office;</li><li>(e) any party formally appointed by the Authority to carry out audit or similar review functions; and</li><li>(f) successors or assigns of any of the above;</li></ul>
<b>“Contract Amendment Report”</b>	the contract amendment report to be provided by the Supplier to the Authority pursuant to Paragraph 1 of Part B;
<b>“Final Reconciliation Report”;</b>	the final reconciliation report to be provided by the Supplier to the Authority pursuant to Paragraph 1 of Part B;
<b>“Financial Model”</b>	the Contract Inception Report, the latest Annual Contract Report or the latest Contract Amendment Report, whichever has been most recently approved by the Authority in accordance with Paragraph 2 of Part B;
<b>“Financial Reports”</b>	the Contract Inception Report and the reports listed in the table in Paragraph 1.1 of Part B;
<b>“Financial Representative”</b>	a reasonably skilled and experienced member of the Supplier’s staff who has specific responsibility for preparing, maintaining, facilitating access to, discussing and explaining the Open Book Data and Financial Reports;
<b>“Financial Transparency Objectives”</b>	has the meaning given in Paragraph 1 of Part A;
<b>“Material Change”</b>	a Change which: <ul style="list-style-type: none"><li>(a) materially changes the profile of the Charges; or</li><li>(b) varies the total Charges payable during the Term (as forecast in the latest Financial Model)</li></ul>

**OFFICIAL-SENSITIVE (COMMERCIAL)**

by:

- (i) [Redacted]% or more; or
- (ii) [REDACTED] or more;

**“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”**

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

- (a) the Supplier’s Costs broken down against each 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:
  - (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

**OFFICIAL-SENSITIVE (COMMERCIAL)**

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 Charges

- (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) [to facilitate the use of Guaranteed Maximum Price with Target Cost pricing mechanisms (where relevant as referred to in Schedule 7.1 (*Charges and Invoicing*));]

#### 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 Charges;
- (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 Charges are calculated.

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

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

### **3 ONEROUS CONTRACTS**

- 3.1 If the Supplier publicly designates this Agreement as an Onerous Contract (including where the Supplier has identified this 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 (and 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 this 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 this 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 of 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 [AFR Strategy 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 [AFR Strategy 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 Strategic Supplier; representatives from any Key Sub-contractors; 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 [AFR Strategy Board] on an information only basis and the Authority and [AFR Strategy 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: FINANCIAL REPORTS

[Note to bidders: Please note that the detail and frequency of reporting and the progression of the Financial Model may be subject to change, if the Authority deems appropriate given the nature of the agreement and initial financial model submitted.]

1 PROVISION OF THE FINANCIAL REPORTS

1.1 The Supplier shall provide:

- (a) the Contract Inception Report on or before the Effective Date; and
- (b) during the Term the following financial reports to the Authority, in the frequency specified below:

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

1.2 The Supplier shall provide to the Authority the Financial Reports in the same software package (Microsoft Excel or Microsoft Word), layout and format as the blank templates which have been issued by the Authority to the Supplier on or before the Effective Date for the purposes of this Agreement. The Authority shall be entitled to modify the template for any Financial Report by giving written notice to the Supplier, including a copy of the updated template.

1.3 A copy of each Financial Report shall be held by both the Authority and the Supplier. If there is a Dispute regarding a Financial Report, the Authority's copy of the relevant Financial Report shall be authoritative.

1.4 Each Financial Report shall:

- (a) be completed by the Supplier using reasonable skill and care;
- (b) incorporate and use the same defined terms as are used in this Agreement;
- (c) quote all monetary values in pounds sterling;
- (d) quote all Costs as exclusive of any VAT; and
- (e) quote all Costs and Charges based on current prices.

## **OFFICIAL-SENSITIVE (COMMERCIAL)**

- 1.5 Each Annual Contract Report and the Final Reconciliation Report shall be certified by the Supplier's Chief Financial Officer or Director of Finance (or equivalent as agreed in writing by the Authority in advance of issue of the relevant Financial Report), acting with express authority, as:
- (a) being accurate and not misleading;
  - (b) having been prepared in conformity with generally accepted accounting principles within the United Kingdom;
  - (c) being a true and fair reflection of the information included within the Supplier's management and statutory accounts; and
  - (d) compliant with the requirements of Paragraph 1.6.
- 1.6 The Supplier shall:
- (a) prepare each Financial Report using the same methodology as that used for the Contract Inception Report;
  - (b) ensure that each Annual Contract Report and each Contract Amendment Report (if any) is a true and fair reflection of the Costs and Supplier Profit Margin forecast by the Supplier;
  - (c) ensure the Final Reconciliation Report is a true and fair reflection of the Costs; and
  - (d) not have any other internal financial model in relation to the Services inconsistent with the Financial Model.
- 1.7 During the Term, and for a period of eighteen (18) months following the end of the Term, the Supplier shall make available the Financial Representative at reasonable times and on reasonable notice to answer any queries that the Authority may have on any of the Financial Reports and/or Open Book Data.
- 1.8 On the Authority's reasonable request, the Supplier shall provide it with copies of any working drafts of the Financial Reports.
- 1.9 If the Supplier becomes aware of the occurrence, or the likelihood of the future occurrence, of an event which will or may have a material effect on the following:
- (a) the Costs incurred (or those forecast to be incurred) by the Supplier; and/or
  - (b) the forecast Charges for the remainder of the Term,
- the Supplier shall, as soon as practicable, notify the Authority in writing of the event in question detailing the actual or anticipated effect. For the avoidance of doubt, notifications provided in accordance with this Paragraph 1.9 shall not have the effect of amending any provisions of this Agreement.
- 2 FINANCIAL MODEL**
- 2.1 Following the delivery by the Supplier of each Annual Contract Report and any Contract Amendment Report:

**OFFICIAL-SENSITIVE (COMMERCIAL)**

- (a) the Parties shall meet to discuss its contents within ten (10) Working Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting;
  - (b) the Supplier shall make appropriate Supplier Personnel and advisers available to discuss any variations between the relevant Financial Report and the Contract Inception Report or immediately preceding Annual Contract Report or Contract Amendment Report (as the case may be) and to explain such variations (with reference to supporting evidence) to the satisfaction of the Authority; and
  - (c) the Authority shall either within ten (10) Working Days of the meeting referred to in Paragraph 2.1(a) notify the Supplier that:
    - (i) the relevant Financial Report contains errors or omissions or that further explanations or supporting information is required, in which event the Supplier shall make any necessary modifications to the Financial Report and/or supply the Authority with such supporting evidence as is required to address the Authority's concerns within ten (10) Working Days of such notification and the Authority shall following receipt of such amended Financial Report and/or supporting information, approve or reject such Financial Report; or
    - (ii) the Authority has approved the relevant Financial Report.
- 2.2 Following approval by the Authority of the relevant Financial Report in accordance with Paragraph 2.1(c), that version shall become, with effect from the date of such approval, the current approved version of the Financial Model for the purposes of this Agreement, a version of which shall be held by both the Authority and the Supplier. If there is a Dispute regarding a Financial Report, the Authority's copy of the relevant Financial Report shall be authoritative.
- 2.3 Any change to the overarching format or structure of the Financial Model, or to the assumptions used for the development of the Financial Model, may only be made with the prior written consent of the Authority.
- 2.4 If the Parties are unable to reach agreement on any Financial Report within thirty (30) Working Days of its receipt by the Authority, the matter shall be referred for determination in accordance with Schedule 8.3 (*Dispute Resolution Procedure*).
- 3 Discussion of Quarterly Contract Reports and Final Reconciliation Report**
- 3.1 Following the delivery by the Supplier of each Quarterly Contract Report, the Parties shall meet to discuss its contents within ten (10) Working Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting.
- 3.2 Following the delivery by the Supplier of the Final Reconciliation Report, the Parties shall meet to discuss its contents within ten (10) Working Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting.

**4 Key Sub-contractors**

4.1 The Supplier shall, if requested by the Authority, provide (or procure the provision of) a report or reports including the level of information set out in the Financial Reports in relation to the costs and expenses to be incurred by any of its Key Sub-contractors.

4.2 Without prejudice to Paragraph 1.1 of Part C, the Supplier shall:

- (a) be responsible for auditing the financial models/reports of its Key Sub-contractors and for any associated costs and expenses incurred or forecast to be incurred; and
- (b) on written request by the Authority, provide the Authority or procure that the Authority is provided with:
  - (i) full copies of audit reports for the Key Sub-contractors. The Authority shall be entitled to rely on such audit reports; and
  - (ii) further explanation of, and supporting information in relation to, any audit reports provided.

**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) to verify the integrity and content of any Financial Report and/or the Financial Model (including any working drafts of any of the Financial Reports and/or the Financial Model);
  - (b) to verify the accuracy of the Charges and any other amounts payable by the Authority under this Agreement (and proposed or actual variations to such Charges and payments);
  - (c) to verify the Costs (including the amounts paid to all Sub-contractors and any third party suppliers);
  - (d) to verify the Certificate of Costs and/or the Open Book Data;
  - (e) to verify the Supplier's and each Key Sub-contractor's compliance with this Agreement and applicable Law;
  - (f) to identify or investigate actual or suspected fraud, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Authority shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
  - (g) to identify or investigate any circumstances which may impact upon the financial stability of the Supplier, 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;

## **OFFICIAL-SENSITIVE (COMMERCIAL)**

- (m) to review any Performance Monitoring Reports and/or other records relating to the Supplier's performance of the Services and to verify that these reflect the Supplier's own internal reports and records;
  - (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.



## **OFFICIAL-SENSITIVE (COMMERCIAL)**

- 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 Performance Indicators at a level of detail sufficient to verify compliance with the Performance Indicators.
- 2.4 The Authority shall endeavour to (but is not obliged to) provide at least fifteen (15) Working Days' notice of its intention to conduct an audit.
- 2.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Paragraph 2, unless the audit identifies a material Default by the Supplier in which case the Supplier shall reimburse the Authority for all the Authority's reasonable costs incurred in connection with the audit.

### **3 USE OF SUPPLIER'S INTERNAL AUDIT TEAM**

- 3.1 As an alternative to the Authority's right pursuant to Paragraph 1.1 to exercise an audit either itself or through its Audit Agents, the Authority may require in writing that an audit is undertaken by the Supplier's own internal audit function for any of the purposes set out in Paragraph 1.1.
- 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 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 and, if such Default constitutes a Notifiable Default, to comply with the Rectification Plan Process;
  - (b) there is an error in a Financial Report, the Supplier shall promptly rectify the error;
  - (c) the Authority has overpaid any Charges, the Supplier shall pay to the Authority:
    - (i) the amount overpaid;
    - (ii) interest on the amount overpaid at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the date of overpayment by the Authority up to the date of repayment by the Supplier; and
    - (iii) the reasonable costs incurred by the Authority in undertaking the audit,

**OFFICIAL-SENSITIVE (COMMERCIAL)**

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

- (d) the Authority has underpaid any Charges, the Supplier shall not be entitled to increase the Charges paid or payable by the Authority.