

## Appendix A

### 37.4 Year 4 and Year 7 Reviews

#### Year 4 Review

37.4.1 Following the Benchmarking Exercise in Clause 38 undertaken on the fourth anniversary of the commencement of the Agreement, the Authority shall conduct a full review of the Services and the performance of the Service Provider in fulfilling its obligations under this Agreement and in accordance with paragraph 32.4 (Schedule of Rates) of Schedule 4 (Payment Mechanism) in order to identify any improvements or savings the Authority may wish to implement in respect of the Services (Year 4 Outcome Review). If a Benchmarking Exercise has not been carried out within three months of the fourth anniversary of the commencement of the Agreement then the Authority may conduct the Year 4 Review independently of any Benchmarking Exercise.

37.4.2 The parties agree that the Year 4 Outcome Review shall be carried out in good faith and each party shall act reasonably in relation to any such Year 4 Outcome Review.

37.4.3 The Year 4 Outcome Review shall be carried out by the Authority at its own cost.

37.4.4 If the Authority requires any changes to be implemented it will notify the Service Provider in writing, setting out the improvements to the Services or reduction to the Periodic Service Payment sought.

37.4.5 The Service Provider shall provide the Authority within fifteen (15) Business Days of receipt of such notice from the Authority (or as otherwise agreed between the parties in writing) an outline proposal setting out the Authority's options in order to achieve the improvements to the Services or alteration to the Periodic Service Payment required by the Authority and the estimated costs for each option (the Year 4 Options Proposal).

37.4.6 The Year 4 Options Proposal shall include:

- (a) a comprehensive range of options which directly address the different aspects of the Services identified for improvement in the Year 4 Outcome Review;
- (b) in relation to each option, the reasonable professional opinion of the Service Provider as to the impact of such option on the provision of the Services and whether such option is feasible in the context of the Public Contracts Regulations 2006 (as updated); and
- (c) information within each option as to the steps that the Service Provider shall take to ensure that the overall level of Guaranteed Income payable to the Authority is maximised.

37.4.7 No later than thirty (30) Business Days after the Authority receives the Year 4 Options Proposal, the Authority shall notify the Service Provider as to the Authority's preferred option and the Service Provider shall within twenty (20) Business Days (or such other longer period as agreed to between the parties) provide a detailed proposal for that option which shall include:

- (a) all the information required as part of a Full Business Case submitted pursuant to Schedule 15 (Special Projects Approval Procedure) and the relevant provisions of Schedule 15 shall apply as if references to Special Project were to the Year 4 Detailed Proposal;

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- (b) the Change in Costs and Change in Revenue;
  - (c) any amendments required to this Agreement (including without limitation the Output Specifications), and
  - (d) any Consents or regulatory approvals that may be required
- (the Year 4 Detailed Proposal).

37.4.8 As soon as practicable after the Authority receives the Year 4 Detailed Proposal:

- (a) the Service Provider shall provide the Authority with all additional information it requires in order to verify the Year 4 Detailed Proposal,
- (b) the Authority shall advise the Service Provider whether it proposes that the Year 4 Detailed Proposal be addressed pursuant to the Change Protocol;
- (c) the Authority shall advise the Service Provider whether the Authority elects to exercise any of its further rights under the Agreement; and/or
- (d) the parties shall discuss and agree the issues set out in Year 4 Detailed Proposal.

37.4.9 After a Year 4 Detailed Proposal has been agreed or otherwise determined the Authority and the Service Provider shall promptly seek to agree how any consequential changes should be documented to ensure that they are legally binding on both parties (and in the absence of agreement the form of such documentation shall be determined in accordance with the Dispute Resolution Procedure) and thereafter the parties shall promptly sign or execute (as appropriate) such documentation (Year 4 Implementation Plan).

37.4.10 Within twenty (20) Business Days of the fifth (5th) anniversary of the Service Transfer Date, the Service Provider shall provide a report to the Authority detailing whether it has met the targets in the Year 4 Implementation Plan insofar as they were set for the preceding year and confirmation of whether on-going targets have been or will be met.

### 37.4.11 Year 7 Review

Following the Benchmarking Exercise in Clause 38 undertaken on the seventh anniversary of the commencement of the Agreement, the Authority may conduct a review in accordance with paragraph 32.4 (Schedule of Rates) of Schedule 4 (Payment Mechanism) and to identify any improvements or savings the Authority may reasonably wish to implement in respect of the Services following such review (Year 7 Review) and the Service Provider shall cooperate with such review and clauses 37.4.12 - 37.4.20 shall apply. If a Benchmarking Exercise has not been carried out within three months of the seventh anniversary of the commencement of the Agreement then the Authority may conduct the Year 7 Review independently of any Benchmarking Exercise.

37.4.12 The parties agree that the Year 7 Review shall be carried out in good faith and each party shall act reasonably in relation to any such Year 7 Review.

37.4.13 The Year 7 Review shall be carried out by the Authority at its own cost.

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37.4.14 If the Authority requires any changes to be implemented it will notify the Service Provider in writing, setting out the improvements to the Services or alteration to Periodic Service Payment sought.

37.4.15 The Service Provider shall provide the Authority within fifteen (15) Business Days of receipt of such notice from the Authority an outline proposal setting out the Authority's options in order to achieve the improvements to the Services or alteration to the Periodic Service Payment required by the Authority and the estimated costs for each option (the Year 7 Options Proposal).

37.4.16 The Year 7 Options Proposal shall include:

- (a) a comprehensive range of options which directly address the different aspects of the Services identified for improvement in the Year 7 Review;
- (b) in relation to each option, the reasonable professional opinion of the Service Provider as to the impact of such option on the provision of the Services and whether such option is feasible in the context of the Public Contracts Regulations 2006 (as updated); and
- (c) information within each option as to the steps that the Service Provider shall take to ensure that the overall level of Guaranteed Income payable to the Authority is maximised.

37.4.17 No later than thirty (30) Business Days after the Authority receives the Year 7 Options Proposal, the Authority shall notify the Service Provider as to the Authority's preferred option and the Service Provider shall within twenty (20) Business Days (or such other longer period as agreed between the parties) provide a detailed proposal for that option which shall include:

- (a) all information required as part of a Full Business Case submitted pursuant to Schedule 15 (Special Projects Approval Procedure) and the relevant provisions of Schedule 15 shall apply as if references to Special Project were to Year 7 Detailed Proposal;
- (b) the Change in Costs and Change in Revenue;
- (c) any amendments required to this Agreement (including without limitation the Output Specifications); and
- (d) any Consents or regulatory approvals that may be required,  
(the Year 7 Detailed Proposal).

37.4.18 As soon as practicable after the Authority receives the Year 7 Detailed Proposal:

- (a) the Service Provider shall provide the Authority with all additional information it requires in order to verify the Year 7 Detailed Proposal,
- (b) the Authority shall advise the Service Provider whether it proposes that the Year 7 Detailed Proposal be addressed pursuant to the Change Protocol;
- (c) the Authority shall advise the Service Provider whether the Authority elects to exercise any of its further rights under the Agreement; and/or

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(d) the parties shall discuss and agree the issues set out in Year 7 Detailed Proposal.

37.4.19 After a Year 7 Detailed Proposal has been agreed or otherwise determined the Authority and the Service Provider shall promptly seek to agree how any consequential changes should be documented to ensure that they are legally binding on both parties (and in the absence of agreement the form of such documentation shall be determined in accordance with the Dispute Resolution Procedure) and thereafter the parties shall promptly sign or execute (as appropriate) such documentation (Year 7 Implementation Plan).

37.4.20 Within twelve (12) months of the execution of the Year 7 Implementation Plan, the Service Provider shall provide a report to the Authority detailing whether it has met the targets in the Year 7 Implementation Plan insofar as they were set for the preceding year and confirmation of whether on-going targets have been or will be met. The Authority may take account of such report when deciding whether to extend the Service Period under clause 2.3 (Commencement and Duration).

37.4.21 Nothing in this clause 37.4 shall fetter the Authority's decision (in its sole discretion) as to whether to seek an extension of the Service Period under clause 2.3 of this Agreement.