# PICTS Contract
# Schedule 24
# Freedom of Information

**Document Info**

**Version #:** 1.0

**Date:** 14 December 2016

**Revision History**

| Version | Date | Details of Changes | Author |
|---|---|---|---|
| 0.1 | 31/10/16 | First draft based on original OMNI schedule | Sopra Steria |
| 0.2 | 03/11/16 | Previous changes accepted; additional changes shown in tracked | Sharpe Pritchard |
| 0.3 | 11/11/16 | Changes accepted – finalised apart from contents of Annex | Sopra Steria |
| 0.4 | 12/12/16 | Annex A updated | Sopra Steria |
| 0.5 | 12/12/16 | Baselined | Joint Workshop |
| 1.0 | 14/12/16 | Final version for completion | Sharpe Pritchard |

1. **General**

1.1 The PROVIDER acknowledges and agrees that:

(A) the AUTHORITY is subject to legal duties under FOIA and the Environmental Information Regulations which may require the AUTHORITY to disclose, in response to Requests for Information, certain information relating to this Agreement or otherwise relating to the PROVIDER;

(B) the AUTHORITY is required by law to consider each and every Request for Information made to it; and

(C) all decisions made by the AUTHORITY pursuant to a Request for Information are solely a matter for and at the discretion of the AUTHORITY.

2. **Exempt Information**

2.1 Notwithstanding anything in this Agreement to the contrary (including without limitation any obligations of confidentiality), the AUTHORITY shall be entitled to disclose information in whatever form pursuant to a Request for Information, save that in relation to any information that is Exempt Information the AUTHORITY shall use reasonable endeavours (but shall not be obliged) to consult the PROVIDER and shall not:

(A) confirm or deny that information is held by the AUTHORITY; or

(B) disclose information requested

to the extent that in the AUTHORITY's opinion the information is eligible in the circumstances for an exemption and therefore the AUTHORITY may lawfully refrain from doing either of the things described in Paragraph 2.1(A) and 2.1(B) of this Schedule 24.

2.2 The PROVIDER acknowledges that any information provided by it that it considers to be Exempt Information and which is set out in Annex A to this Schedule is of indicative value only and that the AUTHORITY may nevertheless be obliged to disclose the Exempt Information in accordance with Paragraph 1.1(A) of this Schedule 24. Accordingly the AUTHORITY shall in no event be liable for any loss, damage, harm or detriment, howsoever caused, arising from or in connection with such disclosure of any Exempt Information whether relating to this Agreement or otherwise relating to the PROVIDER. Notwithstanding the above, nothing in this Paragraph shall relieve the AUTHORITY from adhering to its obligations set out in Clause 17 of this Agreement.

2.3 The PROVIDER shall indemnify the AUTHORITY for any and all costs (including reasonable legal fees) incurred by the AUTHORITY in:

(A) assessing the application of any exemption under FOIA; and/or

(B) responding to any FOIA notice; and/or

(C) lodging any appeal against a decision of the Information Commissioner in relation to any disclosure,

where such costs are incurred pursuant to efforts by the AUTHORITY to withhold Exempt Information, as defined within Annex A to this Schedule 24. The obligation to indemnify the AUTHORITY shall always be subject to the limits of liability set out in Clause 15 of this Agreement.

In respect of 2.3(A), (B) and (C), the AUTHORITY shall co-operate reasonably with the PROVIDER and use reasonable endeavours to consult and notify the PROVIDER of matters that are relevant to such efforts made by the AUTHORITY to withhold Exempt Information.

3. **Compliance**

3.1 The PROVIDER shall assist the AUTHORITY as reasonably necessary to enable the AUTHORITY to comply with its obligations under FOIA and shall ensure that each of its agents and Sub-Contractors is made aware of the PROVIDER's obligations as set out in Clauses 17 and 25 of this Agreement and this Schedule 24. Accordingly it shall enter into binding obligations with each of its agents and Sub-Contractors involved in the delivery of the Services in order to ensure its absolute compliance with its obligations as set out in this Agreement.

3.2 Without prejudice to the generality of Paragraph 3.1 of this Schedule 24, the PROVIDER represents, warrants and undertakes throughout the term of the Agreement that it shall:

(A) pass to the AUTHORITY within one (1) Working Day of receipt of it (or two (2) Working Days of receipt by any of its Sub-Contractors) any Requests for Information that the PROVIDER or any of its Sub-Contractors receive;

(B) provide the AUTHORITY with a copy of all information in its possession or power that is the subject of a Request for Information in the form that the AUTHORITY requires within five (5) Working Days (or such other period as the AUTHORITY may reasonably specify) of the AUTHORITY requesting that information;

(C) ensure that all information produced in the course of the Agreement or relating to the Agreement is retained for disclosure and shall permit the AUTHORITY to inspect such records as are reasonably requested by it from time to time; and

(D) provide the AUTHORITY with such particulars as the AUTHORITY may need to maintain a publication scheme under the FOIA, for the alteration of any particulars included in such publication scheme and for any renewal of such publication scheme.

3.3 Subject to the other provisions of this Schedule 24, the PROVIDER shall not without the prior written consent of the AUTHORITY divulge (whether directly or indirectly) to any third party any information which is the subject of a Request for Information except to those of its agents or Sub-Contractors who are engaged in the processing of such information in connection with this Agreement and who are subject to the binding obligations referred to in Paragraph 3.1 above.

3.4 Without prejudice to the foregoing provisions of this Paragraph 3, the PROVIDER shall indemnify the AUTHORITY against any liability incurred by it under sections 54 and 77 of the FOIA by reason of any failure of the PROVIDER or any of its Sub-Contractors to comply with any provision of this Agreement or arising out of any act or omission of the PROVIDER or any of its Sub-Contractors. The obligation to indemnify the AUTHORITY shall always be subject to the limits of liability set out in Clause 15 of this Agreement.

3.5 The PROVIDER shall further indemnify the AUTHORITY against any third party assessment, claim, demand, action, suit or proceeding in respect of the FOIA arising out of or in connection with any act or omission of the PROVIDER or any of its Sub-Contractors (except for acts or omissions contained in written instructions of the AUTHORITY which were correctly and properly executed by the PROVIDER and which were issued to the PROVIDER prior to the act or omission in question). The PROVIDER shall indemnify the

AUTHORITY for all losses, damages, liabilities and all reasonable expenses and costs incurred by the AUTHORITY as a result of any such assessment, claim, demand, action, suit or proceeding including any fine imposed by the Information Commissioner on the AUTHORITY or final judgment entered against the AUTHORITY. The obligation to indemnify the AUTHORITY shall always be subject to the limits of liability set out in Clause 15 of this Agreement.

# Schedule 24

# Annex A – Exempt Information

The Parties agree that the following information and/or classes of information are categorised as Exempt Information for the purposes of this Schedule 24 (Freedom of Information):

<u>In respect of commercial information:</u>

(A) Schedule 5 (Payment Mechanism) – The bulk of this Schedule can be disclosed save for the following, which the PROVIDER would seek to classify as Exempt Information:

(1) The Charges Model included in Schedule 5 Annex 1A, any updates thereto in CCNs and any OBA analysis that is produced;

(2) The PROVIDER's Day Rates (including any agreed volume discounts) set out in Schedule 5 Annex 4;

(3) Schedule 5, paragraphs 9.4 & 9.5 – any output from the OBA process and any supplied evidence to support OBA;

(4) Details of any discounts agreed as set out in Schedule 5 paragraphs 17 and 18;

(5) The Technology Refresh Charges set out in Schedule 5 Annex 2;

(6) Details of the margins charged by the PROVIDER set out in Schedule 5 paragraphs 2.9 and 2.10;

(B) For all of the items identified at (A) above, the Exemption shall be for the duration of the Agreement.