

Schedule 28 - Benchmarking

For the purposes of this Schedule 28, the following words shall have the following meanings:

- a. **Benchmarker** - means the organisation that AUTHORITY and JVCO jointly select in accordance with the Public Contracts Regulations 2006 to conduct the Benchmark.
- b. **Benchmark Objective** – shall mean the part of the Core Service Charges (as such figure is calculated pursuant to Schedule 4 and including the Unit Prices for Call-off Change) attributable to the Service Line (or Service Element, if applicable in accordance with paragraph 2.0(b)) being Benchmarked is equal to or less than the Target Price following Normalisation.
- c. **Benchmarking** - means the objective measurement and comparison process (including Normalisation) consistent with Clause 37 and this Schedule 28, and “Benchmarked” shall be construed accordingly.
- d. **Benchmark Data** – means the Required Data collected by the Benchmarker in respect of the Comparators.
- e. **Benchmark Remedial Proposal** - means the proposal produced by JVCO in response to the agreed Benchmark Results as set out in paragraph 8.3.1.
- f. **Benchmark Process** - means the process set out in this Schedule 28 to measure whether the Benchmark Objective has been achieved in respect of a Benchmarked Service during the Benchmarked Period.
- g. **Benchmark Results** - means the Benchmarker's final written report – agreed by both AUTHORITY and JVCO or determined in accordance with paragraph 7 - of the results of the Benchmark Process, including all appropriate supporting documentation.
- h. **Benchmarked Period** – means the period of time for which the Benchmarked Service is compared with the corresponding calendar period of the Benchmark Data as identified in the Agreed Benchmark Scope of Work.
- i. **Benchmarked Service** – means a Service Line (or Service Element, if applicable in accordance with paragraph 2.0(b)) which has for the time being been required to be subjected to Benchmarking in accordance with paragraph 2 of this Schedule 28.
- j. **Comparators** – means the organisations that are selected by the Benchmarker and agreed with the Parties or determined in accordance with paragraph 3 in accordance with the provisions of this Schedule 28 against which the relevant Benchmarked Service shall be Benchmarked.
- k. **Normalisation** – means the process applied by the Benchmarker to the Benchmark Data to make allowance for factors which might influence price and to remove any discrepancy created by differences between the Required Data for the Authority by comparison to the Required Data for the Comparators on a like for like basis for the same period as the Benchmarked Period to allow an accurate and fair Benchmarking.

- l. **Required Data** – means the information which the Benchmarker is required to consider (to the extent that the Benchmarker in its reasonable professional opinion considers it appropriate to do so) as set out at Appendix B (Outline Benchmark Methodology).
- m. **SAP BOP** – means the Transformation Project known as SAP Back Office Project and more particularly defined in the agreed Transformation Implementation Contract and related service order for such project.
- n. **Target Price** – means the average of the Normalised prices of the Benchmarked Services provided to the Comparators for the scope of services under Benchmarking, calculated by the Benchmarker in accordance with the agreed methodology.
- o. **Core Service Charge** - means the sum identified for that Service Line in the Summary Sheet (as that term is defined in Schedule 4) for the time being in respect of the Year in which the Benchmarking is taking place

1.0 Introduction

The Parties wish to conduct Benchmarking in an open and co-operative manner governed by the specific principles and procedures set forth in this Schedule 28. This Schedule describes the method and provisions that will govern Benchmarking in order to obtain an accurate, objective and comparable measurement and industry comparison of the price for the Services, taking into consideration the technology, Services, Performance Levels and Core Services Charges when taken in combination as a whole. The Benchmarker shall be jointly instructed by the Parties. The Benchmarker's fees and expenses shall be paid equally by the Parties. Each Party will bear its own costs of complying with the obligations set out in this Schedule 28.

2.0 Overview

- (a) A Benchmark Process for each Benchmarked Service may be requested by the Authority upon at least 90 days written notice to the JV Co (the "**Benchmark Notice**"), unless otherwise agreed by the Parties, to commence no earlier than the later of (i) 24 months after Agreement Date; and, (ii) in respect of a Benchmarked Service for which performance is substantially impaired due to lack of implementation of the SAP BOP if committed as at the Agreement Date, 12 months from the Delivery Date (as defined in the SAP BOP Transformation Implementation Contract) of the SAP BOP or as such date is adjusted by agreement of the parties.
- (b) The Benchmark Process may be applied to the following:
 - (i) the Service Lines and Service Elements as set out at Schedule 2 Part 8 (ISD Output Specification) ("**ICT Services**"), for the purposes of this Schedule Service Elements of ICT Services shall mean each of (1) end user services; (2) server and storage services; (3) voice and data network services; (4) application management support and development services; and,
 - (ii) the Service Lines and Service Elements which are not ICT Services ("**Non-ICT Services**") but only to the extent that the parties have, acting reasonably and in good faith and by reference to (1) the benchmarking service providers set out at Appendix A (as amended in accordance with paragraph 3.0(a); or (2) Good In-

dustry Practice in relation to services or elements of such services which are substantially similar or equivalent to the Non-ICT Services, agreed that it is possible for the Benchmark Process (subject to any necessary adjustments that may be agreed by the parties) to apply to such Non-ICT Services.

- (c) On an annual basis from the Agreement Date, the JVCo and the Authority shall discuss in good faith the application of a Benchmark Process for Non- ICT Services acting reasonably and in good faith and by reference to typical benchmarking service providers and Good Industry Practice in relation to services or elements of such services which are substantially similar or equivalent to the Non-ICT Services.
- (d) In addition to any Benchmarking undertaken by virtue of this Schedule 28, the JVCo shall continue to support the Authority in undertaking any performance related benchmarking activity carried out at the date of the Agreement with local government or other similar benchmarking associations or clubs.

3.0 Agreeing the Benchmark, and Comparators

- (a) Subject to paragraph 3.0(b), JVCO and the Authority have agreed an initial list of Benchmarkers which is set out in Appendix A. Either party may by notice to the other require a variation to this list to include other reputable Benchmarking organisations who have or would be able to secure access to sufficient, comprehensive and comparable reference data to enable them to conduct fair and accurate Benchmarking Processes. Approval of such a requirement by the other shall not be unreasonably withheld or delayed. Once such a requirement has been approved the list in Appendix A shall be amended accordingly.
- (b) As at the Agreement Date, the parties consider the Benchmark Services to be Part A services for the purposes of the Public Contracts Regulations 2006 (the "Procurement Regulations"). To the extent that, at the time at which the Authority requests a Benchmark Process is initiated, the Procurement Regulations are considered by the Authority to apply to the contract between the parties and the Benchmarking, the parties shall not be restricted to the list of Benchmarkers at Appendix A and shall procure any such contract in accordance with the Procurement Regulations and related authorities in relation to their application. Any such appointment of a Benchmarking shall be in accordance with paragraph 3.0(c).
- (c) Within 30 days following agreement of the Proposed Benchmark Methodology as set out in Section 6.0 below, the Benchmarking will be selected jointly by the Authority and JVCO.
- (d) Once a particular Benchmarking has conducted a Benchmark for a Benchmarked Service then, subject to (i) the Procurement Regulations; and (ii) if the Parties agree otherwise, such Benchmarking shall be used for future Benchmarking of that Benchmarked Service provided that, in event that:
 - 1. a Benchmarking is no longer providing the services required to conduct the Benchmarking Process; or
 - 2. the Parties agree that the Benchmarking should be replaced; or

3. the Benchmarker cannot perform a Benchmark on the terms set out in this Schedule 28 to the reasonable satisfaction of the parties; or
4. a Party objects on other reasonable grounds, including permissibility under the Procurement Regulations, to the re-appointment of the Benchmarker for that Benchmarked Service and notifies the other Party of such objection in writing prior to such re-appointment

the Parties shall be entitled to select a new Benchmarker in accordance with the provisions of this Section 3.

- (e) Each Party shall execute a confidentiality undertaking with the Benchmarker in a form substantially similar to that set out at Appendix C. Neither Party shall be obliged to disclose any confidential information or data to any Benchmarker if the other Party has not executed such an undertaking.
- (f) The selection of Comparators shall be discussed by the Parties with the Benchmarker in relation to each Benchmark Process and the Benchmarker shall notify the Parties by giving 5 days written notice to each of them of its determination as to the Comparators to be used for that Benchmark Process. Such determination shall be made on the basis of the Benchmarker's expert opinion as providing sufficient, comprehensive and comparable Required Data to enable them to conduct fair and accurate Benchmark Processes in respect of the Benchmarked Services. In the event that either Party objects to any such determination then they shall be entitled to refer such matter to Dispute Resolution Procedure.
- (g) The Benchmarker will:
 - (i) declare the specific values of each of the selection criteria (such as size of estate, volume of activity and Performance Levels) for each of the proposed Comparators together with the suggested Normalisation approach to achieve a proper comparative benchmark;
 - (ii) produce a services mapping matrix to unambiguously illustrate the range and extent of the specific services being provided or received by each of the Comparators in respect of comparison with the Benchmarked Services.
- (h) Both Parties shall be entitled to scrutinise each Comparator proposed together with any areas to which Normalisation will apply to the Benchmark Data of each Comparator proposed by the Benchmarker and the techniques and criteria used to conduct the Benchmark. Each party may reasonably object to any of the foregoing and the Parties and the Benchmarker, acting in good faith, shall seek to agree any changes necessary.

4.0 Benchmark Objective

JVCO shall meet the Benchmark Objective. If JV Co fails to meet the Benchmark Objective paragraph 8 shall apply.

5.0 Benchmark Frequency and Commencement

- (a) Subject to paragraph 2.0, Benchmarking of a particular Service Line or Service Element (if applicable) shall not occur more frequently than once every two years during the Contract Period.
- (b) Not later than 2 weeks following the selection by the Parties of the Benchmarker in accordance with paragraph 3 (the "**Benchmark Selection**"), and prior to instructing a Benchmarker, the Parties and the Benchmarker will agree in writing, based on the Proposed Benchmark Methodology (as defined at paragraph 6.0) where appropriate in the professional opinion of the Benchmarker, the general principles, method of Benchmarking, applicable Comparators, and the relevant data collection, measurement criteria and applicable Normalisation process required in order to conduct the Benchmark Process for the Benchmarked Services, and the agreed timetable for performance of the Benchmark Process (the "**Agreed Benchmark Scope of Work**"). All such principles, methods, criteria and timetable may be updated by written agreement between the Parties and the Benchmarker from time to time;
- (c) The Benchmarker shall commence the Benchmark Process, unless otherwise agreed by the Parties as documented in the Agreed Benchmark Scope of Work, within 60 days of the Benchmark Selection;
- (d) A Benchmark Process shall not be conducted on any Benchmarked Service during the conduct of an Exit Plan for that Service.

6.0 Benchmark Methodology

- (i) No later than 2 weeks following issue of the Benchmark Notice by the Authority to JV Co requiring the Benchmark Process to be applied to a Benchmark Service (a "**Benchmark Notice**"), and prior to Benchmarker Selection, the Parties shall agree the proposed scope of work (or terms of reference) to be used by the Benchmarker, including the methodology to be used for Benchmarking, together with the relevant measurement criteria, and the proposed timetable (the "**Proposed Benchmark Methodology**").
- (ii) Without prejudice to the foregoing the Proposed Benchmark Methodology shall include the following general principles and criteria:
 - a) Benchmarking shall be carried out by a Benchmarker in an independent and objective manner according to the outline methodology set forth in Appendix B and as set out below;
 - b) Benchmarking shall be carried out in accordance with the indicative timetable for the Benchmarking as set out in Appendix D.
 - c) the Benchmarker shall be jointly instructed by the Parties. The Benchmarker's fees and expenses shall be divided equally between the parties and invoiced separately to each party and paid equally by JVCO and AUTHORITY. Payments to the Benchmarker shall be made in stages linked to agreed deliverables or milestones against specific acceptance criteria. Unless otherwise agreed each Party will bear its own costs of complying with the obligations set out in this Schedule 28;

- d) Each Benchmarked Service, either individually or in combination with other Benchmarked Services, shall be Benchmarked against an appropriate set of Comparators which, are broadly comparative in terms of technology services and service levels.
- e) the Benchmarking shall apply Normalisation to the Benchmark Data to compare the Charges paid by the Authority for the Benchmarked Services by comparison to the Comparators' charges over the Benchmarked Period to measure JV Co's performance against the Benchmark Objective;
- f) Benchmarking shall be structured and undertaken in such a way so as to cause the minimum disruption possible;
- g) The data used by the Benchmarker in the Benchmark Process will be actual data (rather than budgetary);
- h) As regards comparisons of service levels as a normalisation criteria, the Benchmarker will be required to use Performance Levels profiles that have been contracted between AUTHORITY and JVCO. Neither AUTHORITY nor JVCO will be required to disclose to the Benchmarker actual performance against Service Levels, nor will the benchmark require for there to be actual performance comparisons.
- i) the Comparator data used during Benchmarking shall be as current as possible and, in any event, no more than twelve months old. In the event that such data is not available, older data may be used if the Benchmarker in his expert opinion considers it fair and reasonable to do so.
- j) Any correspondence between either of the Parties and the Benchmarker in accordance with this Schedule shall also be copied to the other Party at the same time.
- k) The Benchmarker shall share with the Parties in an even handed manner all Comparator data related to the Benchmarking and its results to the extent that it is lawfully able to do so.
- l) The Parties shall procure that the Benchmarker shall keep the Parties informed of the findings in as even handed a manner as reasonably practicable.
- m) The Parties shall make all reasonable endeavours to ensure that the information provided to the Benchmarker by the Parties is as accurate as possible and shall inform the Benchmarker as soon as practicable upon discovering any inaccuracy.
- n) AUTHORITY and JVCO agree to co-operate reasonably with the Benchmarker in the Benchmark Process activities. Any correspondence between either of the Parties and the Benchmarker in accordance with this Schedule shall also be copied to the other Party at the same time. The Benchmarker shall share with the Parties in an even handed manner all Comparator data related to the Benchmarking and its results to the extent that it is lawfully able to do so.
- o) The Benchmarker shall use its best professional judgement in conducting a fair and accurate Benchmark in accordance with the provisions of this Schedule 28.

7.0 Benchmark Results

- (a) The Benchmarker will provide the data, analysis, and findings, including any supporting documentation, to AUTHORITY and JVCO, as appropriate, throughout the Benchmark Process in paper form and, where requested by the Parties, presented at a workshop or meeting.
- (b) The Benchmarker shall allow the Parties a period of thirty (30) days after collation of the Benchmark Data, which shall be prior to the conclusion of the Benchmark Results to raise any concerns as to whether the Benchmarker has conformed to the Agreed Benchmark Methodology. The Benchmarker shall consider such concerns in good faith and make any appropriate adjustments to the Benchmark Results.
- (c) The Benchmark Results should be prepared promptly, but no later than 120 days from the commencement of the Benchmark Process, or as otherwise agreed between the Parties in writing.
- (d) The Benchmark Results shall include, without limitation, the details related to the specific measurement criteria for each of the Comparators.

The Benchmark Results shall be sufficiently detailed to enable JVCO, if required, to produce a comprehensive Benchmark Remedial Plan.

- (e) The method of calculation for any Normalisation utilised or any normalisation deemed by the Benchmarker as not being necessary shall be declared and suitably explained by the Benchmarker in the Benchmark Results. Such data shall not include data from other customers of JVCO.
- (f) The Benchmarker shall declare in the Benchmark Results the level of comparative accuracy of the Benchmark Results. For example, the extent to which any such Required Data is not available for the same period as the Benchmarked Period in relation to any Comparator should be identified.
- (g) The extent to which any Benchmarked Data is not available for the same period as the Benchmarked Period in relation to any Comparator should be stated in the Benchmark Results.

8.0 Benchmark Consequences

- 8.1 If the Benchmark Results indicate that the Core Services Charges are within 5 percent (5%) of the Benchmark Objective then no adjustment shall be made to the Core Services Charges.
- 8.2 If the Benchmark Results indicate that the Core Services Charges are greater than the Benchmark Objective by more than 5 percent (5%) then the JV Co shall reduce such Core Services Charges for the relevant Benchmarked Services by up to 5% such that the revised Core Services Charges are equal to or greater than 105% of the Benchmark Objective.

Worked Example:

- a) a Benchmark determines that Core Services Charges are 115% of Benchmark Objective: The JV Co reduces Core Services Charges to 110%. The Core Services Charges Delta is

then 10%. The JV Co then delivers a proposal detailing other measures to address the Core Services Charges Delta in accordance with 8.3.

- b) a Benchmark determines that Core Services Charges are 108% of the Benchmark Objective: The JV Co reduces Core Services Charges to 105%. The Core Services Charges Delta is then 5%. The JV Co then delivers a proposal detailing other measures to address the Core Services Charges Delta in accordance with 8.3.
- 8.3 JV Co shall address any difference between the findings for the Benchmark Data following Normalisation in the Benchmark Results and the actual Core Service Charge (which may have been reduced by up to 5% pursuant to paragraph 8.2) (the “**Core Services Charges Delta**”) and the following shall apply:
- 8.3.1 The JVCo shall, within thirty (30) days of delivery of the Benchmark Results, deliver to the Parties a written proposal to remove the Core Services Charges Delta focussing on reduction of the Core Services Charge and Unit Prices for Call-off Change, unless otherwise agreed by the parties (the “**Benchmark Remedial Proposal**”);
 - 8.3.2 The Authority shall respond to the JV Co within fourteen (14) days of receipt of such Benchmark Remedial Proposal and shall either (i) accept the Benchmark Remedial Proposal, and paragraph 8.3.4 shall apply, or (ii) reject the Benchmark Remedial Proposal, or enter into discussions with the JV Co to develop a mutually acceptable proposal, and paragraph 8.3.3 shall apply.
 - 8.3.3 If the Authority rejects the JV Co Benchmark Remedial Proposal or elects to enter into discussions with the JVCo and a mutually acceptable proposal cannot be agreed between the Parties within twenty-eight (28) days then the proposal shall be deemed to have been rejected and the provisions of 8.4 below shall apply.
 - 8.3.4 If a mutually acceptable proposal can be agreed, or should the Authority accept the JVCo’s original Benchmark Remedial Proposal in its entirety, then the changes outlined within the JVCo’s proposal shall apply with effect from the next Contract Month and the provisions of paragraph 8.4 shall not apply.
- 8.4 If the Parties fail to agree a mutually acceptable proposal then the Authority shall have the right:
- 8.4.1 to procure the relevant Benchmarked Services from third parties, including from any other contractors engaged by the Authority and the exclusivity provided in clause 4 shall end forthwith in relation to such services; and
 - 8.4.2 on three months written notice to JV Co to terminate the relevant Benchmarked Services or this Agreement. The Parties acknowledge and accept that an exercise of such right shall not be deemed to be an exercise of the Authority’s rights under clause 48.1 (Voluntary Termination) of this Agreement and, for the avoidance of doubt, Schedule 4 Part B paragraph 5.1 shall not apply. Notwithstanding this, the JV Co shall be entitled solely to claim an amount calculated on the basis of the principles applicable to AM set out in Schedule 4 Part B paragraph 5.1 in relation to the termination of such Benchmarked Service or (as the case may be) this Agreement in full and final settlement of all of the Authority’s liabilities in connection with such termination, subject to the principles set out in Schedule 4 Part B paragraph 5.1(a) to (d).

9.0 Dispute Resolution Process

Without prejudice to the process detailed at paragraphs 8.3 and 8.4, the AUTHORITY and JVCO will resolve any disagreement (including circumstances where one Party has not confirmed agreement when requested or required to do so) related to the Benchmark Process using the Dispute Resolution Process.

Appendix A

List of Benchmarkers

1. **Gartner**
2. **Compass**
3. **Maturity UK Ltd**

Appendix B Outline

Benchmark Methodology

1.0 Outline Method

Benchmarking may be undertaken following the methodology as outlined in this Appendix B. Benchmarking will cover each Service Line and the Services.

The terms of reference for the Benchmarking to be agreed with the Benchmarker as far as reasonably practicable within the Agreed Benchmarkers Scope of Work will be to determine whether or not each Benchmarked Service meets the Benchmark Objective and to identify those areas where they do or do not meet the Benchmarking Objective and should include at a minimum the following:

(A) Benchmarking will be undertaken considering, where appropriate in the opinion of the Benchmarker ("**Required Data**"):

- a) the differences in the nature, type, quantity and overall range of services received by the Comparators and those received by the AUTHORITY (including, but not limited to, size, investments, age of equipment, scope, service environment and nature of overall services, geographic scope of overall services, quality standards, technology, service levels and payment structure)
- b) the difference between the contractual terms (including the minimum committed duration of the contracts and payment structure);
- c) the price for the equivalent or similar services to the Benchmarked Services contracted (rather than budgetary or estimated) by the Comparator
- d) any constraints (including policies and procedures) and overheads imposed by AUTHORITY on the JV Co in the provision of the Services;
- e) periods of measurement, and overall value for the same period as the Benchmarked Period
- f) the efficiency of AUTHORITY's own internally provided services and those provided by its third party suppliers
- g) the issues identified in Section 3.0 and Section 6.0 of this Schedule;
- h) economies of scale reflecting AUTHORITY's requirements;
- i) the ability of Core Services Charges meeting the Benchmarking Objective to be sustained in meeting current and future capacity requirements;
- j) whether, in the opinion of the Benchmarker, as certified in writing where reasonably required, the Comparator's prices are considered to be commercially viable;
- k) the price provided for the Authority's Unit Prices for Call-off Changes;

- l) other relevant factors which, in the Benchmarker's professional opinion, influence the price of services

(B) A Benchmarking methodology which will substantially follow the details set out at paragraph 6.0 and include stages defined below:

- m) agree definitions
- n) define data structure, contents, requirements of the Benchmarking
- o) understand Agreement structure
- p) map data and identify data issues for expansion, change, comparison metrics
- q) identify and agree the selection criteria for Comparators
- r) set up and meet with the Benchmarker to review and agree the Agreed Benchmark Scope of Work including the bandwidths of tolerance for each of the selection criteria to ensure the highest level of comparative accuracy of the Comparators and agree specific requirements and data issues workaround
- s) Authority and JV Co to sign off the Agreed Benchmark Scope of Work.
- t) ongoing Requirements and necessary changes to the Agreed Benchmark Scope of Work (such changes to be agreed by the parties in writing)
- u) review Agreed Benchmark Scope of Work is current and up to date.
- v) obtain approval for any changes to the Agreed Benchmarking Scope of Work plan from both parties.
- w) obtain Benchmark Data
- x) create database extracts and supporting data
- y) generate comparisons to the Comparator data-
- z) validate data
- aa) agree adjustment / normalisation methods and characteristics including full open auditability of the adjustment calculations/algorithms
- bb) provide initial data information to AUTHORITY and JVCO for consideration/validation
- cc) correct data
- dd) generate final comparisons
- ee) define conclusions and recommendations
- ff) discuss issues and recommendations

- gg) produce an initial preliminary draft report in hardcopy form including presentation of such report to the Authority and JV Co
- hh) resolve issues raised by the Authority and JV Co
- ii) produce the Benchmark Results in hardcopy form to the Authority and JV Co
- jj) presentation of Benchmark Results to the Authority and JV Co.

(C) A Benchmark Process plan will be provided by the Benchmarker for agreement by the Parties; this will cover as a minimum the following aspects:

- (a) introduction
- (b) the evaluation process
- (c) agreed definitions
- (d) service mapping
- (e) mapping to the data structure
- (f) service functional models
- (g) service functional models - depreciation
- (h) functional model workaround

2.0 Validation and agreement of Benchmark Data and Results

The benchmark comparative database will be maintained by the Benchmarker and any data entered into it validated to ensure an acceptable level of integrity prior to its inclusion in the database.

Data will be subject to validation by the Benchmarker on receipt from JVCO and AUTHORITY.

On collation of all data relating to Benchmarking and prior to the conclusion of Benchmarking the Benchmark Data will be provided to both AUTHORITY and JVCO simultaneously. This shall enable the Parties to verify that this exercise has conformed to the agreed methodology and to raise any concerns, which shall be considered by the Benchmarker acting always in good faith. The period of time provided for this review will be 30 calendar days.

A period of 7 calendar days will be provided for JVCO and AUTHORITY to dispute the draft report following the Benchmarking.

If the JV Co or the Authority dispute the draft report, such party shall notify the Benchmarker and the other party detailing their concerns with the draft report. If the Benchmarker and the other party agrees with the relevant party's concerns it shall address those concerns in an updated draft report which shall be submitted to the parties. If the Benchmarker does not agree with the relevant party's concerns then the Benchmarker, discuss those concerns with both the Authority and the JV Co and the parties and the Benchmarker, acting reasonably and in good faith shall seek to resolve such concerns within 14 days of notification of the party's concerns. If there is still failure to agree the terms

of the draft Benchmark Results then the Dispute Resolution Process shall apply to determine the terms of the draft Benchmark Results.

3.0 Reports

The Benchmarker will provide reports as follows:

- a) a project plan with appropriate milestones for conducting the Benchmark;
- b) A project definition document which describes in detail the agreed methodology, data handling, comparator selection criteria, adjustment methods/calculations etc. and the required payment staging, project timescales, deliverables and acceptance criteria
- c) an extract of the initial data - provided for validation to both AUTHORITY and JVCO;
- d) report to illustrate the proposed comparators with each of the values for each selection criteria to be used.
- e) an initial hardcopy only report – this report identifies proposals for pricing and service levels and is provided to the Parties and includes profiles of comparative situations used;
- f) Benchmark Report – this report highlights recommendations for improvements (where appropriate) to each Benchmarked Service to meet the Benchmarking Objective, and provides a recommendation for changes including revised Performance Levels or technology.

Appendix C

Tripartite Confidentiality Agreement

Agreement for Exchange of Confidential Information

Our mutual objective under this Agreement is to provide protection for confidential information (Information) while maintaining our ability to conduct our respective business activities. Each of us agrees that the following terms apply when one of us (Discloser) discloses Information to the other Recipient) This Agreement applies only to the Confidential Information disclosed between the parties in connection with Benchmark performing a benchmark of the Service Contract between “CUSTOMER” and JVCo and shall not in respect of the Authority and JV Co impose any greater responsibilities on one of them than would have applied in respect of such information which is provided by the other than would have been the case under any other Agreement between the Customers.

1. Disclosure

Information will be disclosed either:

- (a) in writing;
- (b) by delivery of items;
- (c) by initiation of access to Information, such as may be in a data base; or
- (d) by oral or visual presentation.

Information should be marked with a restrictive legend of the Discloser. If Information is not marked with such legend or is disclosed orally, the Information will be identified as confidential at the time of disclosure.

2. Obligations

The Recipient agrees to:

- (a) use the same care and discretion to avoid disclosure, publication or dissemination of the Discloser’s Information as it uses with its own similar information that it does not wish to disclose, publish or disseminate; and
- (b) use the Discloser’s Information for the purpose for which it was disclosed or otherwise for the benefit of the Discloser.

The Recipient may disclose Information to:

- (c) its employees who have a need to know, and employees of any legal entity that it controls, controls it, or with which it is under common control, who have a need to know. Control means to own or control, directly or indirectly, over 50% of voting shares; and
- (d) any other party with the Discloser’s prior written consent.

Before disclosure to any of the above parties, the Recipient will have a written agreement with the party sufficient to require that party to treat Information in accordance with this Agreement.

The Recipient may disclose Information to the extent required by law. However, the Recipient will give the Discloser prompt notice to allow the Discloser a reasonable opportunity to obtain a protective order.

3. Confidentiality Period

Information disclosed under this Agreement will be subject to this Agreement for six years following the initial date of disclosure.

4. Exceptions to Obligations

The Recipient may disclose, publish, disseminate, and use Information that is:

- (a) already in its possession without obligation of confidentiality;
- (b) developed independently;
- (c) obtained from a source other than the Discloser without obligation of confidentiality;
- (d) publicly available when received, or subsequently becomes publicly available through no fault of the Recipient; or
- (e) disclosed by the Discloser to another without obligation of confidentiality.

The Recipient may disclose, publish, disseminate, and use the ideas, concepts, know-how and techniques, related to the Recipient's business activities, which are in the Discloser's Information and retained in the memories of Recipient's employees who have had access to the Information under this Agreement. Nothing in this paragraph gives the Recipient the right to disclose, publish, or disseminate:

- (f) the source of Information;
- (g) any financial, statistical or personnel data of the Discloser; or
- (h) the business plans of the Discloser.

5. Disclaimers

THE DISCLOSER PROVIDES INFORMATION WITHOUT WARRANTIES OF ANY KIND.

The Discloser will not be liable for any damages arising out of the use of Information disclosed under this Agreement.

Neither this Agreement nor any disclosure of Information made under it grants the Recipient any right or license under any trademark, copyright or patent now or subsequently owned or controlled by the Discloser.

6. General

This Agreement does not require either of us to disclose or to receive Information.

Neither of us may assign, or otherwise transfer, its rights or delegate its duties or obligations under this Agreement without prior written consent. Any attempt to do so is void.

The receipt of Information under this Agreement will not in any way limit the Recipient from:

- (a) providing to others products or services which may be competitive with products or services of the Discloser;
- (b) providing products or services to others who compete with the Discloser; or
- (c) assigning its employees in any way it may choose.

The Recipient will comply with all applicable export and import laws and regulations.

Only a written agreement signed by both of us can modify this Agreement.

Either of us may terminate this Agreement by providing one month's written notice to the other. Any terms of this Agreement that by their nature extend beyond its termination remain in effect until fulfilled, and apply to respective successors and assignees.

The parties consent to the application of the laws of England to govern, interpret, and enforce all of your and our rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles.

This Agreement is the complete and exclusive agreement regarding our disclosures of Information, and replaces any prior oral or written communications between us regarding these disclosures. By signing below for our respective enterprises, each of us agrees to the terms of this Agreement. Once signed, any reproduction of this Agreement made by reliable means (for example, photocopy or facsimile) is considered an original.

Agreed to:

“insert customer name”

Agreed to:

(JVCo)

By

Authorized Signature

Name (type or print):

By

Authorized Signature

Name (type or print):

Date:

Date:

Address:

JVCo address:

Agreed to:

“Benchmarkers”

By _____

Authorized Signature

Name (type or print):

Date:

Address:

Appendix D

Outline Benchmarking Timetable

Benchmarking Assessment Timetable

The benchmark will be undertaken in a three to four month period, unless agreed otherwise by the Parties, and an indicative timetable is provided below following agreement of a project definition document

JVCO Assessment Activity	Benchmarks	
Activity	Commence	Finalise
Project Start Up	Day 0	
Data Collection (includes any workshops etc)	Day 7	Day 40
Data provided to Benchmarker	Day 40	
Data Validation	Day 43	Day 63
Final Data Freeze	Day 66	
Comparison and Collation	Day 66	Day 80
Initial Report	Day 90	
Response to Initial Report	Day 100	
Final Report	Day 120	
Presentation		Day 120

	Benchmarks	
JVCO Follow up Activity	Commence	Finalise
Document an improvement plan	Day 0	Day 30
Discuss Improvement Plan with AUTHORITY	Day 30	
JVCO Improvement Plan to Authority	Day 30	
Commence Discussions on Benchmark Remedial Plan	Day 30	
Finalise Discussions on Benchmark Remedial Plan	Day 58	

Improvement in place	Next billing month or as agreed in plan	
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