

OFFICIAL - COMMERCIAL

AGREEMENT RELATING TO THE SERVICE AND MAINTENANCE OF FIXED AND MOBILE RN DETECTION
EQUIPMENT

Agreement

**relating to the service and maintenance of fixed and mobile RN detection
equipment**

Schedule 7.3 (Value for Money and Benchmarking)

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Schedule 7.3

VALUE FOR MONEY AND BENCHMARKING

1 INTRODUCTION

1.1 This Schedule 7.3 enables the Authority to ensure that the provision of Services and payment of Contract Charges continues to represent Value For Money VFM throughout the Term. The following key principles apply to the VFM mechanisms set out in this Schedule 7.3:

- (a) upon entering this Agreement, the Authority considers that the Supplier's price for the Agreement represent good VFM (as achieved through a competitive procurement process and demonstrated by the Supplier through the AET Baseline Financial Model);
- (b) the VFM mechanisms are designed to ensure that the pricing achieved during the procurement process remains good VFM over the Term;
- (c) no combination of VFM mechanisms in this Schedule 7.3 shall be implemented such that:
- (d) it prevents the Supplier achieving a reasonable return, where it is performing satisfactorily in accordance with the Authority's requirements and meeting its obligations under this Agreement, and
- (e) the Services cannot meet the Service Levels specified within Schedule 2.2 (Performance); and

1.2 This Schedule 7.3 covers:

- (a) the scope of VFM mechanisms as set out in paragraph 2;
- (b) Profit Sharing in accordance with Paragraphs 3 and 4;
- (c) Benchmarking in accordance with Paragraph 5; and
- (d) Continuous Improvement in accordance with Paragraph 6.

2 SCOPE OF VFM MECHANISMS

2.1 This Paragraph 2 describes the scope of the VFM mechanisms in this Agreement. All the VFM mechanisms shall apply from the start of this Agreement except Benchmarking which will only apply when activated by the Authority.

2.2 Profit Sharing means the process and mechanism for sharing the Supplier's profits outlined in paragraph 3 and 4 of Schedule 7.3 (Value for Money and Benchmarking);

2.3 The scope and application of Benchmarking will be determined at the start of the Benchmarking process as set out in Paragraph 5.

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- 2.4 Continuous Improvement benefits sharing will be undertaken during the life of this Agreement and is intended to share the benefits of specific improvements that lead to lower costs.
- 2.5 The Supplier should ensure its supply chain offers VFM and competitive pricing throughout the Term of this Agreement.
- 2.6 Disputes relating to these VFM mechanisms shall be dealt with in accordance with the Dispute Resolution Procedure.

3 PROFIT SHARING

- 3.1 This Paragraph details the method by which the Authority shall share in any cumulative profit above the Threshold Margin made by the Supplier in the provision of the Services (such payment from the Supplier to the Authority being “**Profit Share**”). Where the Earned Profit exceeds the Threshold Margin, the Profit Share Amount (subject to any Underage carried forward) shall be shared between the Supplier and the Authority in accordance with Paragraph 3 and 4 and Appendix 2 to this Schedule 7.3 (Value for Money and Benchmarking).

Profit Share Principles

- 3.2 The Supplier shall conduct a Profit Share Assessment to calculate Profit Share at each Scheduled Profit Share Assessment Point in respect of the relevant Profit Share Period by providing the Authority with a Profit Share Calculation within fifteen (15) Working Days after the Scheduled Profit Share Assessment Point.
- 3.3 Profit Share shall (subject to any Underage carried forward) be payable to the Authority only when the Earned Profit for the relevant Profit Share Assessment Point exceeds the Threshold Margin for the same Profit Share Assessment Point.
- 3.4 If the Earned Profit is less than the than the Threshold Margin, then:
 - (a) the Underage shall be carried forward to the next Profit Share Assessment Point or
 - (b) where the Earned Profit is less than the Threshold Margin at more than one consecutive Profit Share Assessment Points, the cumulative Underage shall be carried forward until the next Profit Share Assessment Point at which the Earned Profit exceeds the Threshold Margin.
- 3.5 For the avoidance of doubt, any cumulative Underage shall lapse at the end of the Term, and in no circumstances shall the Supplier receive any payment from the Authority in respect of Underage.
- 3.6 Where, at a Profit Share Assessment Point, the Earned Profit is greater than the Threshold Margin, the Authority and the Supplier shall the share the Profit Share Amount (subject to any Underage carried forward) in accordance with the Profit Share Bands.

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- 3.7 If this Agreement is terminated on a day other than a Scheduled Profit Share Assessment Point, “the Supplier shall conduct a Profit Share Assessment on the day on which this Agreement is terminated or expires by effluxion of time where it is assumed that the Profit Share Assessment Point falls on the date that the Agreement terminates or expires by effluxion of time and the Profit Share Period shall be from the day following the previous Profit Share Assessment Point to the date on which the Agreement terminates or expires by effluxion of time. The Supplier shall provide the Authority with the Profit Share Calculation in both paper and electronic copy, including a summary of the Actual Revenue and Actual Costs used to calculate the Actual Profit and the Earned Profit for the relevant Profit Share Period.
- 3.8 The Profit Share Calculation shall:
- (a) be certified by the chief financial officer or a director of the Supplier as being accurate and not misleading and in conformity with all the terms of this Schedule;
 - (b) at the Authority’s discretion, be verified by the Supplier’s external financial auditors;
 - (c) include any profit share from arrangements with Sub-contractors as revenue in the Profit Share Calculation in this Schedule;
 - (d) show separately the amounts of Earned Profit falling into each of the Profit Share Bands; and
 - (e) show separately the Profit Share Amount, the Supplier’s Profit Share Amount and the Authority’s Profit Share Amount for each of the Profit Share Bands.
- 3.9 Following receipt by the Authority of a Profit Share Calculation, the Supplier shall, at its own expense, promptly provide to the Authority any such additional information as the Authority may reasonably request so that the Authority can verify the accuracy of the Profit Share Calculation.
- 3.10 Within 30 Working Days of receipt by the Authority of the Profit Share Calculation and all additional information, the Authority shall notify the Supplier if it agrees with or disputes the Profit Share Calculation.
- 3.11 Where the Authority disputes the Profit Share Calculation, it shall follow the procedure set out at Paragraphs 3.17 to 3.20.
- 3.12 If the Authority notifies the Supplier that it agrees with the Profit Share Calculation (a “**Profit Share Acceptance Notice**”), the Supplier shall pay the relevant Profit Share to the Authority in accordance with Paragraphs 3.13 to 3.16.

Profit Share Payment

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- 3.13 Subject to Paragraph 3.22, the Supplier shall pay any Profit Share due to the Authority within twenty (20) Working Days of receiving a Profit Share Acceptance Notice from the Authority.
- 3.14 Any Profit Share that is payable by the Supplier in accordance with this Schedule but remains unpaid after the due date specified in Paragraph 3.13 shall accrue interest on a daily basis at the applicable rate under the Late Payment Of Commercial Debts (Interest) Act 1998 for each day that any such Profit Share remains unpaid following the due date specified in Paragraph 3.13.
- 3.15 As an alternative to the payment described in Paragraph 3.14, the Authority may, at its sole discretion, offset the Profit Share due to the Authority against:
- (a) the Contract Charges falling in the month following the Profit Share Assessment Point and/or agree in writing with the Supplier to offset the Profit Share Amount due to the Authority against other future Contract Charges; and/or
 - (b) Optional Services as the Authority and the Supplier may agree in writing.
- 3.16 Profit Share paid to the Authority cannot be clawed back by the Supplier to offset any losses in subsequent Profit Share Periods.

Disputes

- 3.17 If the Authority disputes any item contained in the Profit Share Calculation in accordance with Paragraph 3.11, it shall issue a notice to the Supplier setting out the reason(s) why the Authority disputes the Profit Share Calculation (a **“Profit Share Dispute Notice”**).
- 3.18 Where the Supplier receives a Profit Share Dispute Notice, it shall notify the Authority within ten (10) Working Days of receipt of the Profit Share Dispute Notice whether it accepts the Authority’s reason(s) for disputing the Profit Share Calculation.
- 3.19 If the Supplier does not accept the Profit Share Dispute Notice then it shall, within twenty (20) Working Days of receipt of the Profit Share Dispute Notice, deliver to the Authority such further financial information certified by the chief finance officer, the director of finance or equivalent of the Supplier as the Supplier believes will prove its case (a **“Profit Share Dispute Rebuttal”**).
- 3.20 If, having received a Profit Share Dispute Rebuttal, the Authority and the Supplier are still unable to agree the Profit Share Calculation, then the matter shall be referred to the Dispute Resolution Procedure for determination.

4 PROFIT SHARE CALCULATION TABLES

The following table sets out how Earned Profit above the Threshold Margin shall be shared between the Authority and the Supplier:

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Profit Share Band	Earned Profit	Supplier % share of Profit Share Amount	Authority % share of Profit Share Amount
1	Earned Profit that is less than or equal to Threshold Margin (“Y%”)	N/A	N/A
2	Earned Profit that is greater than Threshold Margin but less than or equal to Threshold Margin +3%	70%	30%
3	Earned Profit that is greater than Threshold Margin +3% but less than or equal to Threshold Margin +5%	50%	50%
4	Earned Profit that is greater than Threshold Margin +5% but less than or equal to Threshold Margin +7%	30%	70%
5	Earned Profit that is in excess of or Threshold Margin +7%	10%	90%

5 BENCHMARKING

5.1 Frequency of Benchmark Review

- 5.1.1 The Authority may, by written notice to the Supplier (a “**Benchmarking Notice**”), require a Benchmark Review of any or all of the Services;
- 5.1.2 The Authority shall not be entitled to carry out a Benchmark Review during the twenty four (24) month period from the Effective Date nor, in relation to any one Service, at intervals of less than eighteen (18) months after any previous benchmark review of that Service.
- 5.1.3 Subject to Paragraph 5.1.2, Benchmark Reviews may be conducted at any time throughout the Term.

5.2 Purpose and Scope of Benchmark Review

- 5.2.1 The purpose of a Benchmark Review shall be to establish whether any individual Benchmarked Service is and the Benchmarked Services as a whole are Good Value.
- 5.2.2 The Services that are to be the Benchmarked Services shall be identified by the Authority in the Benchmarking Notice.

5.3 Appointment of Benchmarkers

- 5.3.1 The Parties shall appoint the Benchmarkers to carry out the Benchmark Review from the list of organisations set out in Appendix 1.

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- 5.3.2 The Supplier may request an alternative organisation to those set out in Appendix 1 as the Benchmarker and the Authority may, acting reasonably, accept or reject this request.
- 5.3.3 The Authority shall, at the written request of the Supplier, require the Benchmarker to enter an appropriate confidentiality undertaking with the Supplier.
- 5.3.4 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.
- 5.4 **Benchmarking Process**
- 5.4.1 The Authority shall require the Benchmarker to produce, and to send to each Party for approval, a draft plan for the Benchmark Review within ten (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.
- 5.4.2 Each Party must give notice in writing to the Benchmarker and to the other Party within ten (10) Working 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.
- 5.4.3 Where a Party suggests amendments to the draft plan under Paragraph 5.4.2, the Benchmarker must, if it believes the amendments are reasonable, produce an amended draft plan. Paragraph 5.4.2 shall apply to any amended draft plan.
- 5.4.4 Failure by a Party to give notice under Paragraph 5.4.2 shall be treated as approval of the draft plan by that Party.

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- 5.4.5 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.
- 5.4.6 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.
- 5.4.7 Either Party may provide additional material to the Benchmarker to assist the Benchmarker in conducting the Benchmark Review.
- 5.4.8 Once it has received the information it requires, the Benchmarker shall 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 by:
- (a) applying the adjustment factors listed in Paragraph 5.4.9 and from an analysis of the Comparable Services to derive the Equivalent Services Data;
 - (b) using the Equivalent Services Data to calculate the Upper Quartile and/or mean average Service Levels;
 - (c) comparing the Contract Charges attributable to the Benchmarked Services (having regard in particular to the Service Levels and Service Credits regime) with the Upper Quartile using the Equivalent Services Data;
 - (d) comparing the Service Levels attributable to the Benchmarked Services (having regard to the Contract Charges and Service Credits) with the mean average service levels using the Equivalent Services Data; and
 - (e) determining whether or not each Benchmarked Service is and/or the Benchmarked Services as a whole are Good Value.
- 5.4.9 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:
- (a) the terms of this Agreement, including the contractual and business environment under which the Benchmarked Services are being provided (including the scope, scale, complexity and geographical spread of the Benchmarked Services);
 - (b) any front-end investment and development costs of the Supplier;

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- (c) the Supplier's risk profile including the financial, performance or liability risks associated with the provision of the Benchmarked 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).

5.5 Benchmarker's Report

5.5.1 The Benchmarker shall be required to prepare a report (the “**Benchmarker's Report**”) and deliver it simultaneously to both Parties, at the time specified in the plan approved under Paragraph 5.4, setting out its findings. Those findings shall be required to:

- (a) identify whether each Benchmarked Services is and the Benchmarked Services as a whole are Good Value;
- (b) set out the basis of its calculations in sufficient detail to demonstrate that they comply with the plan approved under Paragraph 5.4.5;
- (c) address the quality and competitiveness or otherwise of those Benchmarked Services; and
- (d) 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 Contract Charges or Service Level Targets, that would be required to make that Benchmarked Service or those Benchmarked Services as a whole Good Value.

5.5.2 The Benchmarker shall act as an expert and not as an arbitrator.

5.5.3 Benchmark reviews shall not result in any increase to the Contract Charges or any decrease in the performance of any Services or the Service Level.

5.5.4 If the Benchmarker's Report states that any Benchmarked Services is not Good Value, or that the Benchmarked Services as a whole are not Good Value, then the Supplier shall (subject to Paragraph 5.5.6) implement the changes set out in the Benchmarker's report as soon as reasonably practicable within a timescale agreed with the Authority but in any event within no more than one (1) Month of receipt of the Benchmarker's Report.

5.5.5 Save where there is dispute in relation to the Benchmarker's Report (which shall be addressed using the Dispute Resolution Procedure) and subject to the Supplier's right to reject the benchmarked report under Paragraph 5.5.6, if the Benchmarker's Report determines that any or all of the Benchmarked Services are not Good Value, any failure by the Supplier to reduce the Contract Charges in accordance with such timescales agreed between the Parties under Paragraph 5.5.4 shall, without

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prejudice to any other rights or remedies of the Authority, constitute an irremediable Material Breach.

- 5.5.6 The Supplier shall not be obliged to implement any recommendations of the Benchmarkers' Report to the extent this would cause the Supplier to provide the Benchmarked Services at a loss, or to the extent the Supplier cannot technically implement the recommended changes.
- 5.5.7 In the event of a dispute in relation to the Benchmarkers' Report or in the event of a rejection of the Benchmarkers' Report under Paragraph 5.5.6 the matter shall be resolved in accordance with the Dispute Resolution Procedure. In the event of a dispute between the Parties in relation to the Benchmarkers' Report, the Authority shall continue to pay the Contract Charges to the Supplier and the Supplier shall continue to provide the Services in accordance with the terms.
- 5.5.8 On conclusion of this Agreement pending the conclusion of the Expert determination process. On conclusion of the Dispute Resolution Procedure process, if it is determined that all or any part of the benchmarked report recommendations regarding any reduction in the Contract Charges shall be implemented by the Supplier, the Supplier shall immediately repay to the Authority the difference between the Contract Charges paid by the Authority up to and including the date of the Dispute Resolution Procedure concluded and the date upon which the recommended reduction in Contract Charges should have originally taken effect pursuant to Paragraph 5.5.4

6 CONTINUOUS IMPROVEMENT

- 6.1 Where a Variation is proposed to implement a potential Improvement which has been identified under Clause 17.1, the Supplier shall disclose to the Authority the reduction in its costs that would result from the Variation (taking into account the costs of implementation of the Variation) and the amendments to the Contract Charges resulting from the Variation shall be agreed on the basis that, subject to paragraph 6.2:
- (a) in the first twelve (12) months the benefit of the net reduction in costs shall be shared fifty percent (50%) in favour of the Authority and fifty percent (50%) in favour of the Supplier;
 - (b) in the subsequent six (6) months the ratio shall be seventy five percent (75%) in favour of the Authority and twenty five percent (25%) in favour of the Supplier; and
 - (c) thereafter the whole benefit of the net reduction in costs shall be passed on to the Authority.
- 6.2 During the first three (3) years of the Term, if the proposed Variation was one that, in the reasonable opinion of the Authority, could have been reasonably foreseen by the Supplier at the Effective Date of this agreement and the Contract Charges therefore agreed on a basis that would have incorporated (or planned to incorporate) the benefit of the Variation, then the whole net benefit of the cost savings shall be passed on to the Authority.

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Appendix 1

List of organisations from which Benchmarker may be appointed

- KPMG;
- Gartner UK Limited;
- Forrester Research; and
- ISG Compass.

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Appendix 2

The following table sets out the Threshold Margin (Y%) for each Profit Share Assessment Point (to be populated by the Supplier using Schedule 7.1)

Scheduled Profit Share Assessment Point	Date	Profit Margin for the Period (a)	Risk Margin (b)	Profit Share Threshold Margin (a-b)
1	Effective Date + 2 years			
2	Effective Date + 3 years			
3	Effective Date + 4 years			
4	Effective Date + 5 years			
5	Effective Date + 6 years			