

## **ICT SERVICES AGREEMENT SCHEDULES**

### **SCHEDULE 2.6**

#### **INSURANCE REQUIREMENTS**

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## Section A

### Product Description

#### 1. PRODUCT TITLE

ICT Services Agreement - Schedule 2.6 (Insurance Requirements)

#### 2. PURPOSE OF PRODUCT

To set out the specific requirements in relation to the insurances that the Contractor is required to maintain and their cover levels.

#### 3. COMPOSITION

- The schedule will set out details of the Authority's requirements in relation to the insurance policies and any restrictions on the Contractor's ability to deal with the policies.
- If, during the bidder selection process, a need for project and bidder-specific insurance is identified then the schedule will also set out the requirements for those policies (including appropriate levels of cover). Please note that project specific insurances should only be required in exceptional circumstances. In the event that project specific insurances are required, only those insurances which are absolutely necessary or appropriate should be requested by the Authority. Any requirements for insurance are likely to have an impact on the Contractor's costs and will result in higher charges to the Authority.

#### 4. DERIVATION

- Authority requirements.
- Bidder's proposals.

#### 5. RELATED CLAUSES & SCHEDULES

Clauses:        51 (IPR Indemnity),  
                     52 (Limitations of Liability)  
                     53 (Insurance)  
                     59.3.4 (Exit Management)

Guidance: Guidance Note 1 (Key Commercial Principles), section 1 - 25 (Insurance).

**6. ALLOCATION**

In the rare cases where project specific insurances are required, the availability of these policies and associated costs will need to be carefully explored with potential insurers. The cost impact of requiring the Contractor to procure such insurances will need to be carefully considered. Also consider whether it is appropriate to allocate an insurable risk to the Contractor. In certain circumstances it may be more cost effective for the Authority to self-insure in respect of the identified risks.

**7. QUALITY/REVIEW**

Authority expertise: commercial/procurement, financial, insurance advisors, legal.

## **Section B**

### **Guidance**

#### **1. INTRODUCTION**

- 1.1 After assessing the inherent risks in undertaking the project, the Authority may stipulate levels of insurance cover in respect of risks identified by the Authority which may be incurred by the Contractor. These risks may arise out of the Contractor's legal duties as an employer and provider of goods and/or services. Alternatively, special risks may arise from the Contractor's performance in connection with the Agreement, requiring project specific insurance to mitigate the risk.
- 1.2 The Authority should consider dictating insurance requirements if it believes that the consequences of an insurable event arising may give rise to liabilities which neither the Contractor nor the Authority could bear. A requirement on the Contractor to maintain a policy of insurance at an appropriate level might be considered necessary in some cases.
- 1.3 The Authority must bear in mind that it is arguable whether an insurance schedule should be included in the Agreement at all. The levels of insurance cover should normally be a matter for the Contractor, reflecting its estimate of the risks involved. There is a risk that if the Authority specifies the type and nature of insurances which must be held by the Contractor, in doing so, it is accepting a degree of responsibility. For example, if an event occurs which renders the Contractor unable to deliver services to the Authority, the Contractor is still obliged to deliver services under the Agreement (and in addition there may be additional comfort provided by a parent company guarantee, where one is provided). If however, the Contractor had purchased insurance cover at the Authority's request to cover this event, there may be an argument that the Contractor has done all it needed to do to fulfil its obligations, even though the cover might be inadequate or it does not facilitate the implementation or restoration of the Services.
- 1.4 It is rare for project specific insurances to be required in ICT services contracts. The opposite is true in projects where significant physical assets (e.g. property) form the core of the project (e.g. design build and operate projects). The underlying physical assets in an ICT services agreement will be more dynamic, decentralised and less

likely to be owned by, or to have significant long-term financial value to, the Authority. Much of the value in an ICT services agreement is likely to comprise of intangible assets which are not susceptible to physical loss. Authority owned ICT assets located at Authority sites are generally more suitable to be covered by the Authority's general policies of insurance.

- 1.5 Sometimes Contractors (usually in the case of larger suppliers) will insist on self-insuring against the types of risk that might affect its ability to perform the Agreement. If this is the case you should check that the proposed insurance coverage is adequate and clause 53 of the Agreement and schedule 2.6 will need to be amended to reflect that the Contractor will arrange or provide the cover.
- 1.6 The adequacy of insurance proposed by Contractor will need to be assessed during the bidder selection process. It will be extremely unusual to encounter issues of inadequacy of insurance cover at a later stage in the procurement (e.g. caused by a major claim against the Contractor's insurance or a significant change in the its financial standing), nonetheless the Authority must be alert to changes in the Agreement, specifications or in the Contractor's circumstances which changes the risk profile.
- 1.7 If a need for project specific insurances is identified, the requirements need to be carefully considered both in terms of the availability of insurance and the costs of that insurance. The Authority needs to be aware that its demands for insurances may result in the Contractor attempting to pass on the costs of such insurances through the Service Charges. Examples of project specific insurances may include:
  - 1.7.1 performance of the Agreement by the Contractor or Guarantor;
  - 1.7.2 professional indemnity;
  - 1.7.3 computer hardware and equipment; and
  - 1.7.4 project delays.

## **2. SPECIFIC REQUIREMENTS**

- 2.1 Clause 53 of the Agreement sets out the general obligations to take out and maintain insurance policies in the amounts specified in the schedule. It is usual to stipulate that the insurance policies must run for the term of the Agreement and the following

six years. This obligation is imposed by paragraph 1.1.1 of schedule 2.6 (Insurance Requirements).

2.2 The schedule will set out the additional requirements of the Authority in relation to those policies of insurance and stipulate any restrictions in the Contractor's ability to deal with the policies and/or modify the terms under which they are taken out. Typical requirements are as follows:

2.2.1 noting of the Authority's interest on the policies of insurance (this may be satisfied by a general note of third party interests on the Contractor's global policies). ***[Guidance: Please note that many insurers will not accept this practice.]***

2.2.2 details of the range of insurances that the Contractor should maintain (e.g. public liability, professional indemnity);

2.2.3 details of documentary evidence of the policies required by the Authority (this will typically amount to an obligation on the Contractor to send copies of premium receipts to the Authority);

2.2.4 a restriction on the Contractor's ability to compromise or amend the policies in any way that would be detrimental to the Authority's interests;

2.2.5 an obligation on the Contractor to administer the policies for the benefit of the Authority; and

2.2.6 undertaking that the Contractor will not do anything nor act in any way that could prejudice or invalidate the policies of insurance.

## Section C

### Pro-forma/Example Schedule

#### Insurance Requirements

*[Guidance: subject to the agreement of this schedule, the following definition(s) will need to be added to schedule 1]*

<b>"Joint Insured"</b>	one of the insureds in a type of insurance policy covering more than one insured;
<b>"Required Insurances"</b>	the policies of insurance listed at paragraph 2 of this schedule 2.6 (Insurance Requirements);

#### 1. INSURANCE COVENANTS

- 1.1 The Contractor:
  - 1.1.1 shall maintain the Required Insurances in full force and effect at all times from the Effective Date until the date which is [six] years following the end of the Term;
  - 1.1.2 shall not cancel the Insurances or make any material change thereto without the express written consent of the Authority; and
  - 1.1.3 may change the insurers with whom the Insurances are held on annual basis, upon notice to the Authority at least 10 Working Days prior to any such change. In the event that such a change results in revisions to the terms or cover, Authority consent will be required before the change can be implemented.
- 1.2 The Insurances shall be maintained on terms that are as favourable to those generally available to a prudent contractor in respect of risks insured in the international insurance market.
- 1.3 The Insurances shall be maintained with a reputable insurance company.

1.4 The Contractor shall procure, at no cost to the Authority, in respect of each of the public liability, [and] employer's liability [and product liability] Insurances that:

1.4.1 each such Insurance shall be extended automatically to indemnify the Authority as Joint Insured, [to the extent of the Authority's insurable interest]; and

1.4.2 the insurers of each such Insurance shall waive all rights of subrogation or action that insurers may acquire against the Authority,

provided that the Authority shall as though they were the insured under the Insurances, observe, fulfil and be subject to the terms, exclusions, conditions and endorsements of the Insurances so far as they can apply. ***[Guidance: If Bidders will not accept the Authority as joint insured, an alternative would be to procure a benefit for the Authority as third party under the policy of insurance, with right to enforce under the Contract (Rights of Third Parties) Act 1999. This may require amendment of the Agreement to ensure a benefit is granted. Please refer to the guidance to clause 69 of the Agreement for consideration of third party rights generally.]***

1.5 The Contractor shall procure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any Insurance or cover, or to treat any Insurance, cover or claim as avoided in whole or part. The Contractor shall use reasonable endeavours to notify the Authority (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or avoid any Insurance, or any cover or claim under any Insurance in whole or in part.

1.6 The Authority may purchase (if possible) any of the Insurances which the Contractor has failed to maintain in full force and effect pursuant to this Agreement. The Authority may recover the premium and other costs incurred in doing so as a debt due from the Contractor.

1.7 On request from the Authority, the Contractor shall, not more than 10 Working Days after the Effective Date, and within 15 Working Days after the renewal of every Insurance, forward a letter from its insurance brokers who arranged the Insurances containing at least the information set out in the appendix to the schedule. The



Contractor shall confirm in each covering letter that the maximum deductible in respect of any of its insurance policies is no greater than [10% (ten per cent)] of the sum insured under that policy. (Where the maximum deductible value varies between insurances, these values should be added in a separate column to the table at paragraph 2 below).

- 1.8 The Authority may from time to time submit a request in writing to the Contractor, demanding evidence of the existence of all Insurances, copies of all policy terms, and evidence of the timely payment of premiums (confirmation in the form of a broker's letter), including a summary of the Insurances under which the Authority is named as a Joint Insured, and the Contractor shall provide all such evidence within five Working Days of such written request.

## 2. REQUIRED INSURANCES

<b>Class</b>	<b>Minimum Sum Insured</b>
Public Liability	£xxx million
Employers Liability	£xxx million
Professional Indemnity	£xxx million
[Product Liability]	£xxx million
[Business Continuity]	£xxx million
<i>[Others] [Guidance: consider whether any project specific insurances are required. For example fidelity guarantee insurance may be appropriate where the Contractor will process financial receipts on behalf of the Authority ]</i>	£xxx million

## Appendix

### Contents of Broker's Letter

A) Class: **PUBLIC LIABILITY**

Insurer: *[to be completed]*

Policy No: *[to be completed]*

Period: *[to be completed]*

Confirmation that the levels of Insurance are at least as required in paragraph 2 of schedule 2.6.

[Confirmation that the premiums due under the terms of the policy of insurance are not (and have not previously been) in arrears as at the date of inception or renewal or as at the date of the broker's letter.]

B) Class: **EMPLOYERS LIABILITY**

Insurer: *[to be completed]*

Policy No: *[to be completed]*

Period of Insurance: *[to be completed]*

Confirmation that the levels of Insurance are at least as required in paragraph 2 of schedule 2.6.

C) Class: **PROFESSIONAL INDEMNITY**

Insurer: *[to be completed]*

Policy No: *[to be completed]*

Period of Insurance: *[to be completed]*

Confirmation that the levels of Insurance are at least as required in paragraph 2 of schedule 2.6.

D) Class: **PRODUCTS LIABILITY**

Insurer: *[to be completed]*

Policy No: *[to be completed]*

Period of Insurance: *[to be completed]*

Confirmation that the levels of Insurance are at least as required in paragraph 2 of schedule 2.6.

E) Class: **BUSINESS CONTINUITY INSURANCE**

Insurer: *[to be completed]*

Policy No: *[to be completed]*

Period of Insurance: *[to be completed]*

Confirmation that the levels of Insurance are at least as required in paragraph 2 of schedule 2.6.

F) Class: **[OTHER]**

Insurer: *[to be completed]*

Policy No: *[to be completed]*

Period of Insurance: *[to be completed]*

Confirmation that the levels of Insurance are at least as required in paragraph 2 of schedule 2.6.