

Schedule 11

Best Value and Continuing Value for Money

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1 Definitions

In each part of this Schedule 11 the following expressions (in addition to those specified in Schedule 1 (Definitions, Interpretation and Construction)) shall, save where the context or the express provisions of this Contract otherwise requires or admits, have the following meanings:

1999 Act means the Local Government Act 1999 (and any amendments thereto)

Annual Service Plan shall have the meaning given to it in paragraph 3.2 of this Schedule 11

Annual Service Report shall have the meaning given to it in paragraph [♦] of the Output Specification

Best Value Assistance and Reporting Method Statement means [♦]

Best Value Duty means the duty imposed on the Authority by Section 3 of the Act in relation to, inter alia, the Service

Best Value Improvement Plans means the plan referred to in paragraph [♦] of the Output Specification

Best Value Inspector means an officer, agent or employee of the Audit Commission or other Relevant Authority empowered to inspect the Authority's compliance with Part 1 of the 1999 Act and **Best Value Inspection** shall be interpreted accordingly

Best Value Performance Indicators means the Best Value Performance Indicators, Audit Commission Performance Indicators and Local Performance Indicators for the Service as specified in paragraph [♦] of the Output Specification

Best Value Performance Plans means the best value performance plans that are required to be published by the Authority in accordance with Section 6 of the 1999 Act

Best Value Review means the review that is required to be conducted by the Local Authority in accordance with Section 5 of the 1999 Act

Best Value Review Date means the [insert date] and each [fifth] anniversary thereof during the Contract Period [or such other date or dates for a Best Value Review as the Authority may specify in a Best Value Performance Plan]

Best Value Review Plan shall have the meaning given to it in paragraph 4.6 of this Schedule 11

Best Value Service Change Notice shall have the meaning given in paragraph 3.1 of this Schedule 11

Comprehensive Performance Assessment means any comprehensive performance review of the Authority's services (including the Services) undertaken by the Audit Commission or any Relevant Authority pursuant to Section 99 of the Local Government Act 2003 or otherwise

Customer Satisfaction Survey shall have the meaning given to it in the Output Specification

2 Authority's Best Value Duty

2.1 The Service Provider acknowledges that:

- (a) the Authority is subject to the Best Value Duty;
- (b) the provisions of this paragraph 2 are intended to assist the Authority in discharging its Best Value Duty in relation to the Service; and
- (c) the provisions of this paragraph 2 shall apply in respect of the obligations of the Service Provider and the Authority concerning the Best Value Duty and the 1999 Act generally.

2.2 The Service Provider shall, throughout the Contract Period, but only to the extent of its obligations under this Contract, make arrangements to secure continuous improvement in the way in which the Service is provided, having regard to a combination of economy, efficiency and effectiveness.

2.3 The Service Provider shall undertake, or refrain from undertaking, such actions as the Authority shall reasonably request to enable the Authority to comply with Part 1 of the 1999 Act, including:

- (a) supporting and assisting the Authority in preparing Best Value Performance Plans and conducting Best Value Reviews in relation to the Service;
- (b) complying with requests for information, data or other assistance made by the Authority in pursuance of its Best Value Duty including to:
 - (i) enable the Authority to prepare a Best Value Performance Plan;
 - (ii) enable the Authority to conduct a Best Value Review;
 - (iii) facilitate the audit of the Authority's Best Value Performance Plan by the Authority's auditor pursuant to Section 7 of the 1999 Act as amended by the Local Government (Best Value)

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- Performance Plans and Reviews Amendment and Specified Dates Order 2002;
- (iv) facilitate the Authority preparing any statement, in response to an Authority auditor's report, pursuant to Section 9 of the 1999 Act;
 - (v) facilitate any inspection undertaken by any Relevant Authority in connection with the Best Value Duty in respect of the Service, including any inspection undertaken with a view to verifying the Authority's compliance with its Best Value Duty pursuant to Sections 10 and 11 of the 1999 Act;
 - (vi) assist the Authority in relation to any action taken by the Secretary of State under Section 15 of the 1999 Act;
 - (vii) enable the Authority to comply with any direction given by the Department of Transport;
 - (viii) enable the Authority to report on the Best Value Performance Indicators;
 - (ix) assist the Authority in the Comprehensive Performance Assessment; and
 - (x) enable the Authority to comply with the Publication of Information Direction 2000 (England and Wales);
- (c) complying with all requests by the Authority to procure the attendance of specific officers or employees of the Service Provider or any Sub-Contractor or other sub-contractor at any meetings of the Authority at which the Service is to be discussed (but not, otherwise than in exceptional circumstances, more than [*insert number*]¹ in any one (1) year);
 - (d) co-operating in audits and other Best Value Inspections;
 - (e) permitting any Best Value Inspector, in connection with the exercise of his statutory powers and duties, at all reasonable times and upon reasonable notice, access to:
 - (i) the Apparatus and areas connected to the Service;
 - (ii) any document or data relating to the Service; and
 - (iii) any Personnel.

¹ Authority to consider appropriate number.

3 Annual Service Report and Annual Service Plan²

- 3.1 If, in the Authority's reasonable opinion, the provision, performance or delivery of the Service (or any part of the Service) may be more effective, efficient and economic having regard to the Annual Service Report, and the Best Value Duty, then the Authority may serve a written notice upon the Service Provider (a **Best Value Service Change Notice**) stating the nature and timing of the changes to the provision, performance or delivery of the Service (or the relevant part of the Service) which the Authority desires.
- 3.2 The Service Provider shall, within [twenty (20)] Business Days of the date of receipt of a Best Value Service Change Notice, provide the Authority, at its own cost, with a written statement (the **Annual Service Plan**) containing the Service Provider's proposals to achieve the change to the Service (or the relevant part) in accordance with the Best Value Service Change Notice.
- 3.3 As soon as practicable after the Authority receives the Annual Service Plan, the parties shall discuss and agree the issues set out in the Annual Service Plan. In such discussions the Authority may modify the Best Value Service Change Notice, in which case the Service Provider shall, as soon as practicable and in any event not more than twenty (20) Business Days after the receipt of such modification, notify the Authority of any consequential changes to the Annual Service Plan.
- 3.4 If the parties cannot agree on the contents of the Annual Service Plan then the dispute shall be determined in accordance with the Dispute Resolution Procedure.
- 3.5 As soon as practicable after the content of the Annual Service Plan has been agreed or otherwise determined pursuant to the Dispute Resolution Procedure the Authority shall:
- (a) confirm in writing the Annual Service Plan; or
 - (b) withdraw the Best Value Service Change Notice.
- 3.6 If the Authority either withdraws the Best Value Change Notice or does not confirm the Annual Service Plan within [twenty (20)] Business Days of the Annual Service Plan having been agreed or determined pursuant to the Dispute Resolution Procedure then the Annual Service Plan and the Best Value Service Change Notice shall be deemed to have been withdrawn.
- 3.7 If the Authority confirms the Annual Service Plan, then the Authority shall submit an Authority Change Notice (which shall contain the information set out in the Best Value Service Change Notice and Annual Service Plan) and, [subject to paragraph 3.8] the provisions of the Change Protocol shall apply.

² No drafting regarding customer satisfaction surveys is included. Authorities should include the latest SoPC4 wording and also insert provisions for a remediation plan. See SoPC4 section 7.9.5, and by way of example, the Building Schools for the Future payment mechanism at paragraph 17.1.

- 3.8 Notwithstanding any provision to the contrary in the Change Protocol:
- (a) to the extent that the implementation of the Authority Change referred to in paragraph 3.7 shall result in a decrease in the costs of the Service Provider, the Unitary Charge shall be revised downwards by [♦] per cent (♦%)³ of the decrease in costs of the Service Provider;
 - (b) to the extent that the implementation of the Authority Change referred to in paragraph 3.7 would result in an increase in the costs of the Service Provider, the Unitary Charge shall be revised upwards in accordance with provisions of Schedule 14 (Revision of Base Case and Custody).]⁴
- 3.9 The Service Provider shall take all reasonable steps to mitigate any costs and maximise any savings arising as a consequence of a Best Value Service Change Notice, and for the avoidance of doubt, the corresponding Authority Change Notice served pursuant to clause 3.7.]

4 Best Value Reviews

- 4.1 On or before each Best Value Review Date the Authority may instigate a Best Value Review in relation to the Service and thereafter the following provisions of this paragraph 4 shall apply.
- 4.2 The parties agree that any Best Value Review shall be carried out in accordance with the applicable Legislation.
- 4.3 The Authority shall carry out the Best Value Review at its own cost.
- 4.4 In carrying out the Best Value Review, the Authority may take into account the results of any:
- (a) Annual Service Reports; and/or
 - (b) Customer Satisfaction Survey,
- and shall consult with the Service Provider on any proposals to change the Service to enable the Authority to comply with its Best Value Duty.
- 4.5 If, in the Authority's reasonable opinion, the results of the Best Value Review or Comprehensive Performance Assessment disclose that the provision, performance or delivery of the Service (or any part of the Service) may be more efficient, effective or economic having regard to the Best Value Duty then the Authority may serve a Best Value Service Change Notice on the Service Provider stating the nature and timing of the changes to the provision, performance or delivery of the Service (or the relevant part of the Service) which the Authority desires.

³ Bid back item.

⁴ The clauses in square brackets will need to be conformed to the Change Protocol.

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- 4.6 The Service Provider shall, within [twenty (20)] Business Days of the date of receipt of a Best Value Service Change Notice, at its own cost provide the Authority with a written statement (the **Best Value Review Plan**) containing the Service Provider’s proposals to achieve the change to the Service (or the relevant part) in accordance with the Best Value Service Change Notice.
- 4.7 As soon as practicable after the Authority receives the Best Value Review Plan the parties shall discuss and agree the issues set out in the Best Value Review Plan. In such discussions the Authority may modify the Best Value Service Change Notice, in which case the Service Provider shall, as soon as practicable, and in any event not more than [twenty (20)] Business Days after the receipt of such modification, notify the Authority of any consequential changes to Best Value Review Plan.
- 4.8 If the parties cannot agree on the contents of the Best Value Review Plan then the dispute shall be determined in accordance with the Dispute Resolution Procedure.
- 4.9 As soon as practicable after the content of the Best Value Review Plan has been agreed or otherwise determined in accordance with the Dispute Resolution Procedure the Authority shall:
- (a) confirm in writing the Best Value Review Plan; or
 - (b) withdraw the Best Value Service Change Notice.
- 4.10 If the Authority either withdraws the Best Value Service Change Notice or does not confirm the Best Value Review Plan within [twenty (20)] Business Days of the Best Value Review Plan having been agreed or determined in accordance with the Dispute Resolution Procedure then the Best Value Review Plan and the Best Value Service Change Notice shall be deemed to have been withdrawn.
- 4.11 If the Authority confirms the Best Value Review Plan then the Authority shall submit an Authority Change Notice (which shall contain the information set out in the Best Value Service Change Notice and the Best Value Review Plan) and, [subject to paragraph 4.12,] the provisions of the Change Protocol shall apply.
- 4.12 Notwithstanding any provision to the contrary in the Change Protocol shall apply:
- (a) to the extent that the implementation of the Authority Change Notice referred to in paragraph 4.11 would result in a decrease in the costs of the Service Provider, the Unitary Charge shall be revised downwards by [♦] per cent ([♦]%)⁵ of the decrease in costs to the service to the Service Provider;

⁵ Bid back item.

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- (b) to the extent that the implementation of the Authority Change referred to in paragraph 4.11 would result in an increase in the costs of the Service Provider, the Unitary Charge shall be revised upwards in accordance with the provisions of the Change Protocol.]⁶
- 4.13 The Service Provider shall take all reasonable steps to mitigate any costs and maximise savings arising as a consequence of a Best Value Service Change Notice and, for the avoidance of doubt, the corresponding Authority Change Notice served pursuant to paragraph 4.11.]

⁶ See footnote to paragraph 3.8 in this Schedule 11.