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# Schedule 7.5 – ESMCP Mobile Services Agreement

## Financial Reports and Audit Rights

**Version 1.0**

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Page 1 of 13

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CHANGE HISTORY

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Contents

<b>PART A: Financial Transparency Objectives and Open Book Data</b>	<b>4</b>
<b>1 Financial Transparency Objectives</b>	<b>4</b>
<b>2 Open Book Data</b>	<b>4</b>
<b>PART B: Financial Reports</b>	<b>6</b>
<b>1 Provision of the Financial Reports</b>	<b>6</b>
<b>2 Discussion Of Financial Reports</b>	<b>8</b>
<b>3 Discussion of Quarterly Financial Reports and Final Reconciliation Report</b>	<b>9</b>
<b>4 Key Sub-contractors</b>	<b>9</b>
<b>PART C: Audit Rights</b>	<b>10</b>
<b>1 Audit Rights</b>	<b>10</b>
<b>2 Conduct Of Audits</b>	<b>11</b>
<b>3 Use Of Supplier's Internal Audit Team</b>	<b>12</b>
<b>4 Response To Audits</b>	<b>13</b>

## PART A: Financial Transparency Objectives and Open Book Data

### 1 Financial Transparency Objectives

- 1.1 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 Allowable Costs, Overhead recoveries (where relevant), time spent by Supplier Personnel in providing the Services and the Supplier profit levels;
- (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 pricing mechanisms 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 on-going costs and to identify how these could be mitigated and/or reflected in a revised Financial Model (subject to Change provisions in Schedule 8.2) and/or 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.

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- 2.2 During the Term, and for a period of [REDACTED] 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.

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Page 5 of 13

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**PART B: Financial Reports****1 Provision of the Financial Reports**

- 1.1 The Supplier shall provide the following financial reports to the Authority in the frequency specified below:

Financial Report	When to be provided
Contract Amendment Report	[REDACTED]
Quarterly Financial Report	[REDACTED]
Annual Financial Report	[REDACTED]
Final Reconciliation Report	[REDACTED]

Schedule 7.5 Part B: Table 1.1, Financial Reports

- 1.2 The Supplier shall provide to the Authority the Financial Reports in commonly available software packages (e.g. Microsoft Excel, Microsoft Word or PDF). The Authority shall be entitled to modify the design and specification of any Financial Report by giving written notice to the Supplier, including a copy of the updated specification.
- 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:
- be completed by the Supplier using reasonable skill and care;
  - incorporate and use the same defined terms as are used in this Agreement;
  - quote all monetary values in pounds sterling;
  - quote all costs as exclusive of any VAT;
  - quote all costs and Charges based on outturn prices; and
  - compliant with the requirements of Paragraph 1.6.

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Page 6 of 13

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- 1.5 Each Annual Financial Report and the Final Reconciliation Report shall be certified by the Supplier's Director of Finance or Senior Finance Lead (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; and
  - (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 and where appropriate shall show and explain any deviations from the methodology used for the Contract Inception Report;
  - (b) ensure that each Annual Financial Report and each Contract Amendment report (if any) is a true and fair reflection of the costs and Supplier Cash Margin Percentage forecast by the Supplier;
  - (c) ensure that the Final Reconciliation Report is a true and fair reflection of the costs;
  - (d) ensure and be able to demonstrate to the Authority that the Financial Reports are consistent with and reconciled to representations made in the latest Financial Model, and not have any other internal financial model in relation to the Services inconsistent with the Financial Model or the Financial Reports.
- 1.7 The Supplier shall ensure that each Annual Financial Report is subject to an external audit, the results of which shall be provided to the Authority at the time of delivering the first Quarterly Financial Report of each Financial Year. The Supplier shall bear the costs and expenses of such external audits. The Supplier shall ensure that any findings from the Audit Report are incorporated into the Quarterly Financial Report as soon as possible.
- 1.8 During the Term, and for a [REDACTED] following the end of the Term, the Supplier shall make available the Financial/Commercial 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.
- 1.9 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) actually incurred or forecast Supplier Allowable Costs for calculation of Supplier Cash Margin; and/or

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Page 7 of 13

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- (b) historic or forecast Charges,

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 Discussion Of Financial Reports

- 2.1 Following the delivery by the Supplier of each Annual Financial Report and any Contract Amendment Report:

- (a) the Parties shall meet to discuss its contents within [REDACTED] Working Days of receipt (or such other period as the Parties shall agree). The Financial/Commercial 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 Financial Report or Contract Inception Report (as the case may be) and to explain such variations (with reference to supporting evidence) to the satisfaction of the Authority;
- (c) the Authority shall either within [REDACTED] 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 [REDACTED] 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 If the delivery of the Annual Financial report demonstrates (or it is otherwise determined pursuant to Paragraph 2.1) that the Anticipated Contract Life Supplier Cash Margin Percentage as at the end of the Contract Year to which the Annual Financial Report is made up exceeds the Maximum Permitted Supplier Cash Margin Percentage, the provisions of Paragraph 1 of Part 3 of Schedule 7.1 (Charges and Invoicing) shall apply.

- 2.3 If the Parties are unable to reach agreement on any Financial Report within [REDACTED] Working Days of its receipt by the Authority, the matter shall be referred for determination in accordance with Schedule 8.3 (Dispute Resolution Procedure).

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Page 8 of 13

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### **3 Discussion of Quarterly Financial Reports and Final Reconciliation Report**

- 3.1 Following the delivery by the Supplier of each Quarterly Financial Report, the Parties shall meet to discuss its contents within [REDACTED] Working Days of receipt (or such other period as the Parties shall agree). The Financial/Commercial 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 [REDACTED] Working Days of receipt (or such other period as the Parties shall agree). The Financial/Commercial 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. If requested by a Key Sub-contractor, the Authority agrees that the Key Sub-contractor may provide the relevant report(s) directly to the Authority so that the relevant report(s) are not disclosed to the Supplier.
- 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.

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Page 9 of 13

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## **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;
  - (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 values of Group or Related-Party Supply transactions within the contract costs (actual and forecast);
  - (e) to verify the Open Book Data;
  - (f) to verify the Supplier's and each Key Sub-contractor's compliance with this Agreement and applicable Law;
  - (g) 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;
  - (h) 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;
  - (i) 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 of the National Audit Office;
  - (j) to review any books of account and the internal contract management accounts kept by the Supplier in connection with this Agreement;
  - (k) 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;

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- (l) 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;
- (m) to verify the accuracy and completeness of any Management Information delivered or required by this Agreement;
- (n) 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;
- (o) to inspect the IT Environment (or any part of it) and the wider service delivery environment (or any part of it);
- (p) to review the accuracy and completeness of the Registers;
- (q) to review any records created during the design and development of the Supplier System and pre-operational environment such as information relating to Testing;
- (r) to review the Supplier's quality management systems (including all relevant Quality Plans and any quality manuals and procedures);
- (s) to review the Supplier's compliance with the Standards;
- (t) 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
- (u) 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 once in any Contract Year.

1.3 Nothing in this Agreement shall prevent or restrict the rights of the Comptroller and/or Auditor General of the National Audit Office 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.

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Page 11 of 13

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- 2.2 Subject to the Authority's obligations of confidentiality, the Supplier shall on demand provide the Authority and the Audit Agents with all reasonable co-operation and assistance (and shall procure such co-operation and assistance from its Sub-contractors) in relation to each Audit, including:
- (a) all information requested by the Authority within the permitted scope of the audit;
  - (b) reasonable access to any Sites and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;
  - (c) access to the Supplier System; and
  - (d) access to Supplier Personnel.
- 2.3 The Supplier shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Supplier's performance of the Services against the applicable 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 (a) the Supplier shall bear the costs and expenses (including in respect of compliance by the Parties with the obligations under this Paragraph 2) in connection with the conduct of the annual Audit permitted pursuant to Paragraph 1.2 of this Part C above, and (b) the Authority shall bear such costs and expenses in respect of any other audits, 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 relevant 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.

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Page 12 of 13

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## **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,the Authority may exercise its right to deduct such amount from the Charges if it prefers;
- (d) the Authority has underpaid any Charges, the Supplier shall not be entitled to increase the Charges paid or payable by the Authority; and
- (e) the Supplier has either fraudulently or deliberately misrepresented any cost, price, payment or profit by any amount, then the Authority may treat this as a material Default.