

ICT SERVICES AGREEMENT SCHEDULES

SCHEDULE 7.1

CHARGING AND INVOICING

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Section A

Product Description

1. PRODUCT TITLE

ICT Services Agreement - Schedule 7.1 (Charges and Invoicing).

2. PURPOSE OF PRODUCT

- The schedule sets out when Charges from the Authority to the Contractor fall due and the detail of how those Charges due are to be calculated.
- The charging mechanism is closely linked to Milestones, the Implementation Plan and to the Service Levels. The schedule sets out the financial consequences of delays and poor performance against the Service Levels.
- The charging mechanism will be fully and accurately represented in the Financial Model (schedule 7.5) which calculates the relationship between cost inputs and charges.

3. COMPOSITION

- Clause 16 (Charging and Invoicing) sets out the basic provisions relating to charging and invoicing.
- The schedule describes the method of calculation of the Charges payable by the Authority and should set out:
 - the method of calculation of Charges;
 - the structure of payments/payment profile (when the payments become due, including provisions for interim payments during implementation if appropriate);
 - the payment mechanism (including the invoicing procedure);
 - the method of calculation of abatements (ie Delay Payments and Service Credits); and
 - provisions for revision of Charges.

4. DERIVATION

- Authority requirements
- Bidder's proposal
- Financial Model (Schedule 7.5)
- Schedule 2.1 (Services Description)

See Guidance Note 2 (Payment, Affordability and Asset Ownership)

5. RELATED CLAUSES AND SCHEDULES

- Clauses:
- 4 (Testing)
 - 6 (Delays Due to Contractor Default)
 - 10 (Service Levels)
 - 16 (Charging and Invoicing)
 - 17 (Tax)
 - 18 (Recovery of Sums Due)
 - 24 (Audit)
 - 25 (Change Control)
 - 47 (Change in Law)
- Schedules:
- 2.1 (Services Description)
 - 2.2 (Service Levels)
 - 6.1 (Implementation Plan)
 - 7.5 (Financial Model)

6. ALLOCATION

- The Authority may wish to submit a draft schedule (completed as far as possible) to bidders as part of the descriptive document.
- If the Authority has specified certain required invoicing procedures/practices in its ITT, then the Authority should carefully review each bidder's proposal to clarify any assumptions that the bidder has made and to ensure that the bidder can adhere to the Authority's requirements.
- The calculation of Charges should be populated by the Contractor as a bid item.

7. QUALITY/REVIEW

Authority expertise: procurement/commercial, financial, legal.

Section B

Guidance

1. PAYMENT PRINCIPLES

Reference should be made to Guidance Note 2 (Payment, Affordability and Asset Ownership) which describes the sometimes complex relationship between payment models, value for money, asset ownership and affordability.

The guidance establishes that the key principles of payment are:

- 1.1 The payment model – and specifically any Milestone Payments - should seek to minimise the costs of finance incurred by the Contractor during the implementation phase and passed on to the Authority in the Charges.
- 1.2 Milestone Payments should only be made when the Authority is in receipt of something of tangible business value. This value is that which the Authority would gain in the event of the Agreement being terminated the day following the milestone.
- 1.3 The most significant payment milestone is likely to be that associated with the Authority to Proceed (ATP) – authorisation given by the Authority that the tests demonstrating readiness for service delivery have been successfully completed.
- 1.4 Milestone payments should be no more than the input costs agreed in the Financial Model as being directly attributable to the achievement of that milestone.
- 1.5 Milestone payments made prior to ATP should be made exclusive of profit.
- 1.6 A Contract Performance Point (CPP) should be set at a point when the Authority can be reasonably sure that the service in question is operating successfully and at full scale.
- 1.7 Until the CPP is reached, all Milestone Payments relating to that CPP will be fully recoverable by the Authority in the event of critical service failures or contract termination for contractor default relating to that service.
- 1.8 There may be separate ATPs and CPPs for each service.

2. INDEXATION

- 2.1 The Contractor will be concerned to protect itself against inflation rates increasing over the course of the Term and rendering the prices initially set out in the Agreement insufficient to meet its operating costs. The payment mechanism should therefore usually include arrangements for indexing the Charges agreed at signature. If there is no indexation mechanism¹, the Contractor is likely to have to build in contingency into its price to cover inflation risk and this is unlikely to give the Authority value for money (as the risk is outside the control of the Contractor and, historically, has been difficult to forecast accurately).
- 2.2 The Authority should focus on the appropriate method of applying indexation to the payment stream at an early stage so that by the time an ITT is issued, the Agreement should specify the type of index to be applied and how it applies. The Authority should, in deciding what indexation to include in its ITT give full consideration to indices other than RPI. Leaving the choice of indices to the bidders is not the answer here given the difficulties in comparing one bidder's price and value for money, with that of another bidder where different bidders use different indices².
- 2.3 The Authority must also take into account its affordability constraints in deciding upon the appropriate index. Indices that inflate by a figure less than RPIX (inflation of all items excluding mortgage interest payments) for example should help to ensure that over the Term the aggregate annual Charges do not become a significantly higher percentage of the Authority's annual budget. The Authority should also be aware, however, that the Contractor is likely to charge a higher price if asked to bear significant inflation risk. The price impacts should be weighed against the greater level of protection for cost risks that is being given to the Contractor.
- 2.4 Whilst choosing an index and weighting that reflect the underlying cost exposure of the Contractor has the effect of reducing its cost risk, amended forms of such indexation formulae can incentivise real cost savings over the life of the Agreement (see Paragraph 9 Section C)

¹ The Agreement will also need to include provisions dealing with circumstances where the particular index (or indices) specified in the Agreement is not published or the basis upon which it is calculated is changed.

² It is open to the Authority, however, in the interests of value for money, to invite bidders to propose alternative indices, provided the choice of such alternates is supported in the bid with appropriate models demonstrating their financial impact.

SECTION C

Pro-forma/Example schedule

[Guidance: Charging mechanisms can vary greatly between projects. The charging schedules is therefore a specialised document which needs to be tailored to the exact requirements of each project. The text in this schedule is provided as an example only. You should seek advice on the exact contents of this schedule.]

PART A - CHARGING

3. PURPOSE OF THIS PART OF THE SCHEDULE

The purpose of this part A of the schedule is to set out the provisions relating to:

- 3.1 the Charges applicable to the Services;
- 3.2 Payments for Authority Cause;
- 3.3 Retentions;
- 3.4 Service Credits;
- 3.5 Delay Payments;
- 3.6 Charges for Changes; and
- 3.7 Indexation.

[Guidance: If the Contractor is granted the right to commercially exploit the Project Specific IPRs and/or the Specially Written Software pursuant to clause 40.5.2 then this schedule will also need to record the corresponding commercial arrangements e.g. a share of licensing revenue.]

4. MILESTONE PAYMENTS

- 4.1 On the issue of Milestone Achievement Certificate in relation to a Milestone the Contractor will be entitled to deliver an invoice to the Authority in respect of the charges associated with that Milestone as set out in the table below:

Milestone Number	Milestone Description	Amount of Charge (£)

- 4.2 The circumstances in which a Milestone will be considered to have been achieved are set out in schedule 6.2 (Testing Procedures). Payment will be made to the Contractor in accordance with part B of this schedule.
- 4.3 If any Milestone is not achieved by its associated Milestone Date then Delay Payments will be applied in accordance with paragraph 9 of this schedule. If no further Milestone Charges fall due after Delay Payments accrue, the Contractor shall issue a credit note to the Authority and a sum equal to any such Delay Payments then outstanding shall be repayable by the Contractor to the Authority as a debt.
- 4.4 Where Charges are paid in respect of the achievement of Milestones prior to the CPP, they shall be repaid to the Authority on demand, if and to the extent it so requires if: (a) a Milestone Achievement Certificate is not issued by the Authority in respect of the CPP; and (b) the Contractor has failed to remedy the relevant defects/issues giving rise to that failure within a timescale agreed with the Authority.

5. SERVICE CHARGES

- 5.1 Following [*Guidance: Insert a reference to the date from which Service Charges will commence*] the Authority will pay the Service Charges to the Contractor for all operations services in each [Service Period] from [*Guidance: Insert a reference to the date from which Service Charges will commence*] to [the end of Term.] The Service Charges shall be made up of:

- 5.1.1 the following charges (as applicable):
- 5.1.1.1 charges in accordance paragraph 5.3 below;
 - 5.1.1.2 volume charges in accordance paragraph 5.4 below;
 - 5.1.1.3 time and materials in accordance paragraph 5.5 below;

less,

5.1.2 any Service Credits payable in accordance with paragraph 8 below.

5.2 The Service Charges will be payable in arrears.

5.3 [Fixed] Charges

The Charge to be applied is stated in the table below:

	Charge (£)
Charge	[]

5.4 Volume Charge

The volume Charge shall be calculated by reference to *[Guidance: Insert the metric which will relate to the volume charge e.g. number of transactions, number of documents processed]* in a (Service Period) according to the band set out in the table below:

Number of <i>[insert metric]</i> per Service Period	Charge per <i>[insert metric]</i> (£)
[] - []	[]
[] - []	[]
[] - []	[]

The Contractor will be required to provide evidence of the number of *[insert metric]* to the satisfaction of the Authority. Any disputes as to the number of *[insert metric]* shall be submitted to the Dispute Resolution Procedure.

5.5 Time and Materials Charges

Any *[Guidance: Set out type of Service to which the time and materials charge will relate e.g. training]* requested by the Authority [in excess of the volumes set out in *[Guidance: If the fixed price includes a pre-defined volume of the relevant service*

then set out details here of where that volume is listed e.g. in the Services Description] shall be charged on a time and materials base. The time and materials Charge shall be calculated on a daily basis for every day that the Contractor's Personnel are actively performing the Services and in accordance with the relevant rates (as set out in the Financial Model) for such Contractor's Personnel as required to perform such Services.

- 5.6 The time and materials Charges shall not be subject to Indexation.
- 5.7 The Contractor shall provide a breakdown of any time and materials Charge. For the avoidance of doubt, no risks or contingencies shall apply to the provision of Services for which time and materials Charges apply. The Contractor shall maintain full and accurate records of the time spent by the Contractor's Personnel in providing the Services and shall produce such records to the Authority for inspection at all reasonable times on request.
- 5.8 In addition to the time and materials Charges, the Contractor shall be entitled to be reimbursed by the Authority for reasonable travel and subsistence (eg hotel and food) expenses ("**Reimbursable Expenses**") properly and necessarily incurred in the performance of those Services, other than:
- 5.8.1 travel expenses incurred as a result of Contractor Personnel travelling to and from the Contractor's usual place of work at the Contractor's offices, or to and from the premises at which the Services are to be principally performed; or
- 5.8.2 subsistence expenses incurred whilst performing the Services at the Contractor's usual place of work at the Contractor's offices, or to and from the premises at which the Services are to be principally performed.
- 5.9 The Authority shall reimburse the Contractor for Reimbursable Expenses reasonably incurred by the Contractor at the rates and in accordance with the Authority's policy current from time to time. The Authority shall provide a copy of such rates and policy to the Contractor upon request.

6. PAYMENTS FOR DELAYS DUE TO AUTHORITY CAUSE

6.1 If the Contractor is entitled to compensation in accordance with clause 7.4 (Delays to Milestones due to Authority Cause) then such compensation shall consist of:

6.1.1 *[Guidance: The amount of compensation is to be considered on a project by project basis. Examples of what it may include are staff holding costs, committed sub-contractor costs, any pre agreed profit element. You should consider whether it is appropriate to put any cap on such amounts.]*

provided that this calculation shall not operate as to put the Contractor in a better position than it would have been but for the occurrence of the Authority Cause.

[Guidance: Clause 7.4 in the Agreement obliges the Contractor to mitigate any losses it may suffer as a result of the Authority Cause. If the Authority has knowledge as to the extent of the Authority Cause which may influence such mitigation then it may wish to oblige or prevent the Contractor from taking certain mitigating action eg standing down of sub-contractors. The Authority would need to bear any additional costs of such specific instructions but in the long term this may provide better value for money to the Authority.]

6.2 To the extent that:

6.2.1 [any contributory or related breach of this Agreement [(or any other agreement between the Authority and the Contractor)] by the Contractor caused or resulted in the Authority Cause]; and/or

6.2.2 the Authority gives any advance notification that the Authority Cause is or is likely to occur,

then the compensation amount payable pursuant to paragraph 6.1 above shall be reduced by a fair and equitable amount.

7. RETENTIONS

[Guidance: You should consider whether it is appropriate to include provisions providing for partial payments of any Milestone Payments where only a Milestone Achievement Certificate is only conditionally achieved. Alternatively it may be more appropriate to deal

with this on a case by case basis as any pre-defined percentage may not reflect the degree of actual compliance.]

8. SERVICE CREDITS

8.1 Service Credits will be made based on the number of Service Points accrued in any one Service Period. The basis for the accrual of Service Points is set out in schedule 2.2 (Service Levels).

[Guidance: There are many different ways of linking service levels to Charges. The wording in this schedule uses a points system. Another alternative would be to link the Service Credit directly to level of service e.g. a 1% drop in availability is worth £X. In any event you will need to check the overall sensitivity of the mechanism so that the Service Credit reflects the severity of any drop in Service Levels.]

8.2 In each Service Period, Service Points will be converted to a percentage deduction from *[Guidance: Insert details of the type of Charge which will be subject to Service Credits eg. this may be all of the Charges or all of the Charges except any timer and materials charges, etc.]* in the relevant Service Period as set out in schedule 2.2 (Service Levels) on the basis of one point equating to a *[Guidance: Insert percentage as applicable]* % deduction in the []. The total Service Credit applicable for each Service Period will therefore be calculated in the following way:

$$SC = TSP \times [] \times \text{Applicable Charge}$$

Where:

"Applicable Charge" = *[Guidance: insert relevant charge to which Service Credits are applied]* payable for the relevant Service Period

"SC" = Service Credit

"TSP" = Total Service Points for the Service Period"

[Guidance: in practice the relevant period may be the previous service period because of the time taken to reconcile service credits]

[Guidance: Where appropriate you may want to include ratchets which increase the level of Service Credits depending on the duration of the breach of the relevant Service Level.]

8.3 The liability of the Contractor in respect of Service Credits will be limited in accordance with clause 52.2.4 (Limitations on Liability). However, and for the avoidance of doubt, such financial limitation shall not affect the continued accrual of service points in excess of such financial limit, in accordance with the provisions of schedule 2.2 (Service Levels).

8.4 If no further Charges fall due after Service Credits accrue, the Contractor shall issue a credit note to the Authority for a sum equal to any such Service Credits then outstanding which shall be repayable by the Contractor to the Authority as a debt.

9. DELAY PAYMENTS

9.1 If a Milestone has not been achieved by the relevant Milestone Date, the Contractor shall pay to the Authority Delay Payments in accordance with the following table for each day of delay from and including the relevant Milestone Date until and including the date on which the relevant Milestone criteria are actually achieved and the Authority provides the Contractor with a Milestone Achievement Certificate.

Milestone Number	Delay Payment

10. CHARGES FOR CHANGE CONTROL

10.1 The Contractor shall use the Financial Model to demonstrate any proposed revisions to the Charges arising as a result of any proposed Change.

10.2 The liability of the Contractor in respect of Delay Payments will be limited in accordance with clause 52.2.5 (Limitations on Liability).

10.3 Where a Change is requested then the Contractor will prepare a quotation for the cost of the Change which shall:

10.3.1 be based on and reflect the principles of the Financial Model;

- 10.3.2 include estimated volumes of each type of resource to be employed and the applicable rate card specified in Financial Model;
 - 10.3.3 include full disclosure of any assumptions underlying such quotation; and
 - 10.3.4 include evidence of the cost of any assets required for the Change.
- 10.4 If the Change is adopted by the Authority in accordance with schedule 8.2 (Change Control Procedure) then the Contractor will update the Financial Model in accordance with the provisions of schedule 7.5 (Financial Model).
- 10.5 Any changes to the Charges shall be developed and agreed by the parties such that the Contractors profit margin on such Changes shall be no greater than that applying to the Charges as at the Effective Date (being []%) [provided that where the Change has a higher risk profile than that which applied at the Effective Date then the Contractor shall be entitled to increase such profit margin to reflect such risk up to a maximum of [[]%.]

[Guidance: You should consider inclusion of charging provisions for any Additional Services and/or Future Services as appropriate.]

[Methods of calculation could include a bespoke mechanism or a supplemental charge calculated in the same way as the charges for the core services.]

[Guidance: Consider the way in which any charges for Termination Services will be calculated. See paragraph 5.3.2 and paragraph 6.2 (and its associated guidance) of schedule 8.5 (Exit Management).]

11. INDEXATION

- 11.1 Indexation shall not apply to any [time and materials Charge, any fixed Charge nor to any []].
- 11.2 Any amounts or sums in this Agreement which are expressed to be "subject to indexation" shall be adjusted to reflect the effects of inflation after that date in accordance with the provisions of this paragraph. The adjustment shall be measured by changes in the relevant index published for that Contract Year as calculated in accordance with the following formula:

$$\text{Amount or Sum} \times \left(\frac{\text{Index}_o}{\text{Index}_d} \right) - Y\%$$

Where

"Index" means [*Guidance: Insert details of the relevant index which is to apply to the Agreement eg RPI, CES*];

"Index_d" is the value of Index published or determined with respect for the period immediately preceding the Effective Date;

"Index_o" is the value of Index published or determined with respect to the period immediately preceding the relevant anniversary in respect of which the amount or sum falls to be adjusted; and

"Y" is an efficiency factor of [].

[*Guidance: You need to consider whether an efficiency factor is relevant to the Services which are to be provided. One approach is to invite bidders to offer an efficiency factor and consider this as part of the evaluation process*]

PART B - INVOICING

12. PURPOSE OF THIS PART OF THE SCHEDULE

This part B of the schedule sets out the method by which the Contractor shall raise invoices to the Authority for payment, together with the requirements which apply to such invoices, and the payment terms thereof.

13. CONTRACTOR INVOICES

13.1 The Contractor shall prepare and provide to the Authority for approval a draft pro forma invoice within 10 Working Days of the Effective Date which shall include, as a minimum, the details set out in paragraph 13.4 of this schedule together with such other information as the Authority may reasonably require. If the draft pro forma invoice is not approved by the Authority then the Contractor shall make such amendments as may be reasonably required by the Authority.

13.2 The Contractor shall be entitled to raise an invoice in respect of any payment which falls payable to the Contractor pursuant to the Agreement.

13.3 The Contractor shall invoice the Authority in respect of Services in accordance with the timescales specified for issue of invoices for the Charges [as detailed in part A of this schedule].

13.4 The Contractor shall ensure that each invoice contains the following information:

13.4.1 the date of the invoice;

13.4.2 a unique invoice number;

13.4.3 the Service Period or other period(s) to which the relevant Charge(s) relate;

13.4.4 details of the correct Agreement reference;

13.4.5 the reference number of the purchase order to which it relates (if any);

13.4.6 the dates between which the Services subject of each of the Charges detailed on the invoice were performed;

13.4.7 the methodology applied to calculate the Charges;

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

13.8 The Authority shall only regard an invoice as valid if it complies with the provisions of this part B of this schedule. Where any invoice does not conform to the Authority's requirements set out in paragraph 13 of this schedule, the Authority will return the disputed invoice to the Contractor. The Contractor shall promptly issue a replacement invoice which shall comply with the same.

14. PAYMENT TERMS

Subject to the provisions of paragraph 13 of the schedule, the Authority shall make payment to the Contractor within [*Guidance: insert payment terms*] days of receipt of a valid invoice by the Authority at its nominated address for invoices.