

This and the following 5 pages comprise Schedule 15 referred to in the foregoing Contract between the Scottish Ministers and Serco Ltd.

SCHEDULE 15 – BENCHMARKING

1. Frequency of Benchmark Review

1.1. The Scottish Ministers may, by written notice to the Operator, require a Benchmark Review of any or all of the Services.

1.2. The Scottish Ministers will not be entitled to carry out a Benchmark Review during the first 2 year period from the Commencement Date, nor at intervals of less than 12 months after any previous Benchmark Review. The Scottish Ministers will not request more than 2 Benchmark Reviews of all the Services.

2. Purpose and Scope of Benchmark Review

2.1. 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 .

2.2. The scope of the Benchmarked Services will be identified by the Scottish Ministers in the written request given under paragraph 1 of this Schedule 15.

3. Appointment of Benchmarker

3.1. The Operator must appoint the Benchmarker to carry out the Benchmark Review.

3.2. The costs and expenses of the Benchmarker and the Benchmark Review will be met by the Scottish Ministers. However, each Party must bear its own internal costs of the Benchmark Review.

4. Benchmarking Process

4.1. The Scottish Ministers will 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 may reasonably request in all the circumstances. The plan must include:

- (1) a proposed timetable for the Benchmark Review;

- (2) a description of the information that the Benchmarker requires each Party to provide;
- (3) a description of the benchmarking methodology to be used;
- (4) a description that demonstrates objectively and transparently that the benchmarking methodology to be used is capable of fulfilling the benchmarking objectives;
- (5) an estimate of the resources required from each Party to underpin the delivery of the plan;
- (6) a description of how the Benchmarker will scope and identify the Comparison Group; and
- (7) details of any entities which the Benchmarker proposes to include within the Comparison Group.

4.2. 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 will unreasonably withhold or delay its approval of the draft plan. Any suggested amendments must be reasonable.

4.3. Where a Party suggests amendments to the draft plan under paragraph 4.2, the Benchmarker must, if it believes the amendments are reasonable, produce an amended draft plan. Paragraph 4.2 will apply to any amended draft plan.

4.4. Failure by a Party to give notice under paragraph 4.2 will be treated as approval of the draft plan by that Party.

4.5. Once the plan is approved by both Parties, the Benchmarker will carry out the Benchmark Review in accordance with the plan. Each Party must 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 Operator fails to provide any information requested from it by the Benchmarker and described in the plan such failure will constitute a material Default for the purposes of this Contract.

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 all times reasonably requested by the Benchmarker, provided that the Benchmarker is 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 will:

(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 will be a matter for the Benchmarker's professional judgment using:

- (a) information from other service providers to the Scottish Ministers;
- (b) survey information;
- (c) market intelligence;
- (d) the Benchmarker's own data and experience;
- (e) relevant published information;
- (f) information from consultancies and/or other vendors or purchasers of Comparable Services; and
- (g) information from 'in-house' providers to the Scottish Ministers to the extent that Benchmarker considers that they are valid comparators;

(2) by applying the adjustment factors listed in paragraph 4.9 and from an analysis of the Comparable Services derive the Equivalent Services Data;

(3) using the Equivalent Services Data calculate the Average Price;

(4) compare the Operating Costs attributable to the Benchmarked Services (having regard in particular to the Performance Measures and Performance Deductions regime) with the Average Price using the Equivalent Services Data; and

(5) determine whether or not each Benchmarked Service is and/or the Benchmarked Services as a whole are Good Value.

4.9. In carrying out the benchmarking analysis the Benchmarker will 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:

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

5. Benchmarker's Report

5.1. The Benchmarker will be required to prepare a Benchmark report and deliver it simultaneously to the parties, at the time specified in the plan approved under paragraph 4 of this schedule, setting out its findings. Those findings will be required to:

- (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;
- (2) include other findings (if any) regarding the quality and competitiveness or otherwise of those Services; and
- (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 Operating Costs to make that Benchmarked Service or those Benchmarked Services as a whole Good Value.

- 5.2. The Benchmarker will act as an expert and not as an arbitrator.
- 5.3. For the avoidance of doubt, Benchmark Reviews will not result in any increase to the Operating Costs or any decrease in the performance of any Services or Performance Measures.
- 5.4. 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 Operator must (subject to paragraphs 5.6 and 5.7) treat the changes set out in the Benchmark report as a deemed Cure Plan and implement them as soon as reasonably practicable within a timescale agreed with the Scottish Ministers but in any event within no more than one month.
- 5.5. Subject to the Operator's right to dispute or reject the Benchmark report under paragraphs 5.6 or 5.7 of this schedule, if the Benchmark report determines that any or all of the Benchmarked Services are not Good Value, any failure by the Operator to reduce the Operating Costs in accordance with such timescales agreed between the parties under paragraph 5.4 of this schedule will, without prejudice to any other rights or remedies of the Scottish Ministers, constitute an Event of Default for the purposes of this Contract.
- 5.6. The Operator is entitled to reject a Benchmark report if the Operator 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.
- 5.7. The Operator will not be obliged to implement any Benchmark report to the extent this would cause the Operator to provide the Services at a loss, or to the extent the Operator cannot technically implement the recommended changes.
- 5.8. In the event of a dispute or rejection of the Benchmark report under paragraphs 5.6 and/or 5.7 of this schedule the matter will be settled in accordance with Clause 49 (Dispute Resolution Procedures) of the Contract. For the avoidance of doubt in the event of a dispute between the parties, the Operator must reduce the Grant in accordance with the Benchmark report and paragraph 5.4 (where applicable) pending the dispute resolution process.

5.9. On conclusion of the dispute resolution process, if it is determined that all or any part of the Benchmark report recommendations regarding any reduction in the Grant will not continue to be implemented by the Operator, the Scottish Ministers must repay to the Operator within 30 days the difference between the revised Grant paid by the Scottish Ministers up to and including the date of the settlement of the dispute and the date upon which the recommended reduction in Grant took effect.