

SCHEDULE 25
SERVICE CREDITS AND LIQUIDATED DAMAGES
(Clause 10.3)

SCHEDULE 25**SERVICE CREDITS AND LIQUIDATED DAMAGES****1. GENERAL PROVISIONS**

- 1.1 In the event of a failure to achieve any Service Level as specified in Schedule 5 by the CONTRACTOR, Service Credits shall be assigned and applied to the CONTRACTOR as prescribed in this Schedule.
- 1.2 For the avoidance of doubt, Service Credits will not be assigned or applied where the failure to achieve any Service Level is caused directly as a result of a Default by the AUTHORITY or as a result of Force Majeure as defined in Clause 10.12.
- 1.3 Liquidated Damages may be applied in accordance with paragraph 5 for any delay in achieving the Planned Cutover Date.
- 1.4 The CONTRACTOR shall monitor the performance of its obligations under this Agreement, and shall provide the AUTHORITY with Management Information required in accordance with Schedule 16 in order for the AUTHORITY to determine the level of Service Credits assignable.
- 1.5 For the avoidance of doubt, all Service Credits assigned to the CONTRACTOR in accordance with this Schedule 25 shall be aggregated towards the termination thresholds set out in Paragraph 4 below.
- 1.6 In the event of a dispute arising between the AUTHORITY and the CONTRACTOR over any matter relating to Service Credits under this Schedule 25, such dispute shall be dealt with in accordance with the Alternative Dispute Resolution procedure set out in Clause 10.14.
- 1.7 The AUTHORITY reserves the right to review the performance of the CONTRACTOR where the Scrutiny to Examination rate or other medical process outcomes deviate from the expected range.
- 1.8 Subject to Paragraph 4 of this Schedule 25, the Service Credits specified in this Schedule 25 shall be the AUTHORITY's sole financial remedy for the CONTRACTOR's failure to achieve any Service Level to which one or more Service Credits are stated to be applicable in Appendix 1 of this Schedule 25. Nothing in the foregoing shall be taken to limit the non-financial remedies for such Defaults or the financial remedies available to the AUTHORITY for other Defaults, whether under this Agreement or otherwise at law or in equity.
- 1.9 In the event that new Service Levels are introduced, the AUTHORITY and the CONTRACTOR shall agree the Service Credits which will apply for failures to meet such Service Levels.

2. SERVICE LEVEL DEFAULT

- 2.1 The Service Credits shall be applied for failure to meet the Service Levels during the Service Measurement Periods specified in Appendix 1 to this Schedule 25.
- 2.2 For the avoidance of doubt, where applicable, Service Credits shall apply for each and every Working Day of failure.
- 2.3 Where the Service Level is stated in Appendix 1 with reference to Average Actual Clearance Time (AACT), the Service Credit shall be calculated as follows:

Service Credit equals 'In Month Excess Clearance Days' multiplied by the service credit per day stated in Appendix 1 where:

'In Month Excess Clearance Days' equals the cumulative number of working days to clear the Referrals cleared in the month less the 'Target In Month Clearance Days'. The In Month Excess Clearance Days' shall not be less than zero;

and

'Target In Month Clearance Days' equals the target AACT stated in Appendix 1 for that service level multiplied by the number of Clearances in the month.

2.4 Where the Service Level is stated in Appendix 1 with reference to Average Actual Clearance Time (AACT), Service Credits will only be applied for a failure by the CONTRACTOR to meet the Service Level both "in month" and over the rolling 12-month measurement period.

2.5 Where the Service Level is stated in Appendix 1 with reference to Old Cases, the Service Credit shall be calculated as follows:

Service Credit equals Excess Old Cases multiplied by the service credit per case stated in Appendix 1 where:

Excess Old Cases equals the number of Old Cases which exceed the maximum age stated in Appendix 1 less the target number of Old Cases which exceed the maximum age stated in Appendix 1.

2.6 Where the Service Level is stated in Appendix 1 with reference to percentages, calculations shall be calculated, and rounded, to the nearest 0.1%.

2.7 The maximum value of Service Credits which shall be applied to the CONTRACTOR in any single Month for each Service Level shall be subject to an overall maximum which shall not exceed thirty percent (30%) of the Variable Charges for that Service Level for that Month.

3. ANNUAL REVIEW

3.1 The unit value of the Service Credits shall be subject to annual review as detailed in Schedule 12. The upper limit set out in Paragraph 2.7 of this Schedule 25 and the termination thresholds set out in Paragraph 4 of this Schedule 25 shall also be subject to annual review pursuant to Clause 6.1.4.

3.2 In the absence of any other agreement under Paragraph 3.1, the unit value of the Service Credits shall be automatically adjusted annually in accordance with the Average Earnings Index for all Employees within Service Industries, adjusted by minus four percent (-4%).

4. SERVICE LEVEL TERMINATION THRESHOLDS

4.1 **Redacted: This section has been removed as it is exempt under Section 43 of the Freedom of Information Act 2000, due to the information being commercially sensitive.**

4.2 **Redacted: This section has been removed as it is exempt under Section 43 of the Freedom of Information Act 2000, due to the information being commercially sensitive.**

:

4.2.1 **Redacted: This section has been removed as it is exempt under Section 43 of the Freedom of Information Act 2000, due to the information being commercially sensitive.**;

4.2.2 **Redacted: This section has been removed as it is exempt under Section 43 of the Freedom of Information Act 2000, due to the information being commercially sensitive.**

4.2.3 **Redacted: This section has been removed as it is exempt under Section 43 of the Freedom of Information Act 2000, due to the information being commercially sensitive.**

- 4.2.4 **Redacted: This section has been removed as it is exempt under Section 43 of the Freedom of Information Act 2000, due to the information being commercially sensitive.**
- 4.2.5 **Redacted: This section has been removed as it is exempt under Section 43 of the Freedom of Information Act 2000, due to the information being commercially sensitive.**
- 4.2.6 **Redacted: This section has been removed as it is exempt under Section 43 of the Freedom of Information Act 2000, due to the information being commercially sensitive.**
- 4.2.7 **Redacted: This section has been removed as it is exempt under Section 43 of the Freedom of Information Act 2000, due to the information being commercially sensitive.**
- 4.2.8 **Redacted: This section has been removed as it is exempt under Section 43 of the Freedom of Information Act 2000, due to the information being commercially sensitive.**
- 4.2.9 **Redacted: This section has been removed as it is exempt under Section 43 of the Freedom of Information Act 2000, due to the information being commercially sensitive..**
- 4.2.10 **Redacted: This section has been removed as it is exempt under Section 43 of the Freedom of Information Act 2000, due to the information being commercially sensitive.**
- 4.2.11 **Redacted: This section has been removed as it is exempt under Section 43 of the Freedom of Information Act 2000, due to the information being commercially sensitive.**
- 4.2.12 **Redacted: This section has been removed as it is exempt under Section 43 of the Freedom of Information Act 2000, due to the information being commercially sensitive.**
- 4.2.13 **This section is redacted as it is exempt under Section 43 of the Freedom of Information Act 2000, due to the information being commercially sensitive.**

the AUTHORITY shall have the right, exercisable pursuant to Clause 11.4.5 to terminate the Agreement or any part of the Services relating to such Service Level in addition to all other rights and remedies available to it, whether under this Agreement or at law and in equity, in respect of any Default giving rise to such Service Credits. Where such circumstances occur, Paragraph 1.8 of this Schedule 25 shall cease to apply in relation to such Default, whether or not the AUTHORITY elects to exercise its right of termination.

- 4.3 For the avoidance of doubt, Service Levels will be measured at individual Locations and Service Credits shall be applied at each Measurement Level.
- 4.4 The rights of termination specified in Paragraph 4 of this Schedule 25 shall be the AUTHORITY's sole rights of termination for the CONTRACTOR'S failure to achieve any Service Level to which one or more Service Credits are stated to be applicable in accordance with Appendix 1 of this Schedule 25.
- 4.5 Additional Service Credits shall be applied to any wilful or negligent failure to report any Defaults, which shall be equal to the maximum number of Service Credits applying to the unreported Default. For the avoidance of doubt both sets of Service Credits shall be payable for such failure to report a Default.

5. LIQUIDATED DAMAGES

5.1 Redacted: This section has been removed as it is exempt under Section 43 of the Freedom of Information Act 2000, due to the information being commercially sensitive.

5.2 Redacted: This section has been removed as it is exempt under Section 43 of the Freedom of Information Act 2000, due to the information being commercially sensitive.

6. **SERVICE CREDIT RECOVERY With Effect from 1st September 2009**

6.1 **Redacted: This section has been removed as it is exempt under Section 43 of the Freedom of Information Act 2000, due to the information being commercially sensitive.**

7. **SERVICE CREDIT RELIEF**

7.1 Service Credits which would otherwise be applied by the AUTHORITY shall not be applied in the two (2) Months following the Cutover Date. For the avoidance of doubt any failure to meet the Service Levels in the two (2) Months following the Cutover Date shall still be measured in accordance with the provisions of Schedule 5.

7.2 If the actual volume of IB Referrals received by the CONTRACTOR exceed the Predicted Volumes, as shown in Appendix 4 of Schedule 12, by twenty per cent (20%), or more, in the first Month of any 3 (three) Month rolling period, with the result that aggregated volumes for that 3 (three) Month period are also in excess of Predicted Volumes by twenty per cent (20%) or more, the CONTRACTOR may request that the AUTHORITY waive its right to claim Service Credits in accordance with this Schedule 25 in respect of any Service Levels which the CONTRACTOR fails to meet for that Service Measurement Period, provided that the CONTRACTOR has used reasonable endeavours to achieve those Service Levels and such failure is directly attributable to the increase in volume.

APPENDIX 1

Redacted: This section has been removed as it is exempt under Section 43 of the Freedom of Information Act 2000, due to the information being commercially sensitive.