

SCHEDULE 9

BENCHMARKING

1. Scope of Benchmarking

- 1.1 The Parties have agreed to submit all or part of the Services to a process of external Benchmarking via terms of reference agreed by both Parties in accordance with this Schedule. Any Benchmarking should take into account the totality of this Agreement (including duration and associated costs recovery and spread of costs over the various Services). The purpose of the Benchmarking is to determine whether some or all of the Services in question are being provided to Best Practice at a price to the AUTHORITY which is competitive in the marketplace and that provides value to the AUTHORITY.
- 1.2 The Parties agree that in order for the Parties to gain maximum benefit from any Benchmarking exercise it needs to be demonstrably fair, accurate, comprehensive within the scope of the Benchmarking exercise, comparative, consensual, and carried out in an independent and objective manner, and the Parties will work together with the Trusted Third Party to achieve these aims.
- 1.3 The AUTHORITY shall instruct the Trusted Third Party to carry out an analysis of the cost to deliver the Services against established key performance metrics in order to measure performance and by extension examine potential areas for continuous improvement.

2. Timing of Benchmarking

- 2.1 The AUTHORITY may exercise its right to undertake Benchmarking at any time that it reasonably sees fit avoiding sustained critical periods of Services activity. It is the intention of AUTHORITY to perform the first Benchmarking activity 12 months after the Commencement Date. Thereafter, Benchmarking will run every 12 months from TORD.
- 2.2 The AUTHORITY shall have the right to Benchmark all or any of the Services. The Benchmarked Services will be identified by the AUTHORITY in the written notice given by the AUTHORITY to the CONTRACTOR (the "Benchmarking Notice").

3. Cost of Benchmarking

- 3.1 The CONTRACTOR shall bear all of its own and any Subcontractor's costs incurred in connection with each Benchmarking. The AUTHORITY shall bear the cost of its own and the costs of its contractors (other than the CONTRACTOR and its Subcontractors) in connection with each Benchmarking. The Trusted Third Party's costs shall be borne equally between the Parties. Both Parties will keep the costs of the Trusted Third Party to a minimum.

4. Benchmarking Procedures

- 4.1 The Parties should use wherever possible existing data that is collected to monitor performance and charges so that it minimises the need for specialist data and prolonged use of the Trusted Third Party.

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- 4.2 The Parties shall each nominate a Benchmark Manager who shall be the person responsible on behalf of its respective Party for all matters arising in connection with the Benchmarking exercise. Unless otherwise agreed, the Benchmark Baseline shall be used to determine the initial reference point.
- 4.3 The Benchmarking exercise shall be performed by a Trusted Third Party.
- 4.4 The AUTHORITY and the CONTRACTOR shall agree a list of Trusted Third Parties within six (6) months of the Transfer of Responsibility Date. The AUTHORITY shall appoint one party from that list from time to time as the Trusted Third Party for the purpose of this Schedule, who shall not be a competitor of the CONTRACTOR. In the event any member of this list becomes a competitor of the CONTRACTOR then changes to the list shall be mutually agreed in writing.
- 4.5 The AUTHORITY shall use its reasonable endeavours to ensure that when engaging the Trusted Third Party the terms of this Schedule 9 (Benchmarking) shall form part of the terms of engagement of the Trusted Third Party.
- 4.6 The Trusted Third Party shall enter into a mutually acceptable confidentiality agreement with the Parties.
- 4.7 The Parties agree that they shall provide reasonable co-operation to the Trusted Third Party in a timely manner in preparation for and conduct of the Benchmarking exercise. The CONTRACTOR shall provide access to information related to the Charges paid or payable by the AUTHORITY to the Trusted Third Party on an Open Book basis as it applies to the Services and the scope of the Benchmark. This obligation shall not require the CONTRACTOR to provide financial information not comprised in the Open Book. On no account shall either party be obliged to divulge information to the other (as opposed to the Trusted Third Party) which it genuinely and reasonably believes shall damage its commercial interests in contracts and transactions not related to the Services or which is prohibited by confidentiality obligations. Where the AUTHORITY is charged for assets as a capital charge over the Term of the Agreement, the CONTRACTOR shall provide appropriate discount if the assets are used as a shared service and this information will be made available to the Trusted Third Party.
- 4.8 The first Benchmarking may be instituted by the AUTHORITY by giving the CONTRACTOR sixty (60) Working Days' written notice before the commencement of the first Benchmarking exercise. Subsequent Benchmarking exercises may be instituted by the AUTHORITY by giving sixty (60) Working Days' written notice to the CONTRACTOR before each subsequent Benchmarking exercise.
- 4.9 The Benchmarking Notice issued by the AUTHORITY shall include the following:
- (A) the identity of the Trusted Third Party who shall perform the Benchmarking exercise;
 - (B) proposed terms of reference. The terms of reference will include the proposed methodology;
 - (C) a proposed timetable for the Benchmarking exercise which should be no more than three (3) months from start to production of the Benchmarking Report;

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- (D) a description of the information that each party will be required to provide to the Trusted Third Party;
 - (E) the Benchmarked Services;
 - (F) details of any entities which have been selected by the AUTHORITY to form the comparison sample. This will comprise of the list of peers who perform all or part the Services involved in this Agreement; and
 - (G) the period of Service delivery to be covered by the Benchmarking exercise (the "Benchmark Period").
- 4.10 Subject to paragraph 4.9, the CONTRACTOR shall approve the contents of the Benchmarking Notice within ten (10) Working Days of receipt of the Benchmarking Notice or within such other timescale as may be agreed between the Parties. If the CONTRACTOR approves the contents of the Benchmarking Notice or if the Parties are able to agree changes to the Benchmarking Notice the Benchmarking Notice shall be sent to the Trusted Third Party with an instruction to commence the Benchmarking in accordance with the Benchmarking Notice.
- 4.11 If the CONTRACTOR does not approve the contents of the Benchmarking Notice within the ten (10) Working Day period or other agreed timescale, then the matter shall be referred to the Trusted Third Party to determine the contents of the Benchmarking Notice and the details and scope of the Benchmarking exercise.
- 4.12 The Parties may make representations to the Trusted Third Party during the five (5) Working Days immediately following referral of the Benchmarking Notice to the Trusted Third Party in accordance with paragraph 4.11. The Trusted Third Party's decision on the contents of the Benchmarking Notice and the details and scope of the Benchmarking exercise shall be final and binding on the Parties.
- 4.13 The Trusted Third Party shall make its decision known to the Parties no later than ten (10) Working Days after the referral of the Benchmarking Notice to the Trusted Third Party in accordance with paragraph 4.11.

5. Benchmarking Principles

- 5.1 The Parties agree that each Benchmarking exercise shall be carried out on the basis of the following principles:
- (A) the main objective of the Benchmarking exercise is to determine whether the Services and the Charges for the Services are and will remain competitive with equivalent services ("Equivalent Services") provided by other suppliers and the charges levied for such Equivalent Services and that the value and quality of the Services are of an appropriate industry standard;
 - (B) a comparison sample of not less than two (2) providers of Equivalent Services which are capable of quantitative and qualitative comparison in accordance with paragraph 5 of this Schedule 9 (Benchmarking). The comparison sample shall be used to create a value curve (relative price versus relative value);
 - (C) the Trusted Third Party shall take into consideration specific aspects which could affect the Benchmarking. These aspects shall be recorded in the Benchmarking

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terms of reference alongside the intended scope in paragraph 1 of this Schedule 9 (Benchmarking). These include but are not limited to:

- (1) listed items of assets, resource or equipment used by the CONTRACTOR to deliver the Services but not charged for;
- (2) any costs arising in connection with the Services, including the CONTRACTOR's financial modelling for such costs;
- (3) impact of the commercial structure of the Services;
- (4) the totality of the Agreement;
- (5) any other factors which the CONTRACTOR reasonably considers relevant;
- (6) any other factors which the AUTHORITY reasonably considers relevant; and
- (7) any other factors which the Trusted Third Party reasonably considers relevant.

(D) the Benchmarking exercise shall be undertaken by the Trusted Third Party in an independent and objective manner utilising their standard methodologies or, exceptionally, other methodologies as agreed between the Parties; and

(E) the Benchmarking exercise shall be conducted in such a way as to cause the minimum disruption possible to the activities of the AUTHORITY and the CONTRACTOR and shall not utilise an unreasonable amount of the AUTHORITY's or the CONTRACTOR's resource without the written consent of the relevant Party.

5.2 Except as may specifically be agreed by the Parties, the CONTRACTOR shall ensure that the supply of the Services (including compliance with the Service Levels and KPIs) shall not be affected by the undertaking of the Benchmarking exercise.

6. Benchmark Calculations

6.1 The Trusted Third Party shall, upon receiving and analysing all relevant information, calculate the Weighted Average Price over the Benchmark Period and create a value curve from the comparison sample.

6.2 The Trusted Third Party shall compare the Weighted Average Price over the Benchmark Period with the Benchmark Baseline and Charges attributable to the Benchmark Baseline. With reference to the value curve, the Trusted Third Party shall determine whether or not each of the Benchmarked Services and/or the Benchmarked Services as a whole, are Good Value in relation to the Charges.

6.3 The Trusted Third Party will carry out the Benchmarking in accordance with the Benchmarking Notice and the terms of this Schedule 9 (Benchmarking) and in particular the Benchmarking principles set out in paragraph 5 of this Schedule 9 (Benchmarking). The CONTRACTOR shall, to the extent that it is not precluded from doing so by confidentiality obligations owed to third parties, provide to the Trusted Third Party all such information as is described in the Benchmarking Notice as well as all such information as may be requested by the Trusted Third Party.

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6.4 In addition to paragraph 4.7, the CONTRACTOR shall co-operate fully with the Trusted Third Party including, without limitation to the generality of the foregoing, by granting access to records, data, technical documentation, premises, equipment, systems and personnel. This shall include information relating to the CONTRACTOR's use of the Premises for other customers subject to the CONTRACTOR's obligations of confidentiality with its other customers.

7. Benchmarking Report

7.1 The Trusted Third Party shall produce a Benchmarking Report in accordance with the timetable determined in accordance with the agreed Benchmarking Notice. The Benchmarking Report, which will be reviewed at each meeting of the enGage Board, shall include the following:

- (A) the Trusted Third Party's findings and trend analysis;
- (B) the Trusted Third Party's opinion as to whether each Benchmarked Service and the Benchmarked Services as a whole are Good Value;
- (C) the Trusted Third Party's opinion regarding the quality and competitiveness or otherwise of the Benchmarked Services; and
- (D) the Trusted Third Party's recommendation if any Benchmarked Service is not Good Value, or the Benchmarked Services as a whole are not Good Value, the changes that would be required to the Benchmarked Services, the Charges and/or the Services Levels that would be required to make that Benchmarked Service, or those Benchmarked Services, Good Value.

7.2 The Benchmarking Report will be made available to members of the Operations Board one (1) Working Day after the approval of the Benchmarking results by the AUTHORITY and the CONTRACTOR. The Operations Board will have an obligation to pass the Benchmarking Report on to other boards as required and as outlined in Schedule 13 (Governance & Reporting).

7.3 The Trusted Third Party shall involve the Benchmark Managers during the production of the Benchmarking Report and send a copy of the final Benchmarking Report to each of the Parties inviting a formal response to the Benchmarking Report.

7.4 The Intellectual Property Rights in the Benchmarking Report shall belong to and vest in the AUTHORITY.

7.5 The AUTHORITY shall retain the right to use the results of the Benchmarking exercise including the Benchmarking Report in any way which it chooses subject to the undertakings of confidentiality contained in this Agreement and other confidentiality obligations in the confidentiality agreement entered into with the Trusted Third Party in accordance with paragraph 4.6. The AUTHORITY will notify the CONTRACTOR if the results are to be used for any additional purpose and the AUTHORITY will be bound by the confidentiality arrangements in this Agreement.

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- 7.6 Within fifteen (15) Working Days of the Benchmarking Report the CONTRACTOR shall produce and issue to the AUTHORITY a draft Action Plan that will address the issues identified in the Benchmarking Report. The draft Action Plan will include a:
- (A) timetable of implementing improvements to the Service Levels;
 - (B) timetable of implementing improvements or additional services or the technology used to provide the Services;
 - (C) timetable of implementing any proposed changes in methods of working (leading to increased efficiencies);
 - (D) timetable for implementing any reduction in Charges; and/or
 - (E) any combination of the above.
- 7.7 The AUTHORITY has five (5) Working Days to accept and/or propose amendments to the draft Action Plan, and such amendments shall be incorporated into a revised Action Plan where the CONTRACTOR's draft Action Plan:
- (A) has any significant negative impacts on the AUTHORITY;
 - (B) sets out a timetable or timetables that could, in the AUTHORITY's reasonable belief be either faster or more cost effective with no significant impact on the CONTRACTOR;
 - (C) has no impact assessment on costs and Charges;
 - (D) is not comprehensive as a response to the Benchmarking Report; or
 - (E) would slow down or reverse the trend of positive continuous improvements in the delivering of the Services.
- 7.8 Any change resulting from the Action Plan shall be agreed as a Change under Change Control Procedure. For the avoidance of doubt, Benchmarking Reports shall not result in any increase to the Charges (either individually or in aggregate) or any decrease in the performance of any Services.
- 7.9 Notwithstanding paragraph 7.6 above, the CONTRACTOR will implement (within thirty (30) days) any reductions in the Charges recommended in the Benchmarking Report that relate to the CONTRACTOR utilising for any other customer Services for which the AUTHORITY has been charged on an investment basis or which was originally provided as a service solely for the AUTHORITY.
- 7.10 Subject to paragraph 7.11, any reductions in the Charges shall be calculated by using an agreed formula and with the agreement of both Parties. Using this formula a calculation of the revised payments due in the future from the AUTHORITY will be agreed and implemented.

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- 7.11 Any reductions in the Charges in respect of Hosting Services shall be calculated by using the following formula:
- (A) Ongoing services that were originally provided for the sole use of the AUTHORITY shall be apportioned from the date that the Hosting Services commenced being shared in proportion to the use made by each customer.
 - (B) Charges relating to shared investment shall be apportioned on the following basis: total sharing of investment allocated x number of Invoice Periods elapsed (nearest whole Invoice Period).
 - (1) Where the total sharing of investment allocated is determined for each element within the Hosting Services that applies. This is calculated as follows:
 - (a) Step 1: Identify the elements within the Hosting Services which apply;
 - (b) Step 2: Identify the number of actual additional customers;
 - (c) Step 3: Establish the amount to be calculated by absorbing the relevant proportion of the CONTRACTOR Cost of Financing across each of the elements identified in Step 1 as appropriate. The Trusted Third Party will need to consider whether other elements that make up the Hosting Set-Up Charge that are overheads, for example, corporate contributions, should be absorbed so as not to distort the purpose of this paragraph 7.11;
 - (d) Step 4: For each element divide the amount calculated at Step 3 by the number of Invoice Periods for the provision of the Hosting Services to the AUTHORITY;
 - (e) Step 5: For each element divide the amount calculated at Step 4 by the number identified at Step 2 (plus one to represent the AUTHORITY);
 - (f) Step 6: For each new customer identify which element forms part of its Hosting Service;
 - (2) Using this formula there will be:
 - (a) Step 7: A calculation of payments due to the AUTHORITY for the period between the contracted date of commencement of the Hosting Services with the new customer and the date of the Benchmarking Report. This is payable by reducing the Charges in the next available period(s); and
 - (b) Step 8: A calculation of payments due to the AUTHORITY for the period between the date of the Benchmarking Report and the contracted date for the end of the Hosting Services provided to the new customer or the contracted date for the end of the Hosting Services provided to the AUTHORITY (whichever is the earlier). This is deducted from the remaining contract period on either an Invoice Period or annual basis, whichever is appropriate.

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(C) An illustrative example is provided at Schedule 9, Annex A and is also on CD-Rom available from the CONTRACTOR.

7.12 The CONTRACTOR shall only be entitled to dispute a Benchmarking Report if it notifies the AUTHORITY and the Trusted Third Party of its objections within five (5) Working Days of receipt of the Benchmarking Report. The CONTRACTOR may only dispute the Benchmarking Report if it reasonably considers that the Trusted Third Party has made a manifest error. If the CONTRACTOR does dispute any Benchmarking Report in accordance with this paragraph 7.12 the matter shall be dealt with in accordance with the Dispute Resolution Procedure.

8. Market Testing

8.1 The Parties have agreed to submit all or part of the Services to a process of external Market Testing. The objective of the Market Testing is to determine whether some or all of the Services in question are being provided to Best Practice, at a price to AUTHORITY which is competitive in the marketplace and that provides value to the AUTHORITY. The AUTHORITY may exercise its right to conduct Market Testing at any time. The scope will be agreed between Parties and will include but is not limited to:

(A) commercial rate cards; and

(B) selected third party services.

8.2 Where data is held as part of Open Book the CONTRACTOR shall provide the information freely. Where the data is held by the CONTRACTOR, the CONTRACTOR shall not unreasonably withhold the data unless bound by confidentiality arrangements. If a task of data-mining is required then the CONTRACTOR is obliged to carry out an impact assessment and provide the AUTHORITY with a plan incorporating a timeline and resource plan in order to provide the data.

8.3 The AUTHORITY shall bear all costs in connection with Market Testing which for the avoidance of doubt will include the CONTRACTOR's costs that are in addition to provision of the Services.