



## Application and Maintenance Support Services (AMS) Schedule 15 – Charges and Invoicing

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# 1 Definitions

1.1 In this Schedule, the following definitions shall apply:

<b>Accepted into Service</b>	the relevant Chargeable Application, Database, Service Catalogue Application, Service Wrap, Software, End User Application or Tool meets its functionality and quality requirements, has completed all applicable Testing successfully, and that the Supplier is ready to operate the relevant Chargeable Application, Database, Service Catalogue Application, , Service Wrap, Software, End User Application or Tool when it has been deployed;
<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 4) 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, being [REDACTED];
<b>Chargeable Application</b>	the Applications supported by the Supplier as detailed in Annex 1 Table 3.2;
<b>Volume Service Charges</b>	the Service Charges applicable for each Chargeable Application, Database, Service Wrap, Software, End User Application or Tool as set out in Annex 1 Table 3.2;
<b>Banding Level</b>	means each banding level set out in Table 1 at Paragraph 4 of Part 4.
<b>Baseline Service Charges</b>	the Service Charges applicable for each Service as set out in Annex 1 Table 3.1;
<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, [REDACTED];
<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 issue of the relevant certificate) and substantially in the format set out in Annex 2;
<b>Costs</b>	the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Services:  (a) the cost to the Supplier or the Key Sub-contractor (as the context

requires), calculated per Work Day, of engaging the Supplier Personnel, including:

- (i) base salary paid to the Supplier Personnel;
  - (ii) employer's national insurance contributions;
  - (iii) Employer Pension Contributions;
  - (iv) car allowances;
  - (v) any other contractual employment benefits;
  - (vi) staff training;
  - (vii) work place accommodation;
  - (viii) work place IT equipment and tools reasonably necessary to perform the Services (but not including items included within limb (b) below); and
  - (ix) reasonable recruitment costs, as agreed with the Authority;
- (b) costs incurred in respect of those 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 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 17 (*Benchmarking*); and
- (vii) non-cash items (including depreciation, amortisation, impairments and movements in provisions);

<b>Database</b>	the database instances supported by the Supplier as detailed in Annex 1 Table 3.2;
<b>Delay Payment Rate</b>	has the meaning given in Paragraph 1.1(a) of Part 3;
<b>End User Application</b>	Software or Chargeable Application that resides on an End User Device, i.e. laptop, desktop, mobile phone, which requires support from the Supplier as detailed in Annex 1 Table 3.2.
<b>Employer Pension Contributions</b>	<p>means:</p> <ul style="list-style-type: none"> <li>(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;</li> <li>(b) in respect of NHSPS Eligible Employees, the standard employer contribution rate applicable to NHS 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 NHS Pension Scheme or in respect of any NHS Premature Retirement Rights,</li> </ul>

unless otherwise agreed in writing by the Authority);

- (c) in respect of LGPS Eligible Employees the standard employer contribution rate applicable to LGPS 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 LGPS 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.

**Extra Large Application**

as determined in accordance with the Application T-Shirt Sizing Calculator set out in the 'Application T-Shirt Sizing' tab in the Contract Inception Report.

**Extra Small Application**

as determined in accordance with the Application T-Shirt Sizing Calculator set out in the 'Application T-Shirt Sizing' tab in the Contract Inception Report.

**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);

**Inbound Contract Charge**

the charge from the 3rd party supplier in respect of each Inbound Contract;

**Incurred Costs**

in relation to a Milestone, the sum of:

- (a) the fixed day costs set out in Table 1 of Annex 1 multiplied by the number of Work Days that have been expended by the Supplier Personnel in Achieving the relevant Milestone; and
- (b) any amount that would fall within limbs (b) or (c) of the definition of "Costs" (but subject to exceptions (i) to (vii) in that definition), to the extent

that such amount has been incurred in Achieving the relevant Milestone;

<b>Indexation and Index</b>	the adjustment of an amount or sum in accordance with Paragraph 5 of Part 3;
<b>Large Application</b>	as determined in accordance with the Application T-Shirt Sizing Calculator set out in the 'Application T-Shirt Sizing' tab in the Contract Inception Report.
<b>Maximum Permitted Profit Margin</b>	the Anticipated Contract Life Profit Margin plus 5% or as otherwise amended in accordance with Paragraph 4.3 of Part 4;
<b>Medium Application</b>	as determined in accordance with the Application T-Shirt Sizing Calculator set out in the 'Application T-Shirt Sizing' tab in the Contract Inception Report.
<b>Milestone Retention</b>	has the meaning given in Paragraph 1.3 of Part 2;
<b>MoSPI Consumer Price Index</b>	means the Consumer Price Index published by the Government of India's Ministry of Statistics and Programme Implementation National Statistical Office;
<b>Overhead</b>	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) and including all categories of costs set out in rows 57-60 of tab " <i>Supplier Costs + FTE Days</i> " of the Contract Inception Report, 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" (to the extent not covered by the categories of costs set out in rows 57-60 of tab " <i>Supplier Costs + FTE Days</i> " of the Contract Inception Report) or the day cost set out in Table 1 of Annex 1;
<b>Pass Through Margin</b>	the margin percentage applicable to each Inbound Contract set out in Annex 1 Table 4;
<b>Pass Through Margin Charge</b>	the Inbound Contract Charge plus the applicable Pass Through Margin;
<b>Reimbursable Expenses</b>	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:

- (a) travel expenses incurred as a result of Supplier Personnel travelling to and from their usual place of work, or to and from the premises at which the Services are principally to be performed, unless the Authority otherwise agrees in advance in writing; and
- (b) subsistence expenses incurred by Supplier Personnel whilst performing the Services at their usual place of work, or to and from the premises at which the Services are principally to be performed;

<b>Service Catalogue Application</b>	the Applications supported by the Supplier as detailed in Annex 1 Table 5;
<b>Service Catalogue Charges</b>	the Service Charges applicable for each Service Catalogue Service as set out in Annex 1 Table 5;
<b>Service Wrap</b>	Service wrap activities performed for externally hosted services by the Supplier as detailed in Annex 1 Table 3.2;
<b>Small Application</b>	as determined in accordance with the Application T-Shirt Sizing Calculator set out in the 'Application T-Shirt Sizing' tab in the Contract Inception Report.
<b>Successful Decommissioning</b>	when the Chargeable Application, Database, Service Catalogue Application, Service Wrap, Software, End User Application or Tool has been removed from the support of the Supplier;
<b>Supplier Profit</b>	in relation to a period within the Term, is the difference between the total Charges and total Costs (reported in accordance with the principles set out in Annex 5 (Profit Calculation Principles) for the relevant period.
<b>Supplier Profit Margin</b>	in relation to a period within the Term the Supplier Profit for the relevant period divided by the total Charges (reported in accordance with the principles set out in Annex 5 (Profit Calculation Principles) over the same period and expressed as a percentage;
<b>Supporting Documentation</b>	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;

**Tools**

Software tools that are supported by the Supplier as detailed in Annex 1 Table 3.2;

**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 4;

**Work Day**

7.5 Work Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day;

**Work Hours**

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;

## Part 1 – Pricing

### 1 General

- 1.1 Except as expressly set out in this Schedule 15 Part 3 (*Adjustments to the Charges and Risk Register*), the Charges shall include all costs and expenses relating to the Deliverable, 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.

### 2 Time and Materials Payments

- 2.1 Time and Materials Charges do not apply to the Services as at the Effective Date. Time and Materials Charges may be applied to:

- (a) Services introduced in accordance with Schedule 22 (Change Control Procedure);
- (b) Projects introduced in accordance with Schedule 33 (Projects); and
- (c) Optional Services introduced in accordance with Clause 5.10 (*Optional Services*).

- 2.2 Where the Parties agree that a payment is to be calculated by reference to a Time and Materials pricing mechanism, 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:

- (a) not be entitled to include any uplift for risks or contingencies within its day rates;
- (b) unless otherwise agreed by the Authority in relation to the relevant Milestone Payment or Service Charge (as the case may be), not be entitled to be paid any Charges to the extent that they would otherwise exceed the amount calculated by multiplying:
  - (i) the total number of days expended by the Supplier in relation to the relevant Milestone; or
  - (ii) the total number of days expended by the Supplier during the relevant Reporting Period in relation to the relevant Service,

by the Capped ADR; and

- (iii) only be entitled to be paid Charges that have been properly and reasonably incurred, taking into account the Supplier's obligation to deliver the Services in a proportionate and efficient manner; and
- (c) the Supplier shall keep records of hours properly worked by Supplier Personnel (in the form of timesheets) and expenses incurred and submit a summary of the relevant records with each invoice. If the Authority requests copies of such records, the Supplier shall make them available to the Authority within 10 Working Days of the Authority's request.

- 2.3 The rate card set out in Annex 1 Table 1 shall be subject to increase by way of Indexation.

### **3 Fixed Price Milestone Payments, Service Charges and Service Catalogue Charges**

3.1 Where a Milestone Payment, Service Charge or Service Catalogue Charge is to be calculated by reference to a Fixed Price pricing mechanism:

- (a) in the case of a Milestone Payment, the relevant Charge shall be as set out in Table 2 of Annex 1;
- (b) in the case of a Service Charge, the relevant Charge shall be as set out in:
  - (i) Table 3.1 of Annex 1 with respect to Baseline Service Charges; and
  - (ii) Table 3.2 of Annex 1 with respect to Volume Service Charges.
- (c) in the case of a Service Catalogue Charge, the relevant Charge shall be based on the range set out in Table 5 of Annex 1.

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

3.3 Any Fixed Price Milestone Payment included as part of a Project must be based on an approach that benefits the Authority from increased risks, and not for the purpose of the Supplier to benefit itself financially. For Implementation of a Project, the Supplier must consider the following:

- (a) cost per Milestone should be proportionate against effort and risk to deliver the defined Deliverables for the relevant Project;
- (b) Milestone Payments must be supported with a resource profile; and
- (c) Milestone Payments must be fully inclusive of all risks, assumptions and dependencies.

## Part 2 – Charging mechanisms

### 1 Milestone Payments

- 1.1 Subject to the provisions of Paragraph 1.3 of Part 3 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 2.
- 1.2 Each invoice relating to a Milestone Payment shall be supported by:
- (a) a Milestone Achievement Certificate; and
  - (b) a Certificate of Costs with Supporting Documentation.
- 1.3 The calculation for the "**Milestone Retention**" for each Milestone shall be 20% 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 3.
- 1.4 The Supplier shall not be entitled to invoice the Authority for any additional Charges relating to the Milestone (as applicable) save as provided in Paragraph 1.5.

#### Release of Milestone Retentions

- 1.5 On Achievement of the CPP Milestone, the Supplier shall be entitled to invoice the Authority for an amount equal to all Milestone Retentions that relate to Milestones identified in Table 2 of Annex 1 that have not already been paid.
- 1.6 The RPCE shall be invoiced in accordance with section 2.2 of Annex 1.

### 2 Service Charges

#### Baseline Service Charges

- 2.1 Each Baseline Service Charge shall commence on the Achievement of the Milestone set out against that Service in the "*Service Charge Trigger Event*" column of Table 3.1 of Annex 1 and end on the Expiry of the Initial Term or any Extension Period or on earlier termination of this Contract.
- 2.2 Baseline Service Charges shall be invoiced by the Supplier for each Reporting Period in arrear in accordance with the requirements of Part 5.
- 2.3 If a Baseline Service Charge:
- (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 Baseline Service Charge for the relevant Reporting 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.

#### Volume Service Charges

- 2.4 The Supplier shall ensure each Volume Service Charge shall be aligned to the proposed methodology of the Supplier described within the Contract Inception Report which evidence how the Cost per Application has been developed.
- 2.5 Each Volume Service Charge shall commence as soon as the Chargeable Application, Database, Service Wrap, Software, End User Application or Tool relating to that Charge has been Accepted into Service to the Authority's satisfaction and shall end on the Successful Decommissioning of such Chargeable Application, Database, Service Wrap, Software, End User Application or Tool.
- 2.6 The Volume Service Charges for each month shall be calculated by summing the number of Chargeable Applications, Database, Service Wrap, Software, End User Application or Tool Accepted into Service and being supported by the Supplier during that month, but excluding any Chargeable Applications, Database, Service Wrap, Software, End User Application or Tool Successfully Decommissioned, by the associated Charge shown in Table 3.2 of Annex 1.
- 2.7 Application Services Charges shall be invoiced by the Supplier for each Reporting Period in arrears in accordance with the requirements of Part 5.
- 2.8 If a Volume Service Charge:
- (a) commences on a day prior to the fifteenth (15<sup>th</sup>) day of a month; and/or
  - (b) ends on a day other than the last day of a month,

the Volume Service Charge for the relevant Reporting Period shall not be pro-rated and shall apply to the whole month.

### **Service Credits**

- 2.9 Any Service Credits that accrue during a Reporting Period shall be deducted from the Service Charges payable for the next following Reporting 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 Reporting Period have been agreed.

## **3 Future Services**

- 3.1 If:
- (a) the Authority gives notice pursuant to Clause 5.10 (*Optional Services*) that it requires the Supplier to provide any or all of the *Optional Services*; and/or
  - (b) the Parties agree that the Supplier shall implement future services (forming part of *Projects* but excluding *Service Catalogue Services*),

then, subject to the agreement between the Parties to the contrary, such services shall be calculated on a Time and Materials basis. If the Parties agree that any Milestone relating to the *Optional Services* or *Project* shall be charged on a Fixed Price basis, such Fixed Price shall be agreed on the basis of the Supplier's good faith estimate of the resources to undertake the relevant part of the *Project* or *Optional Services* and the *Project Daily Rates* applicable to those resources.

## **4 Pass Through Margin Charges**

- 4.1 The Supplier shall be entitled to invoice the Authority for a Pass Through Margin Charge promptly following receipt of an invoice relating to the Inbound Contract Charge in respect of an Inbound Contract in accordance with this Paragraph 4 of Part 2.
- 4.2 Each invoice relating to a Pass Through Margin Charge shall be supported by sufficient information in writing to enable the Authority reasonably to assess whether the Pass Through Margin Charges due from the Authority are properly payable, including:
- (a) evidence of the Inbound Contract Charge; and
  - (b) the classification of the relevant Inbound Contract and the associated Pass Through Margin in accordance with Table 4 of Annex 1.
- 4.3 The Supplier shall not be entitled to recover any amounts in respect of the management and administration of the Inbound Contracts in addition to the Pass Through Margin Charges via the Fixed Price Service Charge or otherwise.
- 4.4 The Pass Through Margin Charges shall be subject to annual Indexation.

## **5 Service Catalogue Charges**

- 5.1 If the Authority makes a Service Request in respect of the Service Catalogue then such services shall be calculated based on the range of Charges specified in Table 5 of Annex 1 and agreed in the finalised Work Order as part of a Project. Such Charges shall:
- 5.2 be aligned to the Supplier's proposed methodology as described within the Contract Inception Report; and
- 5.3 be calculated based on the level of required effort of the Supplier and evidenced accordingly.
- 5.4 Each Service Catalogue Charge shall commence:
- (a) in respect of onboarding of a Service Catalogue Application, as soon as such Service Catalogue Application has been Accepted into Service to the Authority's satisfaction;
  - (b) in respect of offboarding of a Service Catalogue Application, on the Successful Decommissioning of such Service Catalogue Application; and
  - (c) in respect of enhanced support for Tier 2 Applications and Tier 3 Applications, on the provision of such support.
- 5.5 The Service Catalogue Charges for each month shall be calculated:
- (a) in the case of Service Catalogue Applications:
    - (i) by multiplying the number of Service Catalogue Applications of each type Accepted into Service during that month by the associated Charge aligned to Table 5 of Annex 1 and set out in the approved Work Order;
    - (ii) by multiplying the number of Service Catalogue Applications of each type Successfully Decommissioned during that month by the associated Charge aligned to Table 5 of Annex 1 and set out in the approved Work Order; and

- (iii) by aggregating the results of each calculation in Paragraphs (a) and (ii) above; and
  - (b) in the case of enhanced support for Tier 2 Applications and Tier 3 Applications, as agreed by the Parties in accordance with Schedule 33 (Projects) and on the basis that the associated Service Catalogue Charge shall be calculated on the same basis at a Tier 1 Application.
- 5.6 Service Catalogue Charges shall be invoiced by the Supplier for each Reporting Period in arrear in accordance with the requirements of Part 5.

## Part 3 – 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**") as set out in Table 2 of Annex 1 for the Key Milestones;
  - (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 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.
- 1.3 The Delay Payment in respect of a Key Milestone shall be shown as a deduction from the amount due from the Authority to the Supplier in the next invoice due to be issued by the Supplier after 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 10 Working Days of expiry of the Delay Deduction Period, then the Supplier shall within 10 Working Days of 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; 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 29.1(iii)(D) (*Authority Cause*) to compensation for failure to Achieve a Milestone by its Milestone Date, then, subject always to Clause 23 (*Limitations on liability*), such compensation shall be determined in accordance with the following principles:
- (a) the compensation shall reimburse the Supplier for additional Costs incurred by the Supplier that the Supplier:
    - (i) can demonstrate it has incurred solely and directly as a result of the Authority Cause; and

- (ii) is, has been, or will be unable to mitigate, having complied with its obligations under Clause 29.1 (*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; and
  - (c) where the relevant Milestone Payment is to be calculated based upon a Fixed 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 2 of Annex 1.
- 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 Reporting Period pursuant to the provisions of Schedule 3 (*Performance Levels*).
- 3.2 For each Reporting Period:
- (a) the Service Points accrued shall be converted to a percentage deduction from the Service Charges for the relevant Reporting Period on the basis of one point equating to a 0.001% deduction in the Service Charges; and
  - (b) the total Service Credits applicable for the Reporting 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 Reporting Period;
  - TSP is the total Service Points that have accrued for the relevant Reporting Period;
  - X is 0.001%; and
  - AC is the total Services Charges payable for the relevant Reporting 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 23.4 (*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 3 (*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 Reporting Period immediately succeeding the Reporting Period to which they relate.

#### **4 Changes to Charges**

4.1 Subject to Paragraph 6, any Changes to the Charges shall be developed and agreed by the Parties in accordance with Schedule 22 (*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 The Supplier may propose to adjust any amounts or sums in this Contract which are expressed to be "subject to Indexation" in accordance with the provisions of this Paragraph 5.

5.2 Where Indexation applies and has been determined by mutual agreement between the Parties (both acting reasonably) in accordance with this Paragraph 5, the relevant adjustment shall be applied on the second anniversary of the Effective Date and on each anniversary of the Effective Date in each subsequent year (each such date an "**adjustment date**").

5.3 In advance of the relevant adjustment date the Supplier shall propose to the Authority for review any proposed adjustments to any amounts, sums or rates in accordance with this Paragraph 5, together with supporting evidence. The Supplier shall promptly provide to the Authority any further documentation that the Authority reasonably requires to assess the Supplier's proposal.

5.4 Where the Supplier proposes an increase to the amounts, sums or rates in accordance with this Paragraph 5, the increase shall:

(a) be based on the Supplier's actual increases in cost;

(b) be justified through open book cost breakdown as against the Contract Inception Report;

(c) in relation to an adjustment of the rate card set out in Annex 1 Table 1, be based on the same increase as calculated in (b);

(d) be subject to a maximum rate of indexation of the percentage change in the Consumer Price Index including Housing (or where any of the Services are provided offshore, the MoSPI Consumer Price Index) published for the 12 months immediately preceding the relevant adjustment date; and

(e) not include increases to Overheads or Supplier Profit.

- 5.5 If the Parties do not agree on the adjustments either Party may refer the matter to be determined by an expert in accordance with Paragraph 6 of Schedule 23 (*Dispute Resolution Procedure*).
- 5.6 Where increases in costs are due to increases in third party contract costs, the Supplier shall not agree increases in costs with that third party unless and until agreed by the Authority or determined by an expert in accordance with Paragraph 5.5.
- 5.7 In relation to evidence required to support any increase request, the Supplier shall provide the following information to the Authority as a minimum:
- (a) Any applicable Supplier Personnel rate cards used to calculate the Charges, as well as the organisation charts and or resourcing profile (by location);
  - (b) For Service Charges, the provision of open book data. The open book data should allow the Authority to see the difference between Supplier's revenue from total Charges and total Costs, to show the Supplier's gross profits. Then the calculation of indirect costs are applied to show the Supplier's net profits.
  - (c) Where increases in costs are due to increases in third party contract costs or Inbound Contract costs, copies of the third party contract invoices, the Supplier's purchase order and the application of the Pass Through Margin; and
  - (d) Where increases in costs are due to the Supplier's own tooling or Software, internal cross-charging from the Supplier's ledger.

## **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 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 4; 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 4,
- 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 4, 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 4.

## **7 Risk Register**

- 7.1 The Parties shall review the Risk Register set out in Annex 3 from time to time and as otherwise required for the purposes of Schedule 21 (*Governance*).

## **6 Annual Review of Ticket Volumes**

- 6.1 On the anniversary of the first OSCD Milestone, the Supplier shall provide a report to the Authority reporting on ticket volumes relating to the Applications.
- 6.2 The Authority shall review the report following receipt and if ticket volumes are +/- 30% (plus or minus thirty per cent) of the current baselined ticket volumes as set out in the AMSMAL and subsequently in the Authority's ITSM Toolset, then this shall trigger a review of the Service Charges.
- 6.3 Any changes to the Service Charges shall be 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.

## **Part 4 – 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 2 of Schedule 19 (*Financial Reports and Audit Rights*) shall apply to the approval of the Annual Contract Report.
- 1.3 The Parties have agreed principles for calculation to reflect the difference between the Contract Inception Report and the requirement to maintain reports in accordance with generally accepted accounting principles in Annex 5.

### **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 2 of Schedule 19 (*Financial Reports and Audit Rights*)) that the Achieved Profit Margin as at the end of the Contract Year to which the Annual Contract Report is made up exceeds the Maximum Permitted Profit Margin:
  - (a) the Supplier shall, within 5 Working Days of delivery to the Authority of the Annual Contract Report, propose such adjustments to the Charges as will ensure that the Achieved Profit Margin both over the Contract Year to which the next Annual Contract Report will relate and over the Term will not exceed the Maximum Permitted Profit Margin;
  - (b) the Authority (acting reasonably) may agree or reject the proposed adjustments;
  - (c) if the Authority rejects the proposed adjustments it shall give reasons and the Supplier shall propose revised adjustments within 10 Working Days of receiving those reasons; and
  - (d) if the Parties cannot agree such revised adjustments and the Authority terminates this Contract by issuing a Termination Notice to the Supplier pursuant to Clause 31.1(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 4, 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 Reporting Period that immediately follows the Reporting Period in which the Change Authorisation Note is executed or such other date as is specified in the Change Authorisation Note.

### 3 Authority Clawback of Excess Supplier Profit

- 3.1 If the Final Reconciliation Report demonstrates (or it is otherwise determined pursuant to Paragraph 2 of Part 2 of Schedule 19 (*Financial Reports and Audit Rights*)) that the Final Achieved Profit Margin exceeds the Maximum Permitted Profit Margin, then:
- (a) the Authority shall be entitled to 100% of the difference between:
    - (i) the total Supplier Profit; and
    - (ii) the Supplier Profit that would have been achieved if the Supplier had met the Maximum Permitted Profit Margin exactly; and
  - (b) the Supplier shall be required to pay the Authority the amount derived from the calculation in Paragraph 3.1(a) above within ten (10) Working Days of submitting the Final Reconciliation Report.

### 4 Continuous Service Improvement / Gainshare

- 4.1 If the Supplier proposes an improvement to the Services or a Project that would result in a reduction in Costs such that the Maximum Permitted Profit Margin would exceed the Anticipated Contract Life Profit Margin (ACLPM), the Parties shall agree in accordance with the Change Control Procedure:
- (a) to adjust the Anticipated Contract Life Profit Margin to reflect the Supplier's share of the proposed increased Supplier Profit in accordance with Table 1 (Gainshare) below; and
  - (a) to reduce the Charges by such value to deliver the new Anticipated Contract Life Profit Margin.

Table 1 - Gainshare

Banding Level	Total Supplier Profit Margin expected to be realised by the proposed Service improvement or Project	Supplier share	Authority share
Banding Level 1	ACLPM+1%	75%	25%
Banding Level 2	ACLPM+1.1-2%	50%	50%
Banding Level 3	ACLPM+2.1-6%	25%	75%
Banding Level 4	ACLPM+6.1%+	0%	100%

- 4.2 Each Banding Level shall apply in aggregate. For example, if the Supplier proposes a change which will be expected to realise a 7% increase in Supplier Profit Margin, the Supplier would be entitled to 75% share of the first 1% increase, 50% share of the next 1% increase and then 25% share of the next 4% increase.
- 4.3 Where the Parties agree to an adjustment in accordance with Paragraph 4.1, the Maximum Permitted Profit Margin shall be reduced to the Anticipated Contract Life Profit Margin plus 2%.
- 4.4 The Authority will work with the Supplier during Implementation to review other gainshare options that are outside of Table 1 above. Should a new gainshare option be agreed, the

share will be baselined at 50/50%. Neither Party is obligated to accept any of the proposed gainshare options but will be considered and possibly agreed on a case-by-case basis.

- 4.5 The Parties agree and acknowledge that any additional gainshare options agreed pursuant to Paragraph 4.4 of this Part 4 will not be included in the calculation of the Anticipated Contract Life Profit.

## Part 5 – Invoicing and Payment terms

### 1 Supplier invoices

- 1.1 The Authority shall accept for processing any electronic invoice that complies with the European Standard, provided that it is valid and undisputed.
- 1.2 If the Supplier proposes to submit for payment an invoice that does not comply with the European standard the Supplier shall:
  - (a) comply with the requirements of the Authority's e-invoicing system;
  - (b) prepare and provide to the Authority for approval of the format a template invoice within 10 Working Days of the Effective Date which shall include, as a minimum the details set out in Paragraph 1.3 together with such other information as the Authority may reasonably require to assess whether the Charges that will be detailed therein are properly payable; and
  - (c) make such amendments as may be reasonably required by the Authority if the template invoice outlined in (b) is not approved by the Authority.
- 1.3 The Supplier shall ensure that each invoice is submitted in the correct format for the Authority's e-invoicing system, or that it contains the following information:
  - (a) the date of the invoice;
  - (b) a unique invoice number;
  - (c) the Reporting Period or other period(s) to which the relevant Charge(s) relate;
  - (d) the correct reference for this Contract;
  - (e) the reference number of the purchase order to which it relates (if any);
  - (f) the dates between which the Services subject of each of the Charges detailed on the invoice were performed;
  - (g) a description of the Services;
  - (h) the pricing mechanism used to calculate the Charges (such as Fixed Price, Time and Materials);
  - (i) any payments due in respect of Achievement of a Milestone, including the Milestone Achievement Certificate number for each relevant Milestone;
  - (j) any payments due in respect of Pass Through Margin Charges.
  - (k) any payments due in respect of Service Catalogue Charges;
  - (l) the total Charges gross and net of any applicable deductions and, separately, the amount of any Reimbursable Expenses properly chargeable to the Authority under the terms of this Contract, and, separately, any VAT or other sales tax payable in respect of each of the same;

- (m) details of any Service Credits or Delay Payments or similar deductions that shall apply to the Charges detailed on the invoice;
- (n) reference to any reports required by the Authority in respect of the Services to which the Charges detailed on the invoice relate (or in the case of reports issued by the Supplier for validation by the Authority, then to any such reports as are validated by the Authority in respect of the Services);
- (o) a contact name and telephone number of a responsible person in the Supplier's finance department in the event of administrative queries;
- (p) the banking details for payment to the Supplier via electronic transfer of funds (i.e. name and address of bank, sort code, account name and number); and
- (q) where the Services have been structured into separate Service lines, the information at (a) to (n) of this Paragraph 1.3 shall be broken down in each invoice per Service line.

1.4 The Supplier shall invoice the Authority in respect of Services in accordance with the requirements of Part 2. The Supplier shall first submit to the Authority a draft invoice setting out the Charges payable. The Parties shall endeavour to agree the draft invoice within 5 Working Days of its receipt by the Authority, following which the Supplier shall be entitled to submit its invoice.

1.5 Each invoice shall at all times be accompanied by Supporting Documentation. Any assessment by the Authority as to what constitutes Supporting Documentation shall not be conclusive and the Supplier undertakes to provide to the Authority any other documentation reasonably required by the Authority from time to time to substantiate an invoice.

1.6 The Supplier shall submit all invoices and Supporting Documentation through the Authority's electronic system "Basware" or if that is not possible to:

SSCL AP  
Defra  
PO Box 790  
Newport Gwent  
NP10 8FZ

APinvoices-DEF-U@gov.sscl.com

with a copy (again including any Supporting Documentation) to such other person and at such place as the Authority may notify to the Supplier from time to time.

1.7 All Supplier invoices shall be expressed in sterling or such other currency as shall be permitted by the Authority in writing.

1.8 The Authority shall regard an invoice as valid only if it complies with the provisions of this Part 5. Where any invoice does not conform to the Authority's requirements set out in this Part 5, the Authority shall promptly return the disputed invoice to the Supplier and the Supplier shall promptly issue a replacement invoice which shall comply with such requirements.

1.9 If the Authority fails to consider and verify an invoice in accordance with Paragraphs 1.4 and 1.8, the invoice shall be regarded as valid and undisputed for the purpose of Paragraph 2.1 after a reasonable time has passed.

**2 Payment terms**

2.1 Subject to the relevant provisions of this Schedule, the Authority shall make payment to the Supplier within thirty (30) days of verifying that the invoice is valid and undisputed.

2.2 Unless the Parties agree otherwise in writing, all Supplier invoices shall be paid in sterling by electronic transfer of funds to the bank account that the Supplier has specified on its invoice.

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