

**SCHEDULE 7.3**

**BENCHMARKING**

## Benchmarking

### 1 DEFINITIONS

In this Schedule, the following definitions shall apply:

<b>“Benchmarked Service”</b>	a Service that the Authority elects to include in a Benchmark Review under Paragraph 2.3;
<b>“Benchmarker”</b>	the independent third party appointed under Paragraph 3.1;
<b>“Benchmark Report”</b>	means the report produced by the Benchmarker following the Benchmark Review as further described in Paragraph 5;
<b>“Benchmark Review”</b>	a review of one or more of the Services carried out in accordance with Paragraph 4 to determine whether those Services represent Good Value;
<b>“Comparable Service”</b>	In relation to a Benchmarked Service, a service that is identical or materially similar to the Benchmarked Service (including in terms of scope, specification, volume and quality of performance) 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;
<b>“Comparison Group”</b>	in relation to a Comparable Service, a sample group of organisations providing the Comparable Service identified by the Benchmarker under Paragraph 4.8 which consists of organisations which are either of similar size to the Supplier or which are similarly structured in terms of their business and their service offering so as to be (in the Benchmarker's professional opinion) fair comparators with the Supplier or which, in the professional opinion of the Benchmarker, are best practice organisations and, where there are a reasonable number of such organisations, referencing only those organisations that are carrying on at least a significant part of their business within the United Kingdom;
<b>“Equivalent Services Data”</b>	in relation to a Comparable Service, data derived from an analysis of the Comparable Service provided by the Comparison Group as adjusted in accordance with Paragraphs 4.8(a) and 4.9;
<b>“Good Value”</b>	that:  (a) having taken into account the Performance

Indicators and Target Service Levels, the value for money of the Charges attributable to a Benchmarked Service is at least as good as the value for money of the average; and

- (b) any Performance Indicators and Target Service Levels applicable to a Benchmarked Service are, having taken into account the Charges, equal to or greater than the median service levels for the Comparable Service using Equivalent Services Data; and

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

- 2.1 The Authority may, by written notice to the Supplier, require a Benchmark Review of any or all of the Services in order to establish whether a Benchmarked Service is, and/or the Benchmarked Services as a whole are, Good Value.
- 2.2 The Authority shall not be entitled to carry out a Benchmark Review during the first 24 month period from the Effective Date, nor at intervals of less than 12 months after any previous Benchmark Review relating to the same Benchmarked Services.
- 2.3 The Services that are to be the Benchmarked Services will be identified by the Authority in the written request given under Paragraph 2.1.

## **3 APPOINTMENT OF BENCHMARKER**

- 3.1 The Authority shall appoint the Benchmarker to carry out the Benchmark Review from the list of organisations set out in Annex 1 (or such other organisation as may agreed between the Parties).
- 3.2 The Authority shall, at the written request of the Supplier, require the Benchmarker to enter into an appropriate confidentiality undertaking with the Supplier.
- 3.3 The costs and expenses of the Benchmarker and the Benchmark Review shall be shared equally between both Parties provided that each Party shall bear its own internal costs of the Benchmark Review.

## **4 BENCHMARK REVIEW**

- 4.1 The Authority shall require the Benchmarker to produce, and to send to each Party for approval, a draft plan for the Benchmark Review within 10 Working Days after the date of the appointment of the Benchmarker, or such longer period as the Benchmarker shall reasonably request in all the circumstances. The plan must include:
  - (a) a proposed timetable for the Benchmark Review;
  - (b) a description of the information that the Benchmarker requires each Party to provide;
  - (c) a description of the benchmarking methodology to be used;

- (d) a description that demonstrates objectively and transparently that the benchmarking methodology to be used is capable of fulfilling the benchmarking objectives;
  - (e) an estimate of the resources required from each Party to underpin the delivery of the plan;
  - (f) a description of how the Benchmarker will scope and identify the Comparison Group; and
  - (g) details of any entities which the Benchmarker proposes to include within the Comparison Group.
- 4.2 Each Party shall give notice in writing to the Benchmarker and to the other Party within 10 Working Days after receiving the draft plan either approving the draft plan or suggesting amendments to that plan which must be reasonable.
- 4.3 Where a Party suggests amendments to the draft plan under Paragraph 4.2, the Benchmarker shall, if it believes the amendments are reasonable, produce an amended draft plan. Paragraph 4.2 shall apply to any amended draft plan.
- 4.4 Failure by a Party to give notice under Paragraph 4.2 shall be treated as approval of the draft plan by that Party.
- 4.5 Once the plan is approved by both Parties, the Benchmarker shall carry out the Benchmark Review in accordance with the plan. Each Party shall procure that all the information described in the plan, together with any additional information reasonably required by the Benchmarker is provided to the Benchmarker without undue delay. If the Supplier fails to provide any information requested from it by the Benchmarker and described in the plan, such failure shall constitute a material Default for the purposes of Clause 27.1(c) (*Rectification Plan Process*).
- 4.6 Each Party shall co-operate fully with the Benchmarker, including by providing access to records, technical documentation, premises, equipment, systems and personnel at times reasonably requested by the Benchmarker, provided that the Benchmarker shall be instructed to minimise any disruption to the Services.
- 4.7 Either Party may provide additional material to the Benchmarker to assist the Benchmarker in conducting the Benchmark Review.
- 4.8 Once it has received the information it requires, the Benchmarker shall:
- (a) finalise the sample of entities constituting the Comparison Group and collect data relating to Comparable Services. The 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;
  - (b) derive the Equivalent Services Data by applying the adjustment factors listed in Paragraph 4.9 and from an analysis of the Comparable Services;
  - (c) derive the relative value for money of the charges payable for the Comparable Services using the Equivalent Services Data and from that derive the value for money of the average;

- (d) derive the median service levels relating to the Comparable Services using the Equivalent Services Data;
- (e) compare the value for money of the Charges attributable to the Benchmarked Services (having regard in particular to the applicable Performance Indicators and Target Service Levels) to the value for money of the value for money of the average;
- (f) compare the Performance Indicators and Target Service Levels attributable to the Benchmarked Services (having regard to the Charges and Service Credits) with the median service levels using the Equivalent Services Data; and
- (g) determine whether or not each Benchmarked Service is and/or the Benchmarked Services as a whole are, Good Value.

4.9 The Benchmarker shall have regard to the following matters when performing a comparative assessment of a Benchmarked Service and a Comparable Service in order to derive Equivalent Services Data:

- (a) the contractual and business environment under which the Services are being provided (including the scope, scale, complexity and geographical spread of the Services);
- (b) any front-end investment and development costs of the Supplier;
- (c) the Supplier's risk profile including the financial, performance or liability risks associated with the provision of the Services as a whole;
- (d) the extent of the Supplier's management and contract governance responsibilities; and
- (e) any other factors reasonably identified by the Supplier, which, if not taken into consideration, could unfairly cause the Supplier's pricing to appear non-competitive (such as erroneous costing or over-aggressive pricing).

## **5 BENCHMARK REPORT**

5.1 The Benchmarker shall be required to prepare a Benchmark Report and deliver it simultaneously to both Parties, at the time specified in the plan approved under Paragraph 4, setting out its findings. The Benchmark Report shall:

- (a) include a finding as to whether or not each Benchmarked Service is and/or whether the Benchmarked Services as a whole are, Good Value;
- (b) include other findings (if any) regarding the quality and competitiveness or otherwise of those Services; and
- (c) if any Benchmarked Service is not Good Value, or the Benchmarked Services as a whole are not Good Value, specify the changes that would be required to the Charges, Performance Indicators and/or Target Performance Levels, that would be required to make that Benchmarked Service or those Benchmarked Services as a whole Good Value.

- 5.2 The Benchmarker shall act as an expert and not as an arbitrator.
- 5.3 If the Benchmark Report states that any Benchmarked Service is not Good Value or that the Benchmarked Services as a whole are not Good Value, then the Supplier shall (subject to Paragraphs 5.5 and 5.6) implement the changes set out in the Benchmark Report as soon as reasonably practicable within timescales agreed with the Authority but in any event within no more than 3 months.
- 5.4 The Supplier acknowledges and agrees that Benchmark Reviews shall not result in any increase to the Charges, disapplication of the Performance Indicators or any reduction in the Target Performance Levels.
- 5.5 The Supplier shall be entitled to reject any Benchmark Report if the Supplier reasonably considers that the Benchmarker has not followed the procedure for the related Benchmark Review as set out in this Schedule in any material respect.
- 5.6 The Supplier shall not be obliged to implement any Benchmark Report to the extent this would cause the Supplier to provide the Services at a loss (as determined, by reference to the Financial Model), or to the extent the Supplier cannot technically implement the recommended changes.
- 5.7 In the event of any Dispute arising over whether the Benchmarker has followed the procedure for the related Benchmark Review under Paragraph 5.5 and/or any matter referred to in Paragraph 5.6, the Dispute shall be referred to an Expert for determination in accordance with the procedure detailed in Schedule 8.3 (Dispute Resolution Procedure). For the avoidance of doubt in the event of a Dispute between the Parties, the Authority shall continue to pay the Charges to the Supplier in accordance with the terms of this Agreement and the Performance Indicators and Target Performance Levels shall remain unchanged pending the conclusion of the Expert determination process.
- 5.8 On conclusion of the Expert determination process:
- (a) if the Expert determines that all or any part of the Benchmark Report recommendations regarding any reduction in the Charges shall be implemented by the Supplier, the Supplier shall immediately repay to the Authority the difference between the Charges paid by the Authority up to and including the date of the Expert's determination and the date upon which the recommended reduction in Charges should have originally taken effect pursuant to Paragraph 5.3 together with interest thereon at the applicable rate under the Late Payment Of Commercial Debts (Interest) Act 1998; and
  - (b) if the Expert determines that all or any part of the Benchmark Report recommendations regarding any changes to the Performance Indicators and/or Target Performance Levels shall be implemented by the Supplier:
    - (i) the Supplier shall immediately implement the relevant changes;
    - (ii) the Supplier shall immediately pay an amount equal to any Service Credits which would have accrued up to and including the date of the Expert's determination if the relevant changes had taken effect on the date determined pursuant to Paragraph 5.3 together with

interest thereon at the applicable rate under the Late Payment Of Commercial Debts (Interest) Act 1998; and

- (iii) the relevant changes shall thereafter be subject to the Change Control Procedure for the purposes of formalising and documenting the relevant change or amendment for the purposes of this Agreement.

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

**ANNEX 1**

**Approved Benchmarkers**

Gartner

Information Services Group

Frost & Sullivan