

## ICT SERVICES AGREEMENT SCHEDULES

### SCHEDULE 7.3

#### VALUE FOR MONEY PROVISIONS

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**Section A**  
**Product Description**

**1. PRODUCT TITLE**

ICT Services Agreement - Schedule 7.3 (Value for Money)

**2. PURPOSE OF PRODUCT**

The schedule establishes the value for money provisions governing the Agreement. In particular it sets out the various mechanisms for ensuring that the Agreement provides the Authority with value for money throughout the Term.

**3. COMPOSITION**

The schedule is composed of suggested draft provisions (which may be used together or selectively) dealing with the following:

- Benchmarking; and
- Gain Sharing.

**4. DERIVATION**

Authority to draft.

**5. RELATED CLAUSES AND SCHEDULES:**

Clauses: 16 (Charges and Invoicing)

19 (Value for Money)

Schedules: 2.1 (Services Description)

2.2 (Service Levels)

7.1 (Charges and Invoicing)

7.5 (Financial Model)

**6. ALLOCATION**

Standard schedule for the Authority to submit to bidders for discussion during the dialogue phase of the procurement. Finalised schedule to be issued with ITT.

**7. QUALITY/REVIEW**

Authority expertise: procurement/commercial, legal, financial.

## **Section B**

### **Guidance**

#### **1. INTRODUCTION**

The schedule sets out the value for money provisions which are referred to in clause 19 of the Agreement. The purpose of the value for money provisions is to ensure that the good value which should be achieved through the competitive tender process is maintained throughout the life of the Agreement. In order to ensure that good value is achieved, the Agreement may contain the value for money provisions described below.

Guidance Note 1 (Key Commercial Principles), section 1 - 1 (Contracts for Outputs with a Single Prime Contractor) and Guidance Note 2 (Payment, Affordability and Asset Ownership) should be consulted when considering this schedule.

#### **2. BENCHMARKING**

Benchmarking is a process whereby service performance and/or the price of services provided under the Agreement are compared to the market for such services. A number of issues will need to be addressed in drafting the benchmarking provisions in the schedule. Particular points to be decided include:

- Will the services be benchmarked only as a whole or can individual service elements be benchmarked separately – such as recognised industry functions or services? The ability to benchmark individual services can be useful in controlling costs and enabling the Authority to focus on those service lines that may be underperforming or are expensive.
- How widely scoped will the benchmarking be? (price, quality (i.e. service levels) etc)?
- What terms of reference or constraints will the Benchmarker operate under?
- How often can benchmarking be carried out over the Term?
- How will the results of the benchmarking be implemented?
- Who pays the fees of the Benchmarker?
- What happens in the event of a dispute?

The draft schedule set out in Section C contains a suggested benchmarking framework that adopts positions on a number of the questions set out above. However, each of these issues (and more) should be considered on a project-by-project basis before deciding whether or how to adopt benchmarking in the context of your particular procurement.

### **3. GAIN SHARE**

The Financial Model should record the level of profit to be made by the Contractor over the life of the Agreement. If the actual operation of the Agreement results in significantly higher gains for the Contractor, then a gain share arrangement allows the parties to share the excess gain made over the term of the Agreement. Any form of gain sharing will require open book accounting in order to verify the gain to be shared.

### **4. OPEN BOOK ACCOUNTING**

Open book accounting is key to effective value for money provisions and the Authority should, as far as possible, seek to extend the principle to Affiliates of the Contractor and material Sub-contractors. The Authority should also require the Contractor to populate annual project accounts to be reconciled to the "Base Case" financial model. See schedule 7.5 (Financial Model) for more details.

### **5. EFFICIENCY SAVINGS**

An efficiency saving regime requires that the Contractor should use its skill, experience and expertise in relation to the delivery of the services in order to investigate (and where appropriate implement) efficiency improvements. Efficiency savings, if applied, will be implemented as part of the continuous improvement process (see schedule 2.4 (Continuous Improvement)). In such a case, any savings above a specified level will normally be shared between the parties.

## Section C

### Pro-forma/Example Schedule

#### PART A - INTRODUCTION

#### 6. PURPOSE OF SCHEDULE

6.1 The purpose of this schedule is to enable the Authority to ensure that the provision of Services and payment of Charges continues to represent value for money for the Authority throughout the Term. It covers:

- Gain Sharing (Part A); and
- Benchmarking (Part B).

*[Guidance: The Authority should select relevant value for money provisions depending on the nature and scope of the proposed Agreement.]*

## **PART A - GAIN SHARING**

*[Guidance: subject to agreement of this schedule, the following definitions will need to be added to schedule 1]*

<b>"Balance Sheet Date"</b>	[the accounting year end date for the Contractor];
<b>"Earned Expenses"</b>	all amounts recognised as costs in accordance with generally accepted accounting principles within the United Kingdom but excluding taxation, funding and similar costs, amounts payable under schedule 7.3 (Value for Money Provisions), capital expenditures and non-cash items (including but not limited to depreciation, amortisation, impairments and movements in provisions) incurred by the Contractor from the Effective Date and in respect of this Agreement until the Balance Sheet Date as at which the Gain Share Calculation falls to be made;
<b>"Earned Gain"</b>	Earned Revenue less Earned Expenses, divided by Earned Revenue and expressed as a percentage;
<b>"Earned Revenue"</b>	all Charges paid or payable to the Contractor by the Authority under this Agreement from the Effective Date until the Balance Sheet Date as at which the Gain Share Calculation falls to be made;
<b>"Final Reconciliation"</b>	the Reconciliation that is made at termination or expiry of this Agreement;
<b>"Forecast Expenses"</b>	all amounts recognised as costs in accordance with generally accepted accounting principles within the United Kingdom but excluding taxation, funding and similar costs, amounts payable under schedule 7.3 (Value for Money Provisions), capital expenditures and non-cash items (including but not limited to depreciation, amortisation, impairments and movements in provisions) as forecast by the Contractor in the Financial Model to be incurred over the Term and in respect of the Agreement;
<b>"Forecast Gain"</b>	Forecast Revenue less Forecast Expenses;

<b>"Forecast Gain Margin"</b>	Forecast Gain divided by Forecast Revenue and expressed as a percentage;
<b>"Forecast Revenue"</b>	all Charges forecast to be paid or payable to the Contractor by the Authority in the Financial Model over the Term and in respect of the Agreement;
<b>"Gain Share Amount"</b>	the amount by which the Earned Gain as at a Balance Sheet Date exceeds the Threshold Gain Margin;
<b>"Gain Share Calculation"</b>	the calculation of the Gain Share Amount as prepared from time to time in accordance with Part A of schedule 7.3 (Value for Money Provisions);
<b>"Reconciliation"</b>	a reconciliation of Earned Expenses and Earned Revenue, against the Forecast Expenses and Forecast Revenue set out in the Updated Financial Model compiled from time to time (and in any event upon termination or expiry of this Agreement) in accordance with paragraph 5 of schedule 7.5 (Financial Model);
<b>"Threshold Gain Margin"</b>	the Forecast Gain Margin plus [ ]%. By way of example, if the Forecast Gain Margin is [ ]%, the Threshold Gain Margin would be [ ]%;

## **7. PURPOSE OF THIS PART A**

This Part A details the method by which the Authority will share in any Gain Share Amount which are made by the provision of the Services during the Term.

## **8. GAIN SHARE CALCULATION**

*[Guidance: This Section illustrates one of several possible methods of calculating gain-share. Alternatives include calculating over a fixed period (annually or greater) or over a rolling fixed period. In such cases any gains can be stored in an escrow account. The Authority should consider which method is the most appropriate preferably by modelling the effects of different approaches. In general the more the Contractor's forecast annual profit/loss varies over the contract term, the stronger the argument for the end of Term calculation as described here.]*



- 8.1 Within 30 days of the expiry or termination of this Agreement, the Contractor shall deliver to the Authority the Gain Share Calculation as at the date of expiry or termination of this Agreement (as relevant).
- 8.2 The Gain Share Calculation shall be prepared in accordance with this schedule and the gain sharing rates set out in the Appendix to this Part A of this schedule.
- 8.3 Each Gain Share Calculation shall:
- 8.3.1 be constructed using the Final Reconciliation and shall be supplied in both paper and electronic copy;
  - 8.3.2 be certified as correct and accurate by a director of the Contractor;
  - 8.3.3 calculate, in accordance with the methodology used for the calculation of the Financial Model, the Earned Revenue and Earned Expenses from the Effective Date to the latest Balance Sheet Date;
  - 8.3.4 calculate, in accordance with the methodology used in the Financial Model the Earned Gain from the Effective Date to the latest Balance Sheet Date;
  - 8.3.5 show separately the amounts of Earned Gain (falling into Band 1, Band 2, Band 3 and Band 4 as defined in the Appendix to Part A of this schedule); and
  - 8.3.6 show separately the Gain Share Amount, the Contractor's Gain Share Amount and the Authority's Gain Share Amount for each of Band 2, Band 3 and Band 4.
- 8.4 Following receipt by the Authority of a Gain Share Calculation, the Contractor shall at its own expense provide to the Authority any such additional information as it may reasonably request so that the Authority can verify the accuracy of the Gain Share Calculation. This shall include the detailed working papers and spreadsheets constructed in accordance with schedule 7.5 (Financial Model) and shall be supplied in both paper and electronic copy.

8.5 Within 30 days of receipt of the Gain Share Calculation and all additional information required pursuant to paragraph 8.4 of this part A of this schedule, the Authority shall notify the Contractor whether it agrees with or disputes the Gain Share Calculation.

*[Guidance: Please see Guidance Note 3 (Ownership and Licensing of Intellectual Property) for guidance on the link between the position adopted on IPR and value for money.]*

*[Guidance: Where the Contractor sub-contracts to its affiliates, consider whether any amounts paid by the Contractor to those affiliates should be included or excluded in the gain share calculation.]*

## **9. PAYMENT OF GAIN SHARE**

Following agreement or determination of the Gain Share Calculation based on the Final Reconciliation, the Contractor shall pay the Authority the Authority's Gain Share Amount calculated in accordance with the Appendix to this Part A of this schedule.

## Appendix To Part A

### Gain Sharing Table

The following table details the manner in which Earned Gain achieved by the Contractor over the Term above the level of the Threshold Gain Margin shall be shared between the Authority and the Contractor:

<b>Band</b>	<b>Where the Earned Gain is</b>	<b>Contractor % share of Gain Share Amount</b>	<b>Authority % share of Gain Share Amount</b>
Band 1	Less than or equal to Threshold Gain Margin	N/A	N/A
Band 2	[More than the Threshold Gain Margin and less than or equal to the Threshold Gain Margin plus [ ].00%]	X%	100% - X%
Band 3	[More than the Threshold Gain Margin plus [ ].00% and less than or equal to the Threshold Gain Margin plus [ ].00%]	X% - [ ]%	[ ]% + X%
Band 4	[More than the Threshold Gain Margin plus [ ].00%]	X% - [ ]%	[ ]% + X%

## PART B – BENCHMARKING

*[Guidance: subject to agreement of this schedule, the following definitions will need to be added to schedule 1.]*

**["Average Price"** in relation to the Comparable Services provided by the Comparison Group, the mean average of prices for those Comparable Services as adjusted to produce Equivalent Services Data over the previous 12 month period, or other period as agreed between the Authority and the Contractor. (For the avoidance of doubt, the "mean average price" shall be calculated by aggregating the prices derived from Equivalent Services Data for each of the services and dividing the same by the number instances of Comparable Services);]

*[Guidance: Note that "Average Price" and "Upper Quartile" are intended to be alternatives which could be used in this schedule. Detailed financial advice should be sought on the most appropriate wording for a particular project.]*

**"Benchmarker"** the independent third party appointed under paragraph 3.1 of Part B of schedule 7.3 (Value for Money Provisions);

**"Benchmark Review"** a review of the Services carried out in accordance with paragraph 4 of Part B of schedule 7.3 (Value for Money Provisions) to determine whether those Services represent Good Value;

**"Benchmarked Services"** the Services that the Authority elects to include in a Benchmark Review under paragraph 2.2 of Part B of schedule 7.3 (Value for Money Provisions);

**"Comparable Services"** services that are identical or materially similar to the Benchmarked Services (including in terms of scope, specification, volume and quality of performance) provided that if no identical or materially similar services exist in the market, the Benchmarker shall propose an approach for developing a comparable service benchmark;

**"Comparison Group"** a sample group of organisations providing Comparable Services identified by the Benchmarker under paragraph 4.8 of schedule 7.3

(Value for Money Provisions) which consists of organisations which are either of similar size to the Contractor or which are similarly structured in terms of their business and their service offering so as to be (in the Benchmarkers professional opinion) fair comparators with the Contractor or which, in the professional opinion of the Benchmarkers, are best practice organisations [and that are carrying on at least a significant part of their business within the United Kingdom];

**"Equivalent Services Data"**

data derived from an analysis of the Comparable Services provided by the Comparison Group as adjusted in accordance with paragraph 4.8.2 of Part B of schedule 7.3 (Value for Money Provisions);

**"Good Value"**

that:

(i) the Charges attributable to a Benchmarked Service are, having taken into account the Service Levels, [less than or equal to the Average Price] [are within the Upper Quartile];

*[Guidance: Note that "Average Price" and "Upper Quartile" are intended to be alternatives which could be used in this schedule. Detailed financial advice should be sought on the most appropriate wording for a particular project.]*

and

(ii) any Service Levels attributable to Benchmarked Services are, having taken into account the Charges, equal to or greater than the [median] [mean average] service levels for Comparable Services as adjusted using Equivalent Services Data;

**["Upper Quartile"** that based on an analysis of Equivalent Services Data, the Charges for the Benchmarked Services, as compared to the range of prices for Comparable Services, are within the top 25% in terms of best value for money or the recipients of Comparable Services;]

*[Guidance: See guidance below the definition of "Average Price"]*

## **10. FREQUENCY OF BENCHMARK REVIEW**

- 10.1 The Authority may, by written notice to the Contractor, require a Benchmark Review of any or all of the Services.
- 10.2 The Authority shall not be entitled to carry out a Benchmark Review [during the [ ] month period from the Effective Date] [during the Pre-Operational Phase] nor at intervals of less than [ ] months after any previous Benchmark Review. *[Guidance: Appropriate periods to be completed as relevant.] [Guidance: You may also wish to provide for the ability to conduct a further Benchmark Review if eg a significant Change is entered into.]*

## **11. PURPOSE AND SCOPE OF BENCHMARK REVIEW**

- 11.1 The purpose of a Benchmark Review will be to establish whether a Benchmarked Service is and/or the Benchmarked Services as a whole are, Good Value.
- 11.2 The Services that are to be the Benchmarked Services will be identified by the Authority in the written request given under paragraph 1.1.

## **12. APPOINTMENT OF BENCHMARKER**

- 12.1 [The Authority][The parties] shall appoint the Benchmarker to carry out the Benchmark Review [from the list of organisations set out in the appendix to this Schedule].

*[Guidance: You may wish to suggest a non-exhaustive list that has been agreed by both parties from whom the Benchmarker is chosen i.e. that have to have demonstrated benchmarking expertise, methodology and data sources and is not a major competitor of the Contractor– option also to include options – e.g. Gartner, Compass, Meta etc]*

- 12.2 The Authority will, at the written request of the Contractor, require the Benchmarker to enter into an appropriate confidentiality undertaking with the Contractor.
- 12.3 [The costs and expenses of the Benchmarker shall be borne by the Authority. In the event that the Benchmark Review finds that the Benchmarked Services are not Good Value, the Authority shall be entitled to recover the full amount of the costs and expenses incurred by the Benchmarker from the Contractor [through adjustments to the Service Charges].]

### **13. BENCHMARKING PROCESS**

- 13.1 The Authority shall require the Benchmarker to produce, and to send to each party for approval, a draft plan for the Benchmark Review within 10 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:
- 13.1.1 a proposed timetable for the Benchmark Review;
  - 13.1.2 a description of the information that the Benchmarker requires each party to provide;
  - 13.1.3 a description of the benchmarking methodology to be used; and
  - 13.1.4 details of any entities which the Benchmarker proposes to include within the Comparison Group.
- 13.2 Each party must give notice in writing to the Benchmarker and to the other party within 10 days after receiving the draft plan, advising whether it approves the draft plan, or, if it does not approve the draft plan, suggesting amendments to that plan. Neither party may unreasonably withhold or delay its approval of the draft plan, and any suggested amendments must be reasonable.
- 13.3 Where a party suggests amendments to the draft plan under paragraph 13.2, the Benchmarker must, if it believes the amendments are reasonable, produce an amended draft plan. Paragraph 13.2 shall apply to any amended draft plan.
- 13.4 Failure by a party to give notice under paragraph 13.2 will be treated as approval of the draft plan by that party.

- 13.5 Once the plan is approved by both parties, the Benchmarker will 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 Contractor shall fail to provide any information requested from it by the Benchmarker and described in the plan such failure shall constitute a material breach for the purposes of clause 55.1.5.2 of this Agreement (Termination for Cause by the Authority).]
- 13.6 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.
- 13.7 Either party may provide additional material to the Benchmarker to assist the Benchmarker in conducting the Benchmark Review.
- 13.8 Once it has received the information it requires, the Benchmarker shall:
- 13.8.1 finalise a sample of entities constituting the Comparison Group and collect data relating to Comparable Services. The selection of 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 [using:
    - 13.8.1.1 information from other service providers to the Authority;
    - 13.8.1.2 survey information;
    - 13.8.1.3 market intelligence;
    - 13.8.1.4 the Benchmarker's own data and experience;
    - 13.8.1.5 relevant published information;
    - 13.8.1.6 information from consultancies and/ or other vendors or purchasers of Comparable Services; and



- 13.8.1.7 information from 'in-house' providers to the Authority to the extent that Benchmarker considers that they are valid comparators].
- 13.8.2 by applying the adjustment factors listed in paragraph 4.9 and from an analysis of the Comparable Services derive the Equivalent Services Data;
- 13.8.3 using the Equivalent Services Data calculate the [Average Price] [Upper Quartile] and/or median Service Levels;
- [Guidance: Note that "Average Price" and "Upper Quartile" are intended to be alternatives which could be used in this schedule. Detailed financial advice should be sought on the most appropriate wording for a particular project.]*
- 13.8.4 compare the Charges attributable to the Benchmarked Services (having regard in particular to the Service Levels and Service Credits regime) with the [Average Price] [Upper Quartile] using the Equivalent Services Data;
- [Guidance: Note that "Average Price" and "Upper Quartile" are intended to be alternatives which could be used in this schedule. Detailed financial advice should be sought on the most appropriate wording for a particular project.]*
- 13.8.5 compare the Service Levels attributable to the Benchmarked Services (having regard to the Charges and Service Credits) with the [median] [mean average] service levels using the Equivalent Services Data; and
- 13.8.6 determine whether or not each Benchmarked Service is and/or the Benchmarked Services as a whole are, Good Value.
- 13.9 In carrying out the benchmarking analysis the Benchmarker shall have regard to the following matters when performing a comparative assessment of the Benchmarked Services and the Comparable Services in order to derive Equivalent Services Data:
- 13.9.1 the contractual and business environment under which the Services are being provided [(including the scope, scale, complexity and geographical spread of the Services)];

- 13.9.2 any front-end investment and development costs of the Contractor;
- 13.9.3 the Contractor's risk profile including the financial, performance or liability risks associated with the provision of the Services as a whole;
- 13.9.4 the extent of the Contractor's management and contract governance responsibilities; and
- 13.9.5 any other factors reasonably identified by the Contractor, which, if not taken into consideration, could unfairly cause the Contractor's pricing to appear non-competitive (such as erroneous costing or over-aggressive pricing).

*[Guidance: other factors may be added in the context of your particular procurement]*

#### **14. BENCHMARKER'S REPORT**

- 14.1 The Benchmarker shall be required to prepare a report ("**Benchmarking Report**"), at the time specified in the plan approved under paragraph 4 of this schedule, setting out its findings. Those findings shall be required to:
  - 14.1.1 include a finding as to whether or not each Benchmarked Service is and/or whether the Benchmarked Services as a whole are, Good Value;
  - 14.1.2 include other findings (if any) regarding the quality and competitiveness or otherwise of those Services; and
  - 14.1.3 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 or Service Levels, that would be required to make that Benchmarked Service or those Benchmarked Service as a whole Good Value.
- 14.2 The Benchmarker shall act as an expert and not as an arbitrator.
- 14.3 For the avoidance of doubt, Benchmark Reviews shall not result in any increase to the Charges or any decrease in the performance of any Services or Service Levels.

- 14.4 If the Benchmarking Report states that any Benchmarked Service is not Good Value, or that the Benchmarked Services as a whole are not Good Value then the Contractor shall [(subject to paragraph 5.5)] implement the changes set out in the Benchmarking Report as soon as reasonably practicable within a timescale agreed with the Authority but in any event within no more than [ ] months. [If the Contractor fails to implement the changes in accordance with such timescales then such failure shall constitute a material breach for the purposes of clause 55.1.5.2 of this Agreement (Termination for Cause by the Authority).]
- 14.5 [The Contractor shall not be obliged to implement any Benchmarking Report to the extent this would cause the Contractor to provide the Services at a loss (as determined, by reference to the Financial Model), or to the extent the Contractor cannot technically implement the recommended changes.]